

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.3067 & 3068 of 2017

C.M.A.No.3067 of 2017

1.Mayil

2.Sangeetha.R

3.Monisha.R

4.Minor Jaipriya.R
(Rep. by her mother and natural guardian
1st petitioner)

5.Krishnaveni

6.Govindan ... Appellants/ Petitioners
Vs.

1.The Managing Director
TamilNadu State Transport Corporation (VPM) Ltd
Villupuram.

2.S.M.Ramesh ... Respondents/ Respondents

C.M.A.No.3068 of 2017

1.Valli

2.Sasikala.M

3.Prasanth

4.Kanthammal ... Appellants/ Petitioners
Vs.

1.The Managing Director
TamilNadu State Transport Corporation (VPM) Ltd
Villupuram.

2.S.M.Ramesh .. Respondents

Common Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.04.2017 made in M.A.C.T.O.P.Nos.7 of 2015 and 152 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi.

In C.M.A.No.3067 of 2017
For Appellants : Ms.S.Thamizharasi
For R1 : Mr.K.J.Sivakumar
R2 : Exparte

In C.M.A.No.3068 of 2017
For Appellants : Ms.S.Thamizharasi
For R1 : Mr.K.J.Sivakumar
R2 : Exparte

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are filed by the appellants/claimants challenging the portion of the award fixing 50% contributory negligence on the part of the deceased as well as seeking enhancement of compensation granted by the Tribunal in the award dated 06.04.2017 made in M.A.C.T.O.P.Nos.7 of 2015 and 152 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi.

2. These appeals arise out of the same accident and common award and hence they are disposed of by this common judgment.

3.The appellants in both the appeals are claimants in M.A.C.T.O.P.Nos.7 of 2015 and 152 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi. The appellants/claimants filed the above said claim petitions claiming a sum of Rs.25,00,000/- each as compensation for the death of Raghu and Murugesan, who died in the accident that took place on 03.07.2014. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2nd respondent/driver of the bus belonging to the 1st respondent/Transport Corporation as well as negligent act of the deceased persons, fixed 50% contributory negligence on the part of both the deceased persons as well as 2nd respondent, awarded a sum of Rs.9,42,000/- each as compensation to the appellants in both the appeals and directed the 1st respondent/Transport Corporation to pay a

sum of Rs.4,71,000/- each i.e., 50% of the award amount, as compensation to the appellants in both appeals. Challenging the portion of the award fixing 50% contributory negligence on the part of the deceased persons and not being satisfied with the award amounts granted by the Tribunal, the appellants/claimants have come out with the present appeals.

4.The learned counsel appearing for the appellants/claimants contended that the Tribunal failed to appreciate the oral and documentary evidence let in through PW1 and PW2. The Tribunal failed to consider the evidence of PW2, an independent eyewitness and erred in believing the evidence of RW1, who is an interested witness, driver of the bus belonging to the 1st respondent Transport Corporation. The Tribunal failed to note that the Amman Chariot cannot be taken through the underground way. The Tribunal ought to have disbelieved the evidence of RW1 that he was driving the bus slowly in the National Highways. If he was driving the bus slowly, by applying sudden brake, the bus would have stopped immediately. The Tribunal ought to have fixed entire negligence on the part of RW1, the driver of the bus as he admitted that he saw the group of around 50 people with Amman Chariot were standing 100 feet before the place of occurrence. The appellants have claimed that both the deceased persons were working as coolies and were earning a sum of Rs.15,000/- per month. The Tribunal ought to have granted 30% enhancement towards future prospects and awarded more compensation towards loss of dependency. The amounts granted by the Tribunal under different heads are meagre. Both the deceased persons were aged 40 years. The Tribunal erroneously fixed age of the deceased persons as 45 years and 50% contributory negligence fixed by the Tribunal on the part of the deceased persons is erroneous and prayed for setting aside 50% contributory negligence fixed on the part of the deceased persons and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 1st respondent/Transport Corporation contended that both the deceased persons and others along with Amman Chariot suddenly crossed the road in the National Highways and due to their negligence, the accident has occurred. The Tribunal ought to have fixed entire negligence on the part of the deceased persons and others. The 2nd respondent, driver of the bus was acquitted in the criminal proceedings. The copy of the judgment in the criminal Court was marked as Ex.R1. The appellants have not proved the age, avocation and income of the deceased persons. In the absence of any material evidence, the notional income fixed by the Tribunal is correct. In M.C.O.P.No.152 of 2014 (C.M.A.No.3068 of 2017), there are only four claimants. The Tribunal erroneously

deducted 1/5th towards personal expenses instead of 1/4th. There are six claimants in M.C.O.P.No.7 of 2015 (C.M.A.No.3067 of 2017). The Tribunal erroneously deducted 1/5th towards personal expenses instead of 1/4th. The amounts awarded by the Tribunal under different heads are excessive and prayed for dismissal of the appeals.

6.Heard the learned counsel appearing for the appellants/claimants as well as the 1st respondent/Transport Corporation and perused the materials available on record.

7.From the materials available on record, it is seen that both the deceased persons were accompanying Amman Chariot along with number of persons. The respondents have contended that the deceased and others suddenly tried to cross the National Highways and there was a pedestrian crossing. The appellants have not denied the said contention of the respondents. Further, the Tribunal has held that there was a underground passage for crossing the National Highways. The deceased persons and others could have used the said underground passage for crossing the National Highways. Considering the above materials, the Tribunal fixed 50% negligence on the part of the deceased persons. There is no error in the said finding of the Tribunal warranting interference by this Court.

8.As far as quantum of compensation is concerned, the appellants have contended that both the deceased persons were coolies and were earning a sum of Rs.15,000/- per month. They have failed to substantiate the said contention with regard to avocation and income of the deceased persons. In the absence of any material evidence, the Tribunal has fixed notional income of both the deceased persons at Rs.5,000/- per month. The accident is of the year 2014 and the notional income fixed by the Tribunal is meagre. A sum of Rs.6,500/- per month is fixed as notional income of both the deceased persons. Both the deceased were aged 45 years at the time of the accident. Hence, the appellants are entitled to 25% enhancement towards future prospects. The appellants/claimants are 6 & 4 in numbers in M.C.O.P.Nos.7 of 2015 and 152 of 2014 respectively. The Tribunal erroneously deducted 1/5th instead of 1/4th towards personal expenses in both the claim petitions. The contention of the learned counsel appearing for the appellants that the Tribunal erroneously fixed age of the deceased as 45 years instead of 40 years is without merits. The appellants have stated in the claim petitions that both the deceased persons were aged 40 years at the time of the accident. The Tribunal fixed the age of the deceased persons as 45 years as per their postmortem

certificates and averments made in the claim petitions. The amount awarded by the Tribunal towards loss of dependency in both the claim petitions is modified to Rs.10,23,750/- (Rs.6,500 + 1625 (Rs.6,500 x 25%) x 12 x 14 x 3/4). In C.M.A.No.3068 of 2017, in addition to loss of dependency, the Tribunal has awarded excessive amounts towards loss of estate, funeral expenses, loss of love & affection and loss of consortium to the 1st appellant and the same are hereby reduced to Rs.15,000/-, Rs.15,000/-, Rs.30,000/- and Rs.40,000/- respectively. In CMA No.3067 of 2017, in addition to loss of dependency, the Tribunal has awarded excessive amounts towards loss of estate, funeral expenses, loss of love & affection and loss of consortium to the 1st appellant and the same are hereby reduced to Rs.15,000/-, Rs.15,000/-, Rs.50,000/- and Rs.40,000/- respectively. Thus, the compensation awarded by the Tribunal is modified as follows:

In CMA No.3068 of 2017:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	6,72,000	10,23,750	Enhanced
2.	Loss of estate	50,000	15,000	Reduced
3.	Funeral expenses	20,000	15,000	Reduced
4.	Loss of love and affection	1,00,000	30,000	Reduced
5.	Loss of consortium (1 st appellant)	1,00,000	40,000	Reduced
	Total	Rs.9,42,000/- 50% of the award amount Rs.4,71,000/-	Rs.11,23,750/- 50% of the award amount Rs.5,61,875/-	Enhanced by Rs.90,875/-

In CMA No.3067 of 2017:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	6,72,000	10,23,750	Enhanced
2.	Loss of estate	50,000	15,000	Reduced
3.	Funeral expenses	20,000	15,000	Reduced
4.	Loss of love and affection	1,00,000	50,000	Reduced
5.	Loss of consortium (1 st petitioner)	1,00,000	40,000	Reduced
	Total	Rs.9,42,000/- 50% of the award amount Rs.4,71,000/-	Rs.11,43,750/- 50% of the award amount Rs.5,71,875/-	Enhanced by Rs.1,00,875/-

9. In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.4,71,000/- is hereby enhanced to Rs.5,61,875/- in C.M.A.No.3068 of 2017 (M.C.O.P.No.152 of 2014) and Rs.5,71,875/- in C.M.A.No.3067 of 2017 (M.C.O.P.No.7 of 2015). The award of Rs.4,71,000/- in both the claim petitions will carry interest at the rate of 6% per annum from the date of petitions till the date of deposit. The enhanced award amount of Rs.90,875/- and Rs.1,00,875/- in C.M.A.No.3068 of 2017 (M.C.O.P.No.152 of 2014) and C.M.A.No.3067 of 2017 (M.C.O.P.No.7 of 2015) respectively will carry interest at the rate of 7.5% per annum. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 1st respondent/Transport Corporation is directed to deposit the enhanced award amount now determined by this Court in both the appeals along with interest and costs, less the amount already deposited if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants in C.M.A.No.3068 of 2017 and the appellants 1 to 3, 5 and 6 in C.M.A.No.3067 of 2017 are permitted to withdraw their respective share of the award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount

if any, already withdrawn. The share of the minor 4th appellant in C.M.A.No.3067 of 2017 is directed to be deposited in any one of the Nationalised Bank till the minor/4th appellant attains majority. The 1st appellant in C.M.A.No.3067 of 2017 being the mother of the 4th appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kj
To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Vaniyambadi.

Copy to :
The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Ms.S.Thamizharasi , Advocate SR.No. 2162
+2ccs to Mr.K.J.Sivakumar , Advocate SR.No. 32880,32881

A.SK(26/07/2019)

C.M.A.Nos.3067 & 3068 of 2017

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