



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2019

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A. (MD) .Nos.934 of 2014 and 14 of 2017
and
M.P. (MD) .No.1 of 2014

C.M.A. (MD) .No.934 of 2014

Tamil Nadu State Transport Corporation Limited,
represented by its Managing Director,
Kumbakonam. ... Appellant/Respondent

Vs.

1. Manokaran
2. Senthamarai
3. Anand

... Respondents/Petitioners

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.124 of 2013, dated 21.03.2014 on the file of the Motor Accident Claims Tribunal, Special District Court, Thanjavur.

For Appellant	: Mr.P.Prabhakaran
	Standing counsel
For Respondents	: Mr.P.Ganapathisubramanian

C.M.A. (MD) .No.14 of 2017

1. Manokaran
2. Senthamarai
3. Anand

... Appellants/Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam Town and Post,
Thanjavur District.

... Respondents /Respondent

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made



in M.C.O.P.No.124 of 2013, dated 21.03.2014 on the file of the Motor Accident Claims Tribunal, Special District Court, Thanjavur.

For Appellants : Mr.P.Ganapathisubramanian
For Respondent : Mr.P.Prabhakaran
Standing counsel

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

(Judgment of the Court was made by **K.KALYANASUNDARAM,J.**)

C.M.A.No.934 of 2014 has been preferred by the Transport Corporation, challenging the award of the Motor Accident Claims Tribunal, Special District Court, Thanjavur, passed in M.C.O.P.No.124 of 2013, dated 21.03.2014.

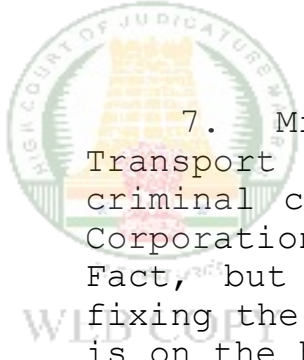
2. C.M.A.No.14 of 2017 has been filed by the claimants seeking enhancement of compensation.

3. Since the issue involved in both the appeals is one and the same, they have been taken up together and disposed of by this common judgment.

4. The claim petition was filed by the parents and brother of the deceased Ezhilarasan, who died in a motor accident, on 25.12.2012. On the fateful day, the deceased was driving a car bearing Registration No.TN-57-M-3984 at Kumbakonam - Mayiladuthurai from east to west direction, at that time, the bus belonging to the appellant Transport Corporation was driven by its driver in a rash and negligent manner and hit against car. In that process, the deceased died on the spot. Hence, they filed a claim petition seeking compensation of Rs.50,00,000/-, on the ground that the driver of the bus was responsible for the accident.

5. The claim petition was resisted by the Transport Corporation by filing a counter stating that the deceased was negligent and hence, they are not liable to pay any amount. The age, income and avocation of the deceased was also disputed and denied.

6. Before the Tribunal, the claimants examined one Selvam and Thandapani as eye witnesses to the occurrence and also produced Ex.P1 - First Information Report. Based on the evidence, the Tribunal came to the conclusion that the driver of the bus has been responsible for the accident and awarded compensation of Rs.9,76,000/- together with interest at 7.5 % per annum. Assailing the same, the Transport Corporation and the claimants have filed these appeals as stated above.

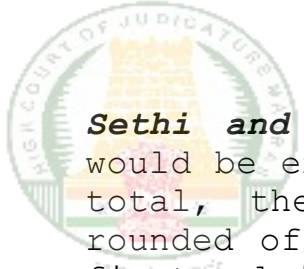


7. Mr.P.Prabhakaran, learned Standing counsel for the Transport Corporation would vehemently contend that though a criminal case was registered against the driver of the Transport Corporation, eventually the criminal case was closed as Mistake of Fact, but the Tribunal failed to take into consideration while fixing the negligence on the part of the driver and that the award is on the higher side.

8. Per contra, Mr.P.Ganapathisubramanian, learned counsel for the claimants would argue that the deceased was appointed as a Civil Engineer in Larsen and Toubro Limited and his salary was Rs.40,175/-. Therefore, the claimants are also entitled for addition towards future prospects, however the Tribunal has not taken into consideration the income in a proper perspective, wrongly fixed Rs.6,000/- per month. According to the learned counsel, the Tribunal rightly came to the conclusion that the driver caused the accident, hence it need not be interfered with.

9. In the instant case, the claimants have examined two eye witnesses and also produced Ex.P1 - First Information Report. P.Ws.2 and 3 deposed that the driver of the bus drove it in a rash and negligent manner and caused the accident. The learned counsel for the appellant Transport Corporation mainly relies upon the closure report issued by the Investigating Officer to fix negligence on the part of the deceased. We are unable to agree with the stand taken by the Standing counsel for the reason that it is settled law that the finding of the Criminal Court is not binding on the Civil Court and the negligence has to be independently assessed and fixed by the Tribunal. Hence in our considered opinion, finding of the Tribunal based on evidence can be confirmed.

10. With regard to the quantum, Ex.P10 appointment order issued by L & T Limited, dated 05.06.2012, would show that the basic pay of the deceased was Rs.16,000/- and he was also entitled for flexi pay² and SAF allowance. In the case on hand, admittedly, the Income Tax Returns of the deceased was not produced. Hence, the Tribunal has rightly rejected the Ex.P.11. It is appropriate to fix the income, based on the order of the appointment. The total salary is taken as Rs.29,600/-. With this 40% is to be added towards future prospects. The salary comes to Rs.41,440/-. Since the deceased is a bachelor, 50% of the salary has been deducted towards his personal expenses. Hence, the contribution to the family would be Rs.20,720/-. The Tribunal relying upon the decision of the **Hon'ble Apex Court** in the case of **National Insurance Company Limited vs. Syamsingh and others** reported in **2011 (8) MLJ 581**, has fixed the multiplier '13', based on the age of the parents. By applying multiplier '13', this Court awards Rs.32,320/- (20,720/- x 13 x 12) towards loss of dependency. As per the decision in **National Insurance Company Limited vs. Pranay**



Sethi and others reported in **(2017) 16 SCC 680**, the claimants would be entitled for Rs.70,000/- towards conventional damages. In total, the claimants are entitled for Rs.33,02,320/- which is rounded off to Rs.33,00,000/-. Out of the total compensation, the first claimant father is entitled for Rs.13,00,000/- and the second claimant mother is entitled for Rs.20,00,000/-. Since the brother is not a dependent, this Court has not awarded any compensation to the third respondent.

11. In the result, the appeal filed by the Transport Corporation is dismissed and the appeal filed by the claimants is allowed. The Transport Corporation shall deposit the modified compensation within a period of eight weeks from the date of receipt of the judgment. On such compliance, the claimants are permitted to withdraw their share. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar (CS)

To
The Motor Accident Claims Tribunal/
Special District Judge,
Thanjavur

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The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai-2 copies

+1 CC to Mr.P.PRABHAKARAN, Advocate(SR-56703[F] dated 26/03/2019)

+1 cc to Mr.D.Sivaraman, Advocate SR.No.56989

+1 cc to Mr.P.Ganapathisubramanian , Advocate SR.No.57138

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