

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.09.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
C.M.A.No.568 of 2016

1.Athayee
2.Marimuthu
3.Indhirani
4.Chinnarasu

...Appellants/ Petitioners

/versus/

The Managing Director,
KSRTC (Karnataka State Road Transport Corporation Ltd.,)
Chikodi Division,
Chikodi.

...Respondent/ Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree in MCOP.No.1436 of 2013 dated 21.09.2015 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

For Appellants :M/s Paraneedharan
For Respondent :Mr.T.Thiyagarajan

J U D G M E N T

(The case has been heard through video conference)

Heard the learned counsel for the appellants and the learned counsel for the respondent.

2. The case of fatal accident occurred on 20.08.2012. The claimants are the parents and siblings of the deceased. As per the claim petition, the deceased was 21 years. At the time of accident, he was working as helper in bore well vehicle and earning Rs.30,000/- per month. Hence they claim compensation from the respondent, who is the Managing Director, Karnataka State Road Transport Corporation Ltd., which is the offending vehicle.

3. The respondent has contested the claim on the ground that the victim had no driving license. He drove the vehicle recklessly in a zig zag manner and dashed the respondent bus. The non joinder of the two wheeler owner and its insurer is fatal to the claim petition. Hence sought dismissal of the claim petition.

4. The Tribunal taking note of the fact that the criminal case was lodged against the driver of the respondent bus held that the respondent is liable to compensate. Taking the income of the deceased notionally at Rs.4,000/- per month, deducted 1/3rd for personal expenditure and applied multiplier 18 and awarded a sum of Rs.5,76,000/-; Rs.10,000/- towards loss of love and affection; Rs.5,000/- for funeral expense.

5. The present appeal is preferred by the claimants on the ground that the award is very low and the income of the victim ought to have been fixed at least at Rs.10,000/- per month.

6. Per contra, the learned counsel for the respondent would submit that the Tribunal failed to note that the accident occurred due to the negligence of the victim, who had no driving license. Further the non impleading of the victim's motorcycle owner and its insurer ought to have been taken note of by the Tribunal while distributing the contributory negligence. Having failed to implead the owner of the vehicle and the insurer, the claimants are not entitled to recover the entire compensation from the respondent Corporation .

7. The learned counsel appearing for the claimants/appellants as his rebuttal, would submit that the Insurance Company has not filed any appeal and therefore they cannot canvas their point in the claimant appeal.

8. This appeal is for enhancement of compensation, which is opposed by the respondent on certain grounds which are reasonable and necessary to take note for considering the appeal. In this case, this Court finds that the Tribunal has rightly fixed the monthly income of the deceased Rs.4,000/- per month, since there is no material to show his earning capacity or income. However being a bachelor, it ought to have deducted 50% of the income towards personal expenditure. Contrarily, taking note of the number of claimants, the Tribunal has deducted only 1/3rd . Claimants are the parents, unmarried sister and brother of the victim.

9. The law is now well settled in case of bachelor, 50% of his income towards personal expenditure has to be deducted, only if he is a married man, the deduction will depends upon the number of claimants. In this case since the deceased is a bachelor, 50% has to be deducted. At the same time now the law laid by the Hon'ble Supreme Court provides future prospects for daily wages and non salary victims also. In this case the Tribunal has not awarded any future prospects. Therefore, the award passed by the Tribunal is modified taking note of the

standardised formula given by the Hon'ble Supreme Court in Sarla verma case and Pranay Sethi case, tentative income is fixed at Rs.4,000/- p.m., and 40% towards future prospects of Rs.1600/- is added making it as Rs.5,600/- per month and 50% of it has been deducted for his personal expenses. Thus to the annual income of Rs.33,600/- multiplicand '18' is applied to compute the loss of income. Accordingly the compensation is modified as below:-

Head of compensation	Tribunal award in MCOP	Modified in CMA
Pecuniary loss: [As per the tribunal award ($4000 + \frac{2}{3} \times 12 \times 18$) Modified in CMA ($4000 + 1600$) $\times \frac{1}{2} \times 12 \times 18$)]	Rs.5,76,000/-	Rs.6,04,800/-
Loss of filial consortium for the parents	-----	Rs.40,000/-
Loss of love and affection [As per the tribunal award Rs.10,000/- Modified in CMA Rs.15,000/- each to the claimants 4 ' 4]	Rs.10,000/-	Rs.30,000/-
Funeral expenses	Rs.5,000/-	Rs.15,000/-
Total	Rs.5,91,000/-	Rs.6,89,800/-

Rounded off to Rs.6,90,000/-

10. After modification, the compensation awarded for the claimants stand enhanced from Rs.5,91,000/- to Rs.6,90,000/-, with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The award amount shall be apportioned by the claimants as below:

- (i) 1st claimant Rs.3,50,000/-
- (ii) 2nd claimant Rs.1,50,000/-
- (ii) Claimants 3 &4 Rs.95,000/- each

10. The respondent/Transport Corporation is directed to deposit the award amount within a period of twelve weeks from

the date of receipt of copy of this order. On such deposit, the claimants shall withdraw the same on filing appropriate petition.

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

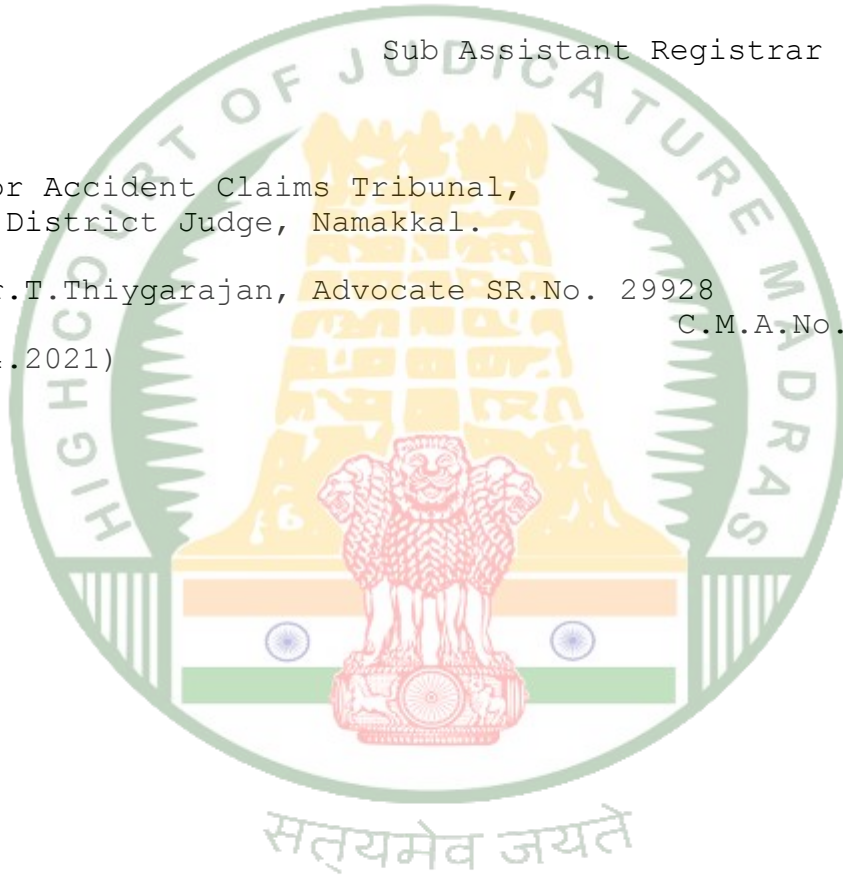
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To

1.The Motor Accident Claims Tribunal,
Principal District Judge, Namakkal.

+1cc to Mr.T.Thiygarajan, Advocate SR.No. 29928

C.M.A.No.568 of 2016

A.SK(20.04.2021)



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