

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1807 of 2013
and C.M.P.No.24380 of 2019 in
Cros.Obj.SR.No.141768 of 2019 and
M.P.No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Rajapalayam Depot,
Virudhunagar District. Appellant

Vs.

1. Mrs.M.Banumathi
2. Rama Aruna (Major)
3. Arun Raja (Major) Respondents

(R2 & R3 are declared as Major and discharged
from the Guardianship of Mother M.Banumathi (R1)
Vide Court Order dated 09.02.2017 made in
C.M.P.Nos.14302 to 14305 in C.M.A.No.1807 of 2013)

Civil Miscellaneous Appeal is filed under Section 173 of
the Motor Vehicles Act 1988, against the award dated
18.06.2008 made in M.C.O.P.No.412 of 2004 on the file of the
Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

CMP No.24380/19 in Cross Obj SR No.141768/19 :

This Petition filed under Section 173(1) of Motor
Vehicle Act R/w Section 5 of the Limitation Act praying to
condone the delay of 2238 days in filing the Cross Objection
SR NO.141768/2019 this petition sought to be preferred against
to set and the order passed in MCOP No.412/2004 dated
18.06.2008 by the Vth Judge, Small Causes Court (Motor
Accident Claims Tribunal) Chennai and enhance the award with
interst.

For Appellant : Mr.N.Anand

For R1 : Mr.A.Shanmugaraj

R2 & R3 - Served
No Appearance

Judgment

This Civil Miscellaneous Appeal has been filed against the award dated 18.06.2008 made in M.C.O.P.No.412 of 2004 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2. The case of the appellant is that on 19.03.2000 at 12.00 p.m., one Mariappan was driving the lorry bearing Registration No.TN-09-F-8899 in Rajapalayam Tenkasi Main Road from South to North. At that time, the appellant's bus bearing Registration No.TN-59-N-0497 driven by one K.Ganesan in a rash and negligent manner hit against the lorry TN-09-F-8899. As a result, the Mariappan died on the spot. At the time of accident, he was aged 30, and before the accident, he was a lorry driver and was earning Rs.4,500/- per month. Since he died in the accident, his legal heirs who are the respondents herein filed a petition before the Motor Accident Claims Tribunal, V Small Causes Court, Chennai, claiming Rs.4,00,000/- as compensation under various heads.

3. Denying the allegations, the appellant transport corporation filed a counter affidavit before the Tribunal stating that the bus involved in the accident is not belonging to them, hence they are not liable to pay any compensation to the respondents.

4. During the trial, on the side of the respondents/claimants, one Dharmar was examined as PW1, one Dr.Sankarlal was examined as PW2, one Dr.Mathiazhagan was examined as PW3 and Exs.P1 to P14 were marked. On the side of the appellant, one Thiru.Bhaskar was examined as RW1 and no document was filed.

5. The Motor Accident Claims Tribunal, V Small Causes Court, Chennai, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the respondents and awarded compensation for a sum of Rs.3,70,000/- as stated below :

S.No.	Description	Amount
1.	Pecuniary Loss (2000 x 12 x 15)	3,60,000
2.	Funeral Expenses	5,000
3.	Loss of Consortium	5,000

S.No.	Description	Amount
	Total	3,70,000

6. Aggrieved by the award, the appellant has filed this appeal before this Court stating that the Tribunal has erred in fixing the compensation.

7. Heard the learned counsel for the appellant and the learned counsel for the first respondent, and perused the materials available on record.

8. On perusal of the award dated 18.06.2008 passed by the Motor Accident Claims Tribunal, V Small Causes Court, Chennai, it is observed that since the respondents were not required to prove the rash and negligent driving of the motor vehicle as per Section 163A of the Motor Vehicles Act 1988, the Tribunal had concluded that the driver of the bus was the root cause for the alleged accident, and further, the driver of the bus was employed under the appellant transport corporation at the time of accident, therefore, the Tribunal had held that the appellant was liable to pay compensation to the respondents.

9. As far as quantum of compensation is concerned, it is observed that the respondents had not filed any document to prove the age of the deceased, but in the Postmortem Certificate marked as Ex.P2, it was found to be 40, therefore, the Tribunal had fixed the same as his age. Further, it is observed that the salary slip of the deceased had been marked as Ex.P4 to prove the avocation of the deceased, but since his age was found to be 40 in Ex.P2, the Tribunal had fixed his income at Rs.3,000/- per month.

10. As per the case [Sarla Verma and others vs Delhi Transport Corporation and another] reported in 2009 ACJ 1298, if the number of dependents in the family are 2 to 3, $1/3^{\text{rd}}$ of the income should be deducted for personal expenses of the deceased. In this case, the number of dependents are 3, therefore, the Tribunal had deducted $1/3^{\text{rd}}$ i.e. Rs.1,000/- for personal expenses of the deceased. Further, as per the above citation, the multiplier for a person aged between 36 to 40 is 15. In this case, the age of the deceased was 40 at the time of accident, therefore, the Tribunal had applied 15 multiplier and awarded Rs.3,60,000/- (2000 x 12 x 15) towards Pecuniary Loss. The sum of Rs.5,000/- each awarded under the heads of Funeral Expenses and Loss of Consortium is very reasonable, hence it cannot be modified.

11. In view of the above observations made by this Court, this Court does not find any error in the award passed by the

Tribunal, hence not inclined to interfere with the same.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed and the appellant is directed to deposit the said amount of Rs.3,70,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the respondents/claimants are permitted to withdraw their respective shares by filing a formal petition before the concerned Court, less the amount if any, already withdrawn. No costs. Consequently, C.M.P.No.24380 of 2019 in Cros.Obj.SR.No.141768 of 2019 is dismissed and M.P.No.1 of 2013 is closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2. The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.N.Anand , Advocate SR.No.18196

+1cc to Mr.A.Shanmugaraj, Advocate SR.No.18039

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GMV (19/04/2021)

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