



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.07.2019

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THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.M.A(MD)No.72 of 2018
and
C.M.P(MD)No.1134 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Division Office II,
Periyamelaguparai,
Trichy.

.. Appellant/ Respondent

Vs.

1.Ponnammal

2.Veerappan

[Appeal against R2 is dismissed vide
order dated 29.01.2019]

3.Dhanalakshmi

.. Respondents/ Claimants

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 04.07.2017, passed in M.C.O.P.No.1745 of 2013 by the Motor Accident Claims Tribunal / Special District Court, Tiruchirappalli.

For Appellant : Mr.P.Prabhakaran

For Respondents 1 & 3 : Mr.N.Sudhagar Nagaraj

JUDGMENT

It is a case of fatal. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.14,04,000/- towards loss of dependency, Rs.20,000/- towards funeral and transportation expenses, Rs.3,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of estate and Rs.1,03,461/- towards medical bills (Ex.P.6 series), totally Rs.19,27,460/- as compensation. The Tribunal has observed that the deceased Rajendran has also contributed for the accident and hence, the respondents 1 to 3 / claimants shall bear 25% of the award amount, ie., Rs.4,81,865/- and the remaining 75% of the award, ie., Rs.14,45,595/- shall be payable by the appellant / Transport Corporation with 7.5% interest per annum from the date of petition



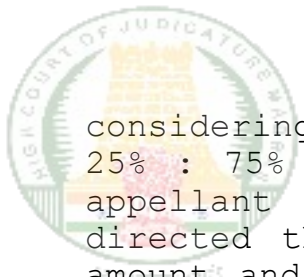
till the date of realization, excluding the default period if any and also directed the appellant / Transport Corporation to deposit the same. The appellant / Transport Corporation has filed this appeal challenging the liability as well as quantum of compensation.

2.The learned counsel appearing for the appellant / Transport Corporation would submit that the accident was not happened due to the rash and negligent driving of the driver of the appellant / Transport Corporation. R.W.1 to R.W.3 have deposed that the deceased drove T.V.S.50 motor cycle in a rash and negligent manner and dashed against the front right side of the appellant's bus. But the Tribunal has fixed 75% on the appellant / Transport Corporation. The compensation awarded by the Tribunal towards various heads, is also excessive. Thus, he prayed to allow the appeal.

3.The learned counsel appearing for the respondents 1 and 3 / claimants 1 and 3 would submit that the accident was happened only due to the rash and negligent driving of the driver of the appellant / Transport Corporation. The Tribunal after considering the contention made on the side of the appellant / Transport Corporation that the deceased has no driving license at the time of accident, has fixed 25% liability on the deceased and 75% liability on the driver of the appellant / Transport Corporation and also awarded reasonable compensation. Thus, he prayed to dismiss the appeal.

4.Heard the learned counsel appearing for the appellant / Transport Corporation and the learned counsel appearing for the respondents 1 and 3 / claimants 1 and 3 and also perused the records carefully.

5.The date of accident is on 02.09.2012. P.W.2 would state that on the date of occurrence, when he was travelling from south to north in Mettupalayam Main Road towards Musiri, the deceased was travelling in a TVS 50 motor cycle in front of him and at that time, the appellant bus came in a high speed to the right side and dashed against the deceased. R.W.2, the driver of the appellant / Transport Corporation would state that when he saw the deceased coming very fast, he stopped the bus, but even then the deceased dashed on the bus and he took the deceased in his bus for treatment. R.W.3 has stated that at the time of accident, the respondent bus came in slow speed and was stopped, but the deceased came in a high speed and even then the deceased dashed on the bus and he helped the deceased and sent him to hospital for treatment in another two wheeler. The complaint was given by R.W.2. The same was also given one day after the occurrence. But, R.W.3 has stated that he was examined by the police within half an hour after the accident. Therefore, the evidence of R.W.2 and R.W.3 are not corroborative. The only contention raised on the side of the appellant / Transport Corporation with regard to the negligence on the part of the deceased, is that he has no driving license at the time of accident and drove the vehicle without knowing to drive it. Therefore, considering the evidence of P.W.1 and Ex.P.1, FIR and also



considering the manner of accident, the Tribunal has rightly fixed 25% : 75% liability on the deceased as well as the driver of the appellant / Transport Corporation respectively and accordingly, directed the respondents / claimants shall bear 25% of the award amount and also directed the appellant / Transport Corporation to pay the remaining 75% of the award amount to the claimants, which requires no interference from this Court.

6.As far as the quantum is concerned, the accident is of the year 2012. It is not in dispute that the deceased was aged about 23 years at the time of accident and he died leaving behind his father, mother and sister. He studied B.Sc., B.Ed., and also got admission for M.Sc., which is substantiated through Ex.P.7, Ex.P.8. Ex.P.9, Ex.P.11 and Ex.P.14. Though it is stated on the side of the claimants that the deceased earned income through tuition centre and by working as accountant in a private firm, no document has been produced to substantiate the same. The Tribunal after considering the educational qualifications of the deceased, has fixed the monthly income of the deceased as Rs.10,000/- and taken multiplier 18 and deducted 50% towards personal expenses. The Tribunal has only added 30% towards future prospectus and accordingly awarded a sum of Rs.14,04,000/- towards loss of dependency of the family. The award passed towards funeral and transportation expenses is not on the higher side.

7.The Tribunal has awarded a sum of of Rs.3,00,000/- towards loss of love and affection. The claimants are the father, mother and sister. Considering the relationship between the claimants and deceased, though the loss cannot be compensated in terms of money, this Court would feel that the amount awarded towards loss of love and affection is on the higher side and therefore, inclined to reduce the same from Rs.3,00,000/- to Rs.1,00,000/-. The Tribunal has awarded Rs.1,00,000/- towards loss of estate, which is on the higher side and as per the decision in **National Insurance Company Ltd., Vs. Pranay Sethi case**, reported in **2017 (2) TN MAC 609 (SC)**, the claimants are entitled to Rs.15,000/- towards loss of estate. The Tribunal has awarded a sum of Rs.1,03,461/- towards medical bills based on documents, which cannot be interfered with. Thus, the total award amount is reduced from Rs.19,27,460/- to Rs.16,42,460/-. After deducting 25% towards contributory negligence, the award is reduced from Rs.14,45,595/- to Rs.12,31,845/-.

8.In view of the above, the award passed by the Tribunal is reduced from Rs.14,45,595/- to Rs.12,31,845/- with 7.5% interest per annum from the date of petition till the date of deposit, excluding the delay period, if any. The appellant / Transport Corporation is directed to deposit the amount now awarded, less the amount already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the amount now awarded with accrued interest and costs, as apportioned by the Tribunal, by filing appropriate petition before the Tribunal.



9. This Civil Miscellaneous Appeal is, accordingly, partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

The Special District Judge,
Motor Accident Claims Tribunal,
Special District Court, Tiruchirappalli.

COPY TO:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-72705[F] dated 02/07/2019)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-72852[F] dated 02/07/2019)

**JUDGMENT MADE IN
C.M.A (MD) No.72 of 2018
and
C.M.P (MD) No.1134 of 2018
02.07.2019**

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JM/26.08.2019/4P/6C