



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. (MD) Nos.940 of 2010

A.Shankar

... Appellant / Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Trichirapalli District.

... Respondent /
Respondent

PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 17.09.2009 made in M.C.O.P.No.2189 of 2000 on the file of the I Additional Sub Court, Trichirapalli / Motor Accident Claims Tribunal, Trichy.

For Appellants : Mr.R.P.Karuppasamy

For Respondent : No appearance

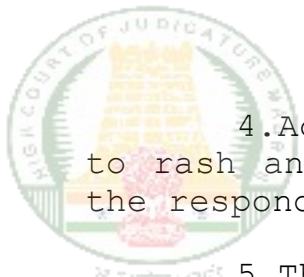
JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellants / claimants challenging the award dated 17.09.2009 in M.C.O.P.No.2189 of 2000 passed by the I Additional Sub Court, Trichirapalli / Motor Accident Claims Tribunal, Trichy.

2.The appellant is the claimant before the Tribunal. The deceased viz., A.Arumugam, died in a road accident and his son filed a claim petition before the Tribunal claiming a sum of Rs.6,00,000/- as compensation.

3.The facts of the case are as follows: -

It is the case of the appellant / claimant before the Tribunal that on 10.04.2004 at about 5.00 p.m., the deceased viz., A.Arumugam was sitting in the two wheeler viz., Hero Honda Splender bearing registration No.TN 45 B 4980 driven by his son viz., A.Dhanapal on Tiruchirapalli to Salem National Highways road. At that time, a bus bearing registration No.TN 45 N 1429 belonging to the respondent / Corporation came on the opposite direction in a rash and negligent manner and dashed against the two wheeler. Due to the impact, the deceased sustained multiple injuries. Immediately, he was taken to AGM GH, Trichy. However, he died on the way to hospital. A criminal case in Crime No.162 of 2004 was registered under Section 304(A) IPC against the driver of the bus.



4. According to the claimant, the accident took place only due to rash and negligent driving by the driver of the bus and hence, the respondent is liable to pay the compensation.

5. The respondent / Transport Corporation has filed a counter statement. According to the respondent, due to rash and negligent act of the rider of the two wheeler, the accident had occurred and hence, driver of the bus is not liable for the accident. It is also stated that the claim amount is highly excessive without any basis and due to the composite negligence on the part of the rider of the motor cycle, the accident had occurred and hence, the respondent prayed that the claim petition has to be dismissed.

6. Before the Tribunal, on the side of the claimants, seven witnesses were examined as P.Ws.1 to P.W.7 and 11 documents were marked as Exs.P1 to P11. On the side of the respondent / Transport Corporation, one witness was examined as D.W.1 and no document was marked.

7. After considering the oral and documentary evidence, the Tribunal has awarded a sum of Rs.1,35,000/- as compensation with 7.5% interest per annum to the appellant / claimant and directed respondent / Transport Corporation to pay the said award amount. Aggrieved by the said award with regard to enhancement of quantum of compensation, the present appeal is filed by the appellant / claimant.

8. The learned counsel for the appellant / claimant submitted that the present appeal is filed by questioning the finding rendered by the Tribunal with regard to quantum for enhancement of compensation. The learned counsel for the appellant has submitted that the income of the deceased was wrongly calculated by the Tribunal. He further submitted that in respect of the award amount towards other heads are very low and hence, the same may be enhanced.

9. Heard the learned counsel for the appellant and there is no representation for the respondent / Transport Corporation and perused the entire materials on record.

10. The accident was occurred on 10.04.2010 and the deceased in the road accident died on the way to hospital. The deceased was a pensioner from Southern Railway and he was receiving a sum of Rs.3,000/- per month and also earning a sum of Rs.10,000/- by way of running a petty shop. At the time of accident, the deceased was 70 years old. In view of the decision reported in **2009 ACJ 1298 in Sarala Verma and others Vs. Delhi Transport Corporation and another** the correct multiplier is 5 for the age group 70. Applying the multiplier as 5, after deducting one third towards personal expenditure, the Tribunal has calculated the monthly income of the deceased at Rs.2,000/- and awarded a sum of Rs.1,20,000/- as loss of income ie., $(Rs.2,000 \times 12 \times 5 = Rs.1,20,000/-)$. The same is



reasonable and hence, it is confirmed.

11. In terms of the judgment reported in **2017(16) SCC 680 (National Insurance Co.Ltd., Vs. Pranay Sethi and others)** a sum of Rs.15,000/- is awarded towards funeral expenses whereas, the Tribunal has awarded a sum of Rs.5,000/-. The Tribunal did not award any amount towards loss of estate and transportation. Hence, a sum of Rs.15,000/- is awarded towards loss of estate and a sum of Rs.10,000/- is awarded towards transportation. The Tribunal awarded a sum of Rs.10,000/- towards loss of love and affection, however, the same is increased to Rs.15,000/-.

12. Accordingly, the claimant is entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	This Court	
1.	Loss of income	1,20,000	1,20,000	Confirmed
2.	Loss of estate	-	15,000	Awarded
3.	Funeral expenses	5,000	15,000	Enhanced
4.	Transportation	-	10,000	Awarded
5.	Loss of love and affection	10,000	15,000	Enhanced
	Total	1,35,000	1,75,000	Enhanced

The claimant is entitled for a sum of Rs.1,75,000/- with interest at 7.5% per annum as compensation. The respondent / Transport Corporation is directed to deposit the enhanced award amount with accrued interest and costs before the Tribunal, within a period of 8 weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant / claimant is entitled to withdraw the compensation.

13. In the result, the award of the Tribunal is hereby modified as above and the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)



To
The I Additional Sub Court, Trichirapalli
/ Motor Accident Claims Tribunal, Trichy.

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+1CC TO MR.M.SUBASH BABU, Advocate Sr. No. 86853

C.M.A. (MD) No. 940 of 2010
13.09.2019

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