



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A. (MD)No.1268 of 2016

and

C.M.P. (MD)No.9555 of 2016

WEB COPY

The Managing Director,
The Metropolitan Transport Corporation,
Chennai - 600 002.

... Appellant / Respondent

- Vs -

1.C.Sivasubramanian

2.Shanmuga Lakshmi

3.Gomathi

4.Minor Vignesh

... Respondents / petitioners

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.09.2012 passed in M.C.O.P.No.248 of 2010 on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.

For Appellants : Mr.P.Prabhakaran
For Respondents : Mr.S.Murugan

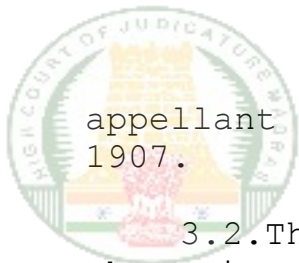
J U D G M E N T

This appeal is directed against the judgment and decree dated 28.09.2012 passed in M.C.O.P.No.248 of 2010 on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur. The appellant/Transport Corporation has filed this appeal challenging both the liability and quantum. The Tribunal fixed the entire liability against the appellant.

2.Heard the learned counsel appearing on either side and perused the materials available on record.

3.Liability:

3.1.The Tribunal fixed the entire liability against the appellant / Transport Corporation. It has also come to the conclusion that the accident has occurred due to the rash and negligent driving of the driver of the bus, which belongs to the



appellant /Transport corporation, bearing registration No.TN 01 N 1907.

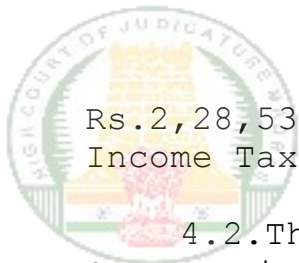
3.2.The learned counsel for the appellant would submit that there is no report obtained from the Motor Vehicle Inspector, no rough sketch and no eye witness was examined. In these circumstances, the Court below wrongly come to the conclusion and fixed the entire liability on the appellant. However, he fairly admitted that on behalf of the claimants, P.W.1 was examined and he stated that R.W.1 driver of the bus was examined and he deposed in his evidence that he was convicted and FIR was also filed against the driver. According to the appellant, though the eye witness R.W.1 deposed that he was convicted, that alone was not enough to fix the entire liability against the appellant herein. Therefore, he contended that the Court below has wrongly fixed the liability against the appellant / Transport Corporation.

3.3.On the other hand, the learned counsel for the respondents / claimants would contend that the Court below has rightly fixed the entire liability against the appellant / Transport Corporation, since the driver of the bus drove the vehicle in a rash and negligent manner and the FIR also filed to the extent stating that the driver of the bus drove the same in a rash and negligent manner. The driver of the bus, who was examined as eye witness, deposed that he was convicted in the criminal case and on the basis of the deposition of eye witness and on the basis of the conviction in the criminal case, the Court below has come to the conclusion and fixed the entire liability and therefore, he submitted that there is no infirmity in the order passed by the Court below in fixing the liability.

3.4.On perusal of the FIR, it appears that the accident was occurred due to the rash and negligent driving of the driver of the bus and though the FIR is not an encyclopedia to rely upon, the Court below based on the FIR and the deposition of R.W.1, who was the eye witness and deposed that he was convicted before the criminal court based on the FIR filed in the present case, has fixed the entire liability against the appellant / Transport Corporation. Therefore, I do not find any infirmity in the order passed by the Court below. Accordingly, this Court is inclined to confirm the order passed by the Court below with regard to the fixation of liability against the appellant / Transport Corporation.

4.Quantum:

4.1.With regard to quantum of compensation, the Court below completely relied upon the Income Tax Return filed by the deceased. The Income Tax Return was marked as Ex.P5. On perusal of Ex.P5, it appears that the deceased was drawing gross salary of



Rs.2,28,533/- for the financial year 2000 - 2001 and as per the Income Tax Return, he has paid a sum of Rs.15,635/- as tax.

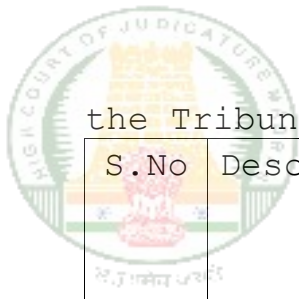
4.2.The learned counsel for the appellant / Transport Corporation would contend that apart from the Income Tax Return, the claimants have not filed any other proof for the income of the deceased and therefore, the Court below wrongly added 50% for future prospects. Therefore, the award of the Tribunal requires interference.

4.3.As stated above, on perusal of the Ex.P5-Income Tax Return, the gross salary of the deceased was Rs.2,28,533/- for the financial year 2000 - 2001. Out of the said amount, the deceased paid a sum of Rs.15,635/- as income tax. Since he has paid the income tax, the said amount is liable to be deducted. After deducting the sum of Rs.15,635/-, the net income of the deceased would be Rs.2,12,898/- p.a. The Tribunal has awarded 50% for future prospects. This Court is of the opinion that since the deceased was drawing fixed salary in a reputed software company and filed Income Tax Return and paid income tax, nothing wrong in the order passed by the Tribunal by adding 50% future prospects as per the decision of the Hon'ble Supreme Court in **NATIONAL INSURANCE CO. LTD., v. PRANAY SETHI**, reported in **2017 (2) TN MAC 609 (SC)**. If 50% is added towards future prospects, the monthly income would be Rs.2,12,898/- + Rs.1,06,449/- (Rs.2,12,898 X 50%) = Rs.3,19,347/-.

4.4..In the present case, the Tribunal has deducted 1/3 towards the personal expenses of the deceased and the same is hereby confirmed. The loss of income after deduction would be Rs.3,19,347 - 1/3rd = Rs.2,12,900/- p.a. and if multiplier 15 is applied, the loss of income would be Rs.2,12,900 X 15 = **Rs.31,93,500/-**.

4.5.The Tribunal has fixed a sum of Rs.20,000/- towards consortium. However, as held by the Hon'ble Apex Court in **PRANAY SETHI**, it has been enhanced to **Rs.40,000/-** from Rs.20,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses and no amount was awarded towards loss of estate. Therefore, as per **PRANAY SETHI** case, a sum of **Rs.15,000/-** is hereby awarded for funeral expenses and **Rs.15,000/-** is awarded towards loss of estate. As far as love and affection is concerned, the Tribunal has awarded a sum of Rs.20,000/- for the claimants 1, 2 and 4. However, this Court is inclined to award a sum of **Rs.10,000/-** towards love and affection to the first claimant; **Rs.10,000/-** to the second claimant and **Rs.50,000/-** to the fourth claimant

4.6. In view of the above, this Court modifies the award of
<https://hcservices.ecourts.gov.in/hcservices/>



the Tribunal by reducing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	34,27,995	31,93,500	reduced
2.	For consortium	20,000	40,000	enhanced
3.	For loss of estate	Nil	15,000	awarded
4.	For funeral expenses	5,000	15,000	enhanced
5.	Damages for clothes	500	500	confirmed
6.	For loss of love and affection	20,000	70,000	enhanced
	Total	Rs.34,73,495	Rs. 33,34,000	By reducing a sum of Rs.1,39,495/-

5. In the result,

(i).The Civil Miscellaneous Appeal is partly allowed.

(ii).The appellant/Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.248 of 2010 on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur, within a period of **Three weeks** from the date of receipt of a copy of this judgment;

(iii).On Such deposit, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the repondents/claimants through RTGS/NEFT system, after getting their Account Details, within a period of **two weeks thereafter** in the manner stated below;

(i).Gomathi	Rs.20,00,400/-
(ii).Minor Vignesh	Rs.10,00,200/-
(iii).Sivasubramanian	Rs. 1,66,700/-
(iv).S.Shanmugalakshmi	Rs. 1,66,700/-



(iv).In the facts and circumstances of the case, there shall be no order as to costs.

WEB COPY

// True Copy //

Sd/-

Assistant Registrar ()

/ /2020

Sub Assistant Registrar (CS)

rj2

To:

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Virudhunagar District at Srivilliputhur.

Copy to

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

+1 CC to Mr.P.PRABHAKARAN, Advocate (SR-99836[F] dated 20/11/2019)

+1 CC to Mr.S.MURUGAN, Advocate (SR-100046[F] dated 21/11/2019)

C.M.A. (MD) No.1268 of 2016

20.11.2019

KM/ (04.02.2020) 5P 6C