

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2646 of 2019

1.D.Sasikala

2.S.D.Manikandan

3.J.Sathya

..Appellants/Petitioners

Vs.

The Managing Director,

Tamil Nadu State Transport Corporation,

Pallaaan Salai, Chennai.

... Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.10.2018 and made in M.A.C.T.O.P.No.4128/2014 on the file of the learned Principal District Judge, (Motor Accidents Claims Tribunal), Cudalore.

For Appellants : Mr.S.Udhayakumar

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree made in M.C.O.P.No.4128 of 2014, dated 31.10.2018, on the file of the learned Principal District Judge, (Motor Accidents Claims Tribunal), Cudalore.

2. The appellants are the claimants in M.C.O.P.No.4128 of 2014, on the file of learned Principal District Judge, (Motor Accidents Claims Tribunal), Cudalore. They filed the above said MCOP claiming compensation of Rs.25,00,000/- as compensation for the death of Durairaj, husband of the first petitioner, father of the second and third petitioners, who died an accident that took place on 17.08.2014, when the deceased was riding the TVS Scooty No. TN 31 AE 9120 from north to south, at a moderate speed, keeping extreme left of Cuddalore-Puducherry ECR Road, near Pandurangan Complex, Chinna ganganankuppam, the respondent's SETC bus registration No.TN. 01.N.9996 came from south to north, at a great speed, in a rash and negligent manner, without any signal, dashed the deceased motor cycle in which, the deceased sustained

fatal injuries and died on the spot. Then post mortem was conducted at Govt HQ Hospital, Cuddalore.

3. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus and directed the respondent/transport Corporation to pay the compensation of a sum of Rs.5,45,000/- to the claimants. Based on the deceased age, occupation and income, the tribunal awarded a sum of Rs.5,45,000/- as compensation under the following heads:

S.No	Description	Amount awarded by Tribunal
1.	Loss of Pendency	Rs.4,75,200/-
2.	Loss of Consortium, loss of love and affection and funeral expenses.	Rs.70,000/-
	Total	Rs.5,45,200/-
	Rounded to	Rs.5,45,000/-

4. Before the Tribunal, on the side of the claimants, witnesses P.W.1, P.W.2 and P.W.3 were examined and following exhibits were marked:

- (a) Ex.P1: Copy of FIR
- (b) Ex.P2: Copy of M.V.I. Report of TN.01-N-9996
- (c) Ex.P3: Copy of Postmortem certificate of deceased Durairaj
- (d) Ex.P4: Death certificate of deceased Durairaj
- (e) Ex.P5: Copy of legal heir certificate of deceased Durairaj
- (f) Ex.P6: Appointment letter of deceased Durairaj
- (g) Ex.P7: Service Record Form BB of deceased Durairaj
- (h) Ex.P8: Pay slips of deceased Durairaj for the month of May and 2014 and July 2014.

5. Before the Tribunal, on the side of the respondents no witnesses were examined and no exhibits were marked:

6. Aggrieved by the award passed by the Tribunal, the respondent has filed the present appeal under Section 173 of the Motor Vehicles Act.

7. The learned counsel for the appellants submitted contended that on 17.08.2014, when the deceased was riding the TVS Scooty No. TN 31 AE 9120 from north to south, at a

moderate speed, keeping extreme left of Cuddalore-Puducherry ECR Road, near Pandurangan Complex, Chinna ganganankuppam, the respondent's SETC bus registration No.TN. 01.N.9996 came from south to north, at a great speed, in a rash and negligent manner, without making horn and dashed against the deceased motor cycle in which, the deceased sustained fatal injuries and died on the spot. He further submitted that the tribunal has not awarded any amount towards future prospects of the deceased and the multiplier method adopted by the tribunal is also not reasonable one. He further submitted that the deceased was working as Security Guard, SIS Security Services in Puducherry and he was earning a sum of Rs.12,500/- per month, the tribunal has not considered the same which determining the compensation.

8. The learned counsel appearing for the respondent submitted that the accident occurred only due to the rash and negligent driving of the deceased. Further as per the evidence of P.W.3 the deceased working as Temporary staff of their company without considering the nature of work and age of the deceased, the Tribunal erroneously fixed the monthly income at Rs.6,000/- without any basis and on the whole the sum awarded by the Tribunal under other heads is also excessive and arbitrary. He further submitted that the tribunal ought to reduce the compensation by taking age and occupation of the deceased.

9. On perusal of records it is seen that the accident was occurred only due to the rash and negligent driving of the driver of the bus. The particulars have been furnished by the claimant regarding the age, income and occupation of the deceased and the same are taken into consideration by the Tribunal. The deceased was aged about 59 years at the time of accident and he was earning Rs.8,000/- per month by working as Security Guard and also he was in service only in five months. Hence, the tribunal has fixed as monthly as Rs.6,000/- which is very much reasonable. The Tribunal has taken a sum of Rs.6,000/- as monthly income of the deceased and towards added 10% for future prospects as Rs.6,000+Rs.600=6,600/- and by deducting 1/3 towards personal expenses and applying multiplier 9, the loss of dependency was calculate by the tribunal at Rs.4,75,200/-. By considering the age of the deceased future prospects and deduction towards personal expenses and the multiplier have been properly applied by the tribunal. As far the fixation of monthly income of the deceased is concerned, this Court is of the view that the monthly income is very meager and the same has to be increased by considering the age of the deceased and also the Exs.P6 to P8 submitted to prove it income of the deceased. Hence this Court fixes the income of the deceased at Rs.8,000/- per month and calculates the loss of dependency at Rs.6,33,600/-. The amounts awarded by the Tribunal under other heads are

confirmed.

10.Hence the total compensation payable to the claimant is as hereunder:-

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court
1.	Loss of dependency	Rs.4,75,200/-	Rs.6,33,600/-
2.	Loss of Consortium, loss of love and affection and funeral expenses.	Rs.70,000/-	Rs.70,000/-
	Total	Rs.5,45,200/-	Rs.7,03,600/-
	Rounded to	Rs.5,45,000/-	-

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,45,000/- is hereby enhanced to Rs.Rs.7,03,600/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

12.The respondent / Tamil Nadu Transport Corporation is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through NEFT or RTGS as per the apportionment ordered by the Tribunal within a period of one week thereon. The appellant/claimant is directed to pay the requisite court fee, if any within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Cudalore.

+1cc to Mr.S.Udayakumar, Advocate SR.53806

C.M.A.No.2646 of 2019

EV (CO)
CB (04/02/2020)



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