

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2156 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Railway Station Road,
Kumbakonam Town & Taluk & Munsifi ... Appellant

Vs.

1.M.Rengaraj
2.R.Abirami ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.09.2016 and made in M.C.O.P.No.13 of 2016 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tiruvarur.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.S.Parthasarathy

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.13 of 2016, dated 14.09.2016, on the file of the Chief Judicial Magistrate, (Motor Accidents Claims Tribunal), Tiruvarur.

2. The respondents are the claimants in M.C.O.P.No.13 of 2016, on the file of the learned Chief Judicial Magistrate, (Motor Accidents Claims Tribunal), Tiruvarur. They filed the above said MCOP claiming compensation of Rs.30,00,000/- for the death of Vignesh, son of the respondents herein, who died an accident that took place on 02.11.2012, when the deceased Vignesh was traveling in the Two Wheeler bearing registration No.TN 51 D 5983, which is owned by his friends, after visiting his friends he was proceeding in Tiruvarur to Tanjur road at 9.00 p.m., by observing all the traffic rules, at that time the

Tamil Nadu State Transport Corporation bus bearing registration No.TN-68-N-0069 came in the rash and negligent manner and dashed against the two wheeler, as a result of which, the deceased Vignesh thrown away from the motor cycle and he sustained grievous injuries to all over the body and he died on the spot. Therefore, the claimants/parents of the deceased claimed a compensation for their only son. The respondents denied the mode of claimants in the claim application by stating that the said transport Corporation was proceedings from the Tanjur to Tiruvar in a very rash and negligent manner and hit behind the deceased Vignesh motor cycle.

3. The Tribunal upon considering the pleadings, FIR, evidence of eye witnesses, oral and documentary evidences adduced on the side of the deceased held that the accident occurred due to the rash and negligent driving of the driver of the bus/Tamil Nady Transport Corporation belonging to the appellant /Tamil Nadu Transport Corporation and directed the appellant/ Tamil Nadu Transport Corporation to pay the compensation of Rs.16,50,000/- to the respondents/claimants under the following heads.

S.No	Description	Amount awarded by Tribunal
1.	loss of income of the deceased (90,000 x 17)	Rs.15,30,000/-
2.	Funeral Expances	Rs.40,000/-
3.	Love and affection	Rs.80,000/-
	Total	Rs.16,50,000/-

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

- (a) Ex.P1 : Copy of FIR
- (b) Ex.P2 : Postmortem report
- (c) Ex.P3 : Death certificate
- (d) Ex.P4 : Legal heir Certificate
- (e) Ex.P5 : Motor vehicle inspection report for first respondent
- (f) Ex.P6 : Motor vehicle inspection report of transprot corporation
- (g) Ex.P7 : deceased graduation certificate
- (h) Ex.P8 : Course Completion Certificate
- (i) Ex.P9 : Transfer Certificate

On the side of the Respondent / Transport Corporation, R.W.1 was examined and no exhibits were marked.

5. Aggrieved by the award passed by the Tribunal, the respondent/Tamil Nadu Transport Corporation has filed the present appeal under Section 173 of the Motor Vehicles Act.

6. The learned counsel appearing for the appellant/Tamil Nadu Transport Corporation has submitted that the accident occurred only due to the rash and negligent driving of the deceased, who came in the motor cycle in a high speed and invited the accident. He further submitted that there is no proof for occupation or income of the deceased and in the absence of any details, the Tribunal erroneously fixed the monthly income at Rs.15,000/- per month, without any basis and on the whole, the sum awarded by the Tribunal under other heads is excessive.

7. The learned counsel for the respondents/claimants submitted that the deceased Vignesh was 22 years old boy at the time of the accident, Ex.P7 clearly shows that he was a graduate in the catering technology and was working in hotel and also earning a monthly income of Rs.15,000/-. He further submitted that the Ex.P1/FIR copy clearly shows that the transport Corporation bus, which came in a rash and negligent manner and hit against the rider of the two wheeler and further contented that the tribunal has not awarded any amount for future prospects.

8. 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 has been furnished by the claimant regarding the age, income and occupation of the deceased and the same are taken into consideration by the Tribunal. It is also seen from the award that the accident had occurred in the year 2012. The respondents 1 and 2 produced Ex.P7 graduation certificate. As per the certificate the deceased was working and also earning a sum of Rs.20,000/- per month. But the Tribunal in the absence of any proof for income, and fixed notional income of deceased at Rs.15,000/- per month and deducted 50% towards his personal expenses, applied multiplier and granted compensation. In view of the submission made by the learned counsel for the appellant and also considering the fact that the claimants have not produce any documents to prove the income of the deceased, it would be proper to reduce the monthly income taken by the Tribunal. Accordingly, this Court finds the monthly income of the deceased at Rs.9,000/- by deducting 50% towards his personal income, applying the multiplier 18 has calculated the loss of income of Rs.13,60,800/- [(Rs.4,500/- + 40% of Rs.4,500/-) X 12 X 18].

9. Considering the fact that the respondents are aged at 60 and 51 years, they lost their only son in the said accident and they also lost their family support the sum at Rs.80,000/- towards loss of love and affection, is enhanced to Rs.1,00,000/-. The Tribunal has awarded a sum of Rs.40,000/- towards funeral expenses and the same is reduced to Rs.15,000/-. It is seen that the Tribunal has not granted any amount towards loss of estate, hence a sum of Rs.50,000/- has been granted by this Court towards loss of estate. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court
1.	loss of income of the deceased (90,000 x 17)	Rs.15,30,000/-	Rs.13,60,800/-
2.	Funeral Expances	Rs.40,000/-	Rs.15,000/-
3.	Love and affection	Rs.80,000/-	Rs.1,00,000/-
4.	Loss of Estates	-	Rs.50,000/-
	Total	Rs.16,50,000/-	Rs.15,25,800/-

10. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.16,50,000/- is reduced to Rs.15,25,800/-. No costs.

11. The appellant / 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 within a period of one week thereon. The appellant/Transport Corporation 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(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
(Motor Accidents Claims Tribunal),
Tiruvarur.

2.The Section Officer,
VR Section,
High Court,
Madras.

+lcc to Mr.D.Venkatachalam, Advocate Sr.64655
+lcc to Mr.S.Parthasarathy, Advocate Sr.64638

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