



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.12.2020

Delivered on : 21.12.2020

CORAM:

THE HONOURABLE **MR. JUSTICE G. ILANGO VAN**

WEB COPY

C.M.A. (MD) No.87 of 2010

1.S.Lakshmanan
2.L.Senthilkumar
3.L.Vijayakumar

... Appellants / Petitioners

Vs.

1. The Managing Director,
Tamilnadu State Transport Corporation,
Villupuram (Division),
Villupuram.

2. Devanadhan

... Respondents / Respondents

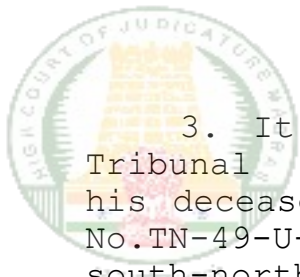
Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the award and ex-order in M.C.O.P.No.510 of 2007, dated 04.08.2009 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Kumbakonam, Thanjavur District.

For Appellants : Mr.D.Senthil
For R1 : Mr.S.Royce Emmanuel
For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award and the decreetal order dated 04.08.2009 passed in M.C.O.P.No.510 of 2007, by the Motor Accident Claims Tribunal-(Principal Subordinate Judge), Kumbakonam, Thanjavur District.

2. The appellants / claimants filed a claim petition in M.C.O.P.No.510 of 2007, before the Motor Accident Claims Tribunal (Principal Subordinate Judge), Kumbakonam, Thanjavur District, claiming a compensation of a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) for the death of Babyammal, who is the wife of the first petitioner. Others are the childrens. That petition was allowed and the Tribunal awarded a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) to the appellants. Against the award, the appellants filed this Civil Miscellaneous Appeal for enhancement of the award passed by the Tribunal.



3. It is the case of the claimants / appellants before the Tribunal that on 27.05.2007, when the first petitioner along with his deceased wife, was riding a two wheeler bearing Registration No.TN-49-U-4282 on the Kumbakonam Railway Station Road, in the south-north direction at about 11.15 hours, the first respondent vehicle's driver drove the bus bearing Registration No.TN 32-N-2424 and hit the first petitioner and his wife, as result of which, the wife of the first petitioner fell down and the front side wheel of the bus ran over her and died on the spot itself. In respect of the offence, a case in crime No.50 of 2007 was also registered on the file of Kumbakonam Traffic Police Station. The deceased was aged about 47 years, at the time of the occurrence and she was earning Rs.5,000/- (Rupees five Thousand only) per month, by being the member of self help group called "Gangai". The first petitioner is the husband and the other petitioners are the children and they claimed compensation of a sum of Rs.10,00,000/- (Rupees Ten Lakhs only).

Case of the first respondent:

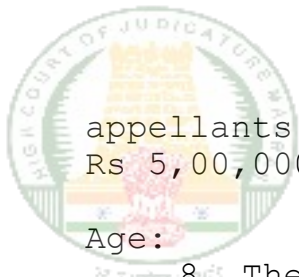
4. It is the case of the first respondent that the manner of the accident is only denied as the first petitioner / first claimant in a negligent manner, suddenly, crossed the road and on seeing it, the second respondent, who is the driver, stopped the bus and in spite of that, due to the overspeed, the first petitioner hit the bus and it happened. There is no loss of income, as all the petitioners / claimants are earning members.

5. Before the Tribunal, on the side of the appellants / claimants, three witnesses were examined as P.W.1 to P.W.3 and 7 documents marked as EX.P.1 to Ex.P.7. On the side of the respondents, one witness was examined as R.W.1 and no document was marked.

6. On completion of the enquiry, the Tribunal came to the conclusion that the accident that has been stated in the petition took place involving the driver of the first respondent and his vehicle and it has also come to the conclusion that only rash and negligent driving on the part of the first respondent's vehicle driver, the accident took place, and awarded a total compensation of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) for the appellants / claimants with 7.5% p.a., interest and costs. Against the award, the appellants filed the Civil Miscellaneous Appeal for enhancement of the award passed by the Tribunal.

Grounds in the appeal;

7. It is the case of the appellants/ claimants that the Tribunal failed to fix the monthly income of the deceased as Rs 5,000/- (Rupees Five Thousand only) per month and failed to consider the documents and oral evidence on this aspect. So, the



appellants / claimants seek enhancement of compensation to a sum of Rs 5,00,000/- (Rupees Five Lakhs only).

Age:

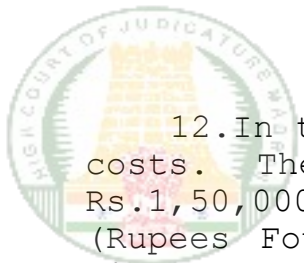
8. The age of the deceased was fixed as 47 years on the date of the accident on the basis of the note in the postmortem report under Ex.P6 and no ground of objection is raised and so, it is maintained.

Income:

9. No income was fixed by the Tribunal stating the it was not proved and hence, Rs.1,00,000/- (Rupees One Lakh only) was fixed on the basis of "No Fault Liability". This manner of the finding is under challenge. As per the witness of P.W.2, who is the Secretary of Ammachathiram Village Panchayat Board and by producing the minute book of Gangai Magalir Self Help Group, she said that the deceased by doing weaving work, was earning a sum of Rs.4,000/- to Rs.5,000/- per month. P.W.3, who is running cloth store and would say that the deceased was doing weaving work under him and used to issue a hand chit, which is marked as Ex.P7, shows that from 2005, the deceased was supplying weaved cloths to him, for which payment was made to her and would further say that she used to earn a sum Rs.2,500/- to Rs. 3000 per month. His evidence was rejected by the Tribunal.

10. Similarly, the evidence of P.W.2 was also rejected. The reasonings for rejecting the documents and the oral evidence are not convincing. From the evidence of P.W.3, it is seen that as stated above the deceased was supplying weaved cloths to him from 2005. So, from his evidence, we can at least fix the minimum monthly income as 2,500 per month. So, the total yearly income can be arrived at Rs.30,000. After deducting $\frac{1}{3}^{\text{rd}}$ for personal expenses, the total loss of estate will be Rs.20,000 per annum. The age of the deceased was 47, at the time of accident and so, the multiplier is fixed 13. The total loss of estate is Rs.2,60,000/- ($20,000 \times 13 = \text{Rs.}2,60,000/-$). To this, 25% of the income is to be added as future prospects, which comes to Rs. 65,000/-. So, the total loss of estate is Rs.3,25,000/- (Rupees Three Lakhs Twenty Five Thousand only).

11. Loss of consortium to the first petitioner is fixed at Rs. 40,000/-. Loss of love and affection already ordered by the tribunal of Rs.45,000/- is maintained and so also the funeral expenses of Rs.5,000/-. Hence, the total compensation is increased to Rs.4,15,000/- (Rupees Four Lakhs Fifteen Thousand only. In this, the first appellant is entitled for Rs.3,00,000/- (Three Lakhs only) and second and third appellants are equally entitled to Rs.57,500/- (Rupees Fifty Seven Thousand and Five Hundred only) each.



12. In the result, this Civil Miscellaneous Appeal is allowed. No costs. The award passed by the Tribunal is enhanced from Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) to Rs.4,15,000/- (Rupees Four Lakhs Fifteen Thousand only) with 7.5 % p.a and the first appellant is entitled for Rs.3,00,000/- (Three Lakhs only) and second and third appellants are equally entitled to Rs.57,500/- (Rupees Fifty Seven Thousand and Five Hundred only) each. The first respondent /Transport Corporation is directed to deposit the award amount with interest and costs within a period of two months from the date of receipt of copy of this order. On such deposit being made, the Tribunal may permit the appellants / claimants to withdraw their respective shares with interest and costs immediately, since there is a lapse of ten years, after filing proper petition before the Tribunal.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar (CS)

Ls

To

The Motor Accident Claims Tribunal
(Principal Subordinate Judge),
Kumbakonam, Thanjavur District.

Copy to: The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2)

C.M.A. (MD) No.87 of 2010

21.12.2020

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