



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2019

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. (MD) .No.81 of 2014

and

M.P. (MD) .No.1 of 2014

WEB COPY

The General Manager,
Tamil Nadu State Transport Corporation,
Bye Pass Road,
Tirunelveli District,
Tirunelveli.
Madurai Division

.. Appellant/Respondent.

Vs

1.Ammavasi
2.Minor Veeramani
3.Minor Veerasamy
4.Minor Surya
5.Minor Dhanalakshmi

(The respondents 2 to 5, who are minors
are represented by mother and natural
guardian the first respondent)

6.Kathiriammal

... Respondents/Petitioners

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal set aside the judgement and decree dated 23.04.2012 passed in M.C.O.P.No.74/2011 on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Court/ Fast Track Court, Periyakulam.

For Appellant

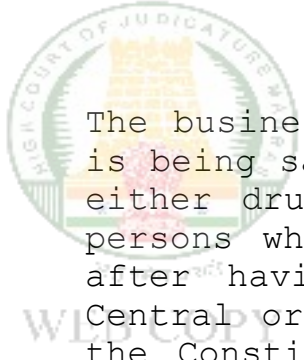
:Mr.P.Prabhakaran

For Respondents

:Mr.R.Karunanidhi

J U D G M E N T

How liquor spoils many families and takes away precious lives of numerous persons is very well exhibited in this case. Even though in this case it is not proved that the deceased was under intoxication, especially, when the appellant Transport Corporation specifically took a definite stand that the deceased after taking liquor from TASMAL shop under intoxication suddenly tried to cross the road, without any control, thereby invited the fatal accident. It is a fact on record that many people are dieing or injured due to drunken driving but also the dependants of those persons are lost because of this "dangerous liquid" that too being sold by the Government for the purpose of money violating Article 21 of Constitution of India. It is sad to note that the Government itself is doing this unwarranted business only for the sake of raising revenue instead of going for alternative revenues, like, additional tax or new taxation for the purpose of extra revenue.



The business of the Government would endanger people's lives. It is being said that 70% of the accidents are caused only because of either drunken driving or by intoxication. It is more than the persons who died out of the diseases or any other causes. Even after having data no effective steps are taken either by the Central or State Governments in consonance of the Articles 47 of the Constitution of India. The Father of the Nation fought for prohibition throughout his life. There is no meaning in calling "Mahatma Gandhi" as "Father of our Nation" without following his core principle "Prohibition". This Court hopes that appropriate measures would be taken by the Government to bring back prohibition, which was in force from 1937 to 1971 in our State.

2. The appeal has been preferred by the Transport Corporation against the judgment and decree dated 23.04.2012 passed in M.C.O.P.No.74/2011 on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Court/ Fast Track Court, Periyakulam. The Tribunal fixed the negligence on the part of the driver of the appellant Transport Corporation bus and awarded Rs.5,69,000/- for the legal heirs of one Murugan aged about 40 years allegedly earning Rs.15,000/- as worker in Bricklyn for the accident occurred on 10.09.2010. When the deceased tried to cross the road near Karuvelanayakkanpatti bus stop, Madurai-Theni Main Road, he was knocked down by the bus belonging to the appellant Transport Corporation, which was driven rash and negligently. Therefore, Claim Petition.

3. On contest, the Tribunal found that the accident was caused because of rash and negligent driving of the appellant Transport Corporation bus and awarded a sum of Rs.5,69,000/-. The said award is being challenged before this Court.

4. Heard Mr.Prabhakaran, learned Counsel appearing for the appellant Transport Corporation and Mr.Karunanidhi, learned Counsel appearing for the respondents 1 to 6/Claimants 1 to 6.

5. Mr.Prabhakaran, learned Counsel would very strenuously argue that the deceased emerged from the TASMACH shop after taking liquor and without any control and without noticing the traffic, he crossed the road and he himself dashed against the bus, which was going on the main road. Therefore, the accident was invited by a drunken man and therefore, no negligence could be fixed on the driver of the Transport Corporation. He would further submit that the amount awarded by the Tribunal is on higher side and therefore, he would submit that atleast contributory negligence should be fixed on the deceased and he seeks to set aside the award.

<https://hcservices.courts.gov.in/hcservices> On the other hand, the learned Counsel for the respondents/claimants would support the award and he seeks for enhancement of compensation.



7. A perusal of records would show that Ex.P.1 FIR was registered against the driver of the bus and in fact, FIR was given by P.W.2 Eye Witness. P.W.2 Eye Witness categorically stated that when the deceased tried to cross the main road near the bus stop, the bus driven rash and negligently knocked down the deceased. The Tribunal, pointing out contradictions in the evidence of D.W.1 driver of the bus, rejected the same correctly. Further, there is no evidence to show that the deceased was under the influence of alcohol. Moreover, there is nothing stated in the Postmortem Certificate regarding the presence of alcohol in the stomach of the deceased. Postmortem Certificate Ex.P.2 was rightly relied upon by the Tribunal to come to the conclusion that there is no proof to show that the deceased was under intoxication.

8. However, it is the pleading of the appellant in paragraph No.4 of the counter statement that the deceased straightly emerged from TASMACH shop and under intoxication he tried to cross the road and dashed against the bus and fell down and died. It is not as if in all cases, the Transport Corporation is taking such definite stand unless it is a fact. Though no proof had been filed except oral evidence of R.W.1 driver of the bus to the effect that the deceased was under the influence of alcohol, could not be ignored. No doubt the Postmortem certificate does not reveal the intoxication of the deceased. In any event, based on evidence of D.W.1, contributory negligence should be fixed on the deceased at 15%. Accordingly, the finding of the Tribunal is modified to the effect that the driver of the Transport Corporation was negligent to the extent of 85% only.

9. The Tribunal, in the absence of any proof regarding monthly income of Rs.15,000/-, determined the monthly income at Rs.3,500/- and applied multiplier '16' as per the age of the deceased 40 proved by Ex.P.2 Postmortem certificate. After deducting 1/4th as the size of the family is 5, the tribunal awarded Rs.5,04,000/- towards loss of income and Rs.5,000/- was awarded towards funeral expenses and Rs.20,000/- towards consortium and Rs.40,000/- towards love and affection for the respondents 2 to 5 and totally Rs.5,69,000/- was awarded by the Tribunal for the accident occurred on 10.09.2010.

10. However, the Honourable Supreme Court in **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.** reported in **2014 (1) TNMAC 459 (SC)**, determined the monthly income at Rs.6,500 (Rupees Six Thousand and Five Hundred only) for a vegetable vendor, who sustained injuries in the accident occurred on 14.02.2008 in the absence of any proof. Therefore, this Court is inclined to follow the said Judgment and determines monthly income as Rs.6,500/-. Since the deceased was aged about 40 years,

50% should be added towards future prospects and fixed the monthly income at Rs.9,750/- (Rupees Nine Thousand Seven Hundred and Fifty only). Further, ¼th has to be deducted towards personal expenses of the deceased as the size of the family is 5. After applying the correct multiplier '15' the loss of income would be Rs.13,16,250/-.

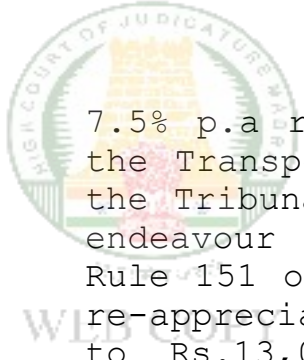
11. The Tribunal awarded only a sum of Rs.20,000/- as consortium to the first respondent and the same is enhanced to Rs.40,000/- as per the Judgment of the Honourable Supreme Court in **Praney Sethi's** case.

12. Similarly the respondents 2 to 5 were given only Rs.40,000/- and the same is enhanced to Rs.1,20,000/-. Rs.5,000/- awarded by the Tribunal towards funeral expenses is enhanced to Rs.25,000/-. No amount was awarded by the Tribunal towards Transportation and towards loss of estate and a sum of Rs.10,000/- is awarded towards transportation. A sum of Rs.15,000/- is awarded towards loss of estate. Out of the total amount of Rs.15,26,250/-, 15% has to be deducted for contributory negligence fixed on the deceased and therefore, total amount would come at Rs.12,97,312.50 rounded off to Rs.13,00,000/-.

13. Accordingly, the respondents/claimants are entitled to get the following compensation:

SI.No	Heads	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of income	5,04,000.00	13,16,250.00
2.	Loss of consortium for the first respondent	20,000.00	40,000.00
3.	Loss of Love and Affection to the respondents 2 to 5	40,000.00	1,20,000.00
4.	Funeral Expenses	5,000.00	25,000.00
5.	Transportation	Nil	10,000.00
6.	Loss of Estate	Nil	15,000.00
	Total	5,69,000.00	15,26,250.00
After deducting 15% towards contributory negligence Total = Rs.12,97,312.50/-			
Rounded off to Rs.13,00,000/-			

14. Out of the total Compensation, the mother of the deceased-the Sixth respondent is entitled for Rs.1,50,000/- and the respondents 2 to 5 are entitled for Rs.2,00,000/- each and the ~~respondent~~ ^{respondent's} wife of the deceased is entitled for Rs.3,50,000/-. The rate of interest awarded by the Tribunal at



7.5% p.a remains unaltered. Though the appeal has been filed by the Transport Corporation against the amount of Rs.5,69,000/-, as the Tribunal failed to award just compensation, this Court, in an endeavour to do justice by invoking Order 42 Rule 33 of CPC and Rule 151 of C.P.C. And Article 22 of Constitution of India and by re-appreciating the evidence, suo motu, enhanced the compensation to Rs.13,00,000/-, for which, this Court has got power and jurisdiction as mentioned by the Hon'ble Supreme Court of India in **Nagappa Vs.Gurudayal Singh and others, in 2003 ACJ 12:2004 (2) TN MAC 398 (SC) .**

15. The appellant Transport Corporation is directed to deposit the entire amount in four equal instalments at the interval of four weeks commencing from the date of receipt of a copy of this judgment. On such deposit, the entire amount has to be transferred to the account of respective claimants through RTGS as per the apportionment made. The respondents are directed to pay additional Court fee within two weeks before this Court.

16. In the result, the appeal is disposed of as above. Connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To
The Motor Accidents Claims Tribunal/Additional
District and Sessions Court Fast Track Court,
Periyakulam.

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-52925[F] dated
11/03/2019)

+1 CC to M/s.R.KARUNANIDHI, Advocate (SR-53040[F] dated
11/03/2019)

CM/PGP

C.M.A. (MD) .No.81 of 2014
Dated : 11.03.2019

KM/ (22.03.2019) 5P 4C