



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2020

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.339 of 2019

and

C.M.P. (MD)No.4212 of 2019

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Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited, Karaikudi Region,
Through its Branch Manager,
Managiri Road, Marudhupathi,
Karaikudi - 630 307.

.. Appellant/2nd Respondent

Vs.

1. Paul Rathinam @ Rathinam
2. Arockiamarry
3. Anandha Anil Priya
4. Minor Arikket Sabarinathan .. Respondents 1 to 4/Petitioners
(4th respondent's minor represented by his guardian
and father the first respondent Paul Rathinam @ Rathinam)
5. V. Veeranan ... 5th Respondent/1st Respondent
(The 5th respondent is the driver of the
appellant and given up)

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and decree made in M.C.O.P.No.40 of 2014 dated 21.06.2018 on the file of the Motor Accident Claims Tribunal / Sub Court, Devakkottai.

For Appellant	: Mr.P.Prabhakaran
For Respondents 1 to 4	: Mr.A.L.Kannan
5 th Respondent	: Given up

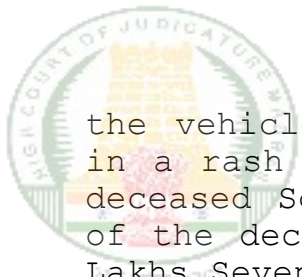
JUDGMENT

Heard learned counsel appearing on either side.

2. This Civil Miscellaneous Appeal has been filed against the order passed in M.C.O.P.No.40 of 2014 dated 21.06.2018 on the file of The Motor Accident Claims Tribunal / Sub Court, Devakkottai.

3. The appellant herein is the second respondent, the respondents 1 to 4 herein are the claimants and the fifth respondent herein is the first respondent in the claim petition.

4. The case of the claimants is that on 10.11.2011 at about 8.30 a.m., the deceased was travelling in a TVS XL as pillion rider along the Thirupathur - Kunrangudi Road. At that time, the driver of



the vehicle bearing Registration No.TN-63-N-0967 drove the vehicle in a rash and negligent manner and dashed against the TVS XL. The deceased Sophia died on the spot. The claimants are the dependants of the deceased and they claim a sum of Rs.9,71,000/- (Rupees Nine Lakhs Seventy One Thousand only) as compensation.

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5.The brief substance of counter in M.C.O.P.No.40 of 2013 is as follows:

The driver of the bus drove the vehicle in a careful manner but the driver of the two wheeler without observing the bus suddenly crossed the road and he dashed against the right side bumper of the bus and he caused that accident. The driver of the two wheeler alone is solely responsible for the accident. The insurance company of the two wheeler is a necessary party. The petitioner has to prove that the driver of the two wheeler is having valid driving license at the time of the accident.

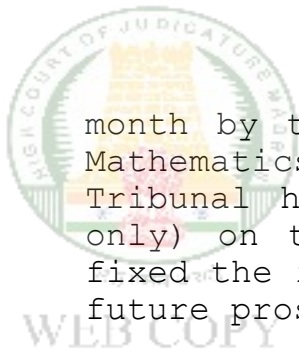
6.The Tribunal after considering both sides, awarded a sum of Rs.16,50,000/- (Rupees Sixteen Lakhs and Fifty Thousand only) as compensation. Against which, the appellant preferred this appeal.

7.On the side of the appellant, it is stated that the Tribunal failed to consider that the driver of the two wheeler without showing any kind of signal, suddenly crossed the road from left side to the right side with uncontrollable speed and dashed against the bus. The Tribunal is wrong in awarding a compensation of Rs.16,50,000/-, which is excessive. The Tribunal has fixed the monthly income as Rs.10,000/-, even though in the petition itself it is mentioned that the monthly income is only Rs.5,000/-. The Tribunal is wrong in awarding 50% as additional income towards future prospects without deducting any amount towards personal expenses. The multiplier adopted is wrong. The interest awarded is excessive.

8.On the side of the respondents, it is stated that the Tribunal has power to enhance the compensation even beyond the amount, prayed for. In support of his contention, the judgment passed by Hon'ble Supreme Court in the case of **Ibrahim v. Raju and others** reported in **2011 ACJ 2845** is cited.

9.It is seen that the Tribunal has fixed the liability on the driver of the bus, since the FIR and chargesheet were against the driver of the bus. There is no evidence on the side of the appellant against that the driver of the two wheeler. Hence, there is nothing to interfere in the findings of the Tribunal regarding the liability.

10.Regarding the quantum, the claim of the appellant is that the deceased was earning Rs.5,000/- (Rupees Five Thousand only) per



month by taking tuition at home. The deceased has completed B.Sc. Mathematics and was doing B.Ed at the time of the accident. The Tribunal has fixed the income as Rs.10,000/- (Rupees Ten Thousand only) on that basis after deducting 50% towards personal expenses fixed the income as Rs.5,000/- (Rupees Five Thousand only) including future prospects.

11.The Tribunal has fixed the future prospects as 50%. As per **Praney Sathi** case, since the age of the deceased is 19 years, only 40 % has to be taken into account as future prospects. The Tribunal has not deducted any amount towards the personal expenses of the deceased. After including 40 % towards future prospects, the monthly income will be Rs.7,000/- (Rupees Seven Thousand only), out of which, the deceased might have contributed Rs.3,500/- (Rupees Three Thousand and Five Hundred only) for the family. After applying multiplier '18', the claimants are entitled to Rs.7,56,000/- (Rupees Seven Lakhs and Fifty Six Thousand only) as loss of income.

12.The claimants are entitled to Rs.15,000/- (Rupees Fifteen Thousand only) towards funeral expenses and Rs.15,000/- (Rupees Fifteen Thousand only) towards transport expenses.

13.The claimants are entitled to Rs.80,000/- (Rupees Eighty Thousand only) towards loss of love and affection. Therefore, the total compensation to be awarded would be Rs.8,66,000/- (Rupees Eight Lakhs and Sixty Six Thousand only). The interest is fixed at 7.5 %.

14.In the result, this Civil Miscellenaous Appeal is partly allowed. Out of Rs.8,66,000/- (Rupees Eight Lakhs and Sixty Six Thousand only), the respondents 1 and 2/claimants 1 and 2 are entitled to Rs.3,40,000/- (Rupees Three Lakhs and Forty Thousand only) each, the respondents 3 and 4/claimants 3 and 4 who are the brother and sister of the deceased are entitled to Rs.93,000/- (Rupees Ninety Three Thousand only) each as compensation with interest at the rate of 7.5 % from the date of the claim petition till the date of realization.

15.The appellant is directed to deposit Rs.8,66,000/- (Rupees Eight Lakhs and Sixty Six Thousand only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimants 1 to 3 are permitted to withdraw their respective shares with proportionate interest after deducting any amount received by them earlier without filing any formal petition before the Tribunal. Insofar as the shares of the minor/4th respondent is concerned, the Tribunal is directed to deposit the same in a Fixed Deposit under a periodically renewable scheme till they attain majority and the first respondent, the Guardian of the minor, is permitted to withdraw the interest accrued thereon once in



three months for the welfare of the minor. The excess amount, if any deposited shall be refunded to the appellant. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

MRN

To

The Subordinate Judge,
Motor Accident Claims Tribunal / Sub Judge, Devakkottai.

2. The Section Officer, (2 COPIES)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.P.PRABHAKARAN, Advocate (SR-4594[F] dated 04/02/2020)

+1 CC to Mr.VR.SHANMUGANATHAN, Advocate (SR-5338[F] dated 07/02/2020)

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