



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2019

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

C.M.A.(MD).Nos.546 and 1144 of 2018
and
C.M.P.(MD).No.6381 of 2018 in C.M.A.(MD).No.546 of 2018

C.M.A.(MD).No.546 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Division II, Periyamilaguparai,
Trichy. ... Appellant/Respondent
Vs.

1. Alamelu
2. Minor Akshya
(The second respondent is a minor represented
by their mother, next friend and guardian the first
respondent Alamelu)
Ragavachari (died) ... Respondents/Petitioners

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of
the Motor Vehicles Act, 1988, against the decree and judgment dated
02.02.2018 made in M.C.O.P.No.235 of 2013 on the file of Motor
Accidents Claims Tribunal / Sub Court, Kulithalai.

For Appellant : Mr.P.Prabhakaran
For Respondents : Mr.K.Baskaran

C.M.A.(MD).No.1144 of 2018

1. Alamelu
2. Minor Akshya
(The second respondent is a minor represented
by their mother, next friend and guardian the first
respondent Alamelu).
Ragavachari (Died) ... Appellants/Petitioners
Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Division II, Periyamilaguparai,
Trichy. ... Respondents/Respondents

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Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of



the Motor Vehicles Act, 1988, against the decree and judgment dated 02.02.2018 made in M.C.O.P.No.235 of 2013 on the file of Motor Accidents Claims Tribunal / Sub Court, Kulithalai.

For Appellants : Mr.K.Baskaran
For Respondent : Mr.P.Prabhakaran

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

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

C.M.A.(MD).No.1144 of 2018 has been filed by the claimants against the award passed by the Motor Accident Claims Tribunal / Sub Court, Kuzhithalai in M.C.O.P.No.235 of 2013, seeking enhancement of compensation. The Transport Corporation has filed C.M.A.(MD).No.546 of 2018 assailing the award of the Tribunal.

2. The brief facts of the case are that the husband of the first claimant viz., Vasudevan had stopped his two wheeler for signal at Trichy - Mambalasalai Police Traffic Signal, on 27.05.2013 at 5.15 p.m. At that time, the bus belonging to the Transport Corporation came in a rash and negligent manner and hit against the deceased and the impact he died on the spot. The legal heirs of the deceased Vasudevan filed the claim petition seeking compensation of Rs.1,00,00,000/-. According to the claimants, the deceased was 44 years old on the date of accident and he was a tax consultant and thereby earning Rs.50,000/- per month.

3. The claim was resisted by the Transport Corporation by contending that the driver of the bus was going in a normal speed and the accident had taken place beyond the control of the driver, since a child suddenly crossed the road and the deceased also contributed negligence for the accident.

4. Before the Tribunal, on the side of the claimants, P.Ws.1 to 3 were examined and Exs.P1 to P14 were marked. The Transport Corporation examined one witness and Exs.X1 to X4 were marked. In order to prove the negligence, the claimant examined the eyewitness as P.W.2 and marked Ex.P1 / the First Information Report. The driver of the bus was examined as R.W.1.

5. The Tribunal after analysing the evidence on record, in our view, came to the right conclusion that the driver of the bus was responsible for the accident. Further, the manner of accident is not seriously disputed by the parties.

6. With regard to the quantum, the first claimant had deposed before the Tribunal that her husband was 45 years old and to prove the income, P.W.1 has marked Exs.P5 to P7 / the Income Tax Returns of the years 2009 - 2010, 2011 - 2012 and 2012 - 2013.

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7. The Tribunal without considering the income tax returns



submitted by the claimants has taken up notional income at Rs.12,000/- and awarded compensation of Rs.17,85,000/-.

8. On perusal of the income tax returns, it is evident that the deceased was earning Rs.28,000/- and by adding Rs.7,000/- towards future prospects, the income of the deceased is arrived at Rs.35,000/-, from which 1/3rd is deducted towards his personal and living expenses. After deducting 1/3rd, the contribution to the family comes to Rs.23,334/- (Rs.35,000/- - Rs.11,666/-). It is not in dispute that the deceased was 44 years old on the date of accident and the proper multiplier would be '14' and by adopting the multiplier, this Court awards Rs.39,20,112/- towards loss of income. As per the decision of the Hon'ble Supreme Court, in the case of *National Insurance Company Limited vs. Pranay Sethi and others* reported in (2017) 16 SCC 680, Rs.70,000/- has to be awarded for conventional damages. Hence, the claimants are entitled for Rs.39,90,112/- which is rounded off to Rs.39,90,000/-. The amount is apportioned as Rs.19,00,000/- and Rs.20,00,000/- respectively.

9. For the foregoing reasons, the appeal filed by the Transport Corporation is dismissed and the appeal filed by the claimants is allowed. Accordingly, the award of the Tribunal is modified. The award shall carry interest at the rate of 7.5% per annum and proportionate cost. The Transport Corporation shall deposit the modified compensation, after deducting the amount already deposited, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the major claimant is permitted to withdraw her share of Rs.19,90,000/- together with interest and the share of the minor second claimant shall be deposited in the Indian Bank, High Court Branch, Madurai, till she attains majority. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Subordinate Court, Kulithalai.

2.The Managing Director,
Tamil Nadu State Transport Corporation,
Division II, Periyamilaguparai,
Trichy.

Copy to: The Section Officer,
V.R. Section,

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Madurai Bench of Madras High Court,

Madurai.(2 COPIES)



+2cc to Mr.P.Prabhakaran, Advocate, SR.No.48518,48519

+2cc to Mr.K.BHASKARAN, Advocate, SR.No. 48438,48437

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