



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 05.01.2021

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.397 of 2016  
& C.M.A.No.512 of 2017  
& C.M.P.No.2997 of 2016

The Managing Director,  
Tami Nadu State Express Transport Corporation Ltd.,  
Rep. by its Managing Director,  
Pallavan House, Pallavan Salai,  
Chennai - 600 002.

... Appellant/Respondent  
in C.M.A.No.397 of 2016

/versus/

1. Mrs.Chitra,  
2. Govindasamy,  
3. Radha,  
All are residing at  
No.4, Egappan Street,  
Old Washermanpet, Chennai.

... Respondents/Petitioners  
in C.M.A.No.397 of 2016

Prayer in C.M.A.No.397 of 2016: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 24.08.2015 made in M.C.O.P.no.4897 of 2011 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

1. Mrs.Chitra,  
2. Govindasamy,  
3. Radha,  
All are residing at  
No.4, Egappan Street,  
Old Washermanpet, Chennai.

... Appellants/Claimants  
in C.M.A.No.512 of 2017

/versus/



The Managing Director,  
Tami Nadu State Express Transport Corporation Ltd.,  
Rep. by its Managing Director,  
Pallavan House, Pallavan Salai,  
Chennai - 600 002.

...Respondent/Respondent  
in C.M.A.No.512 of 2017

Prayer in C.M.A.No.512 of 2017: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 24.08.2015 made in M.C.O.P.No.4897 of 2011 on the file of the Motor Accident Claims Tribunal, (III Small Causes Court), Chennai.

For Appellants : Mr.K.Kathiresan  
in C.M.A.No.397 of 2016

For R1 to R3 : Mr.K.Varadha Kamaraj  
in C.M.A.No.397 of 2016

For Appellants : Mr.K.Varadha Kamaraj  
in C.M.A.No.512 of 2017

For Respondent : Mr.K.Kathiresan  
in C.M.A.No.512 of 2017

#### COMMON JUDGMENT

(The case has been heard through video conference)

Heard the Learned Counsel for the appellants and the Learned Counsel for the respondents.

2. The Appeal in C.M.A.No.397 of 2016 is filed by the Transport Corporation aggrieved by the quantum of compensation awarded by the Tribunal. The Appeal in C.M.A.No.512 of 2017 is filed by the claimants being not satisfied with the quantum of compensation.

3. The facts of the case is that one Thiru. Balaji, aged 22 years old bachelor while riding his motorcycle bearing registration No.TN-09-AX-8593 along the Sydenhams Road, Perambur, the SETC lorry bearing registration No.TNL-9969 hit the motorcycle and caused grievous injury to the motorcycle rider. The accident victim was taken to Government General Hospital, Chennai but he succumb to the injury on the next day. The parents of the deceased and sister has filed claim petition



seeking a sum of Rs.15,00,000/-. According to the claim petition, the deceased was working as driver in Apollo Hospital and earning a sum of Rs.9,000/- per month. Since he died at young age of 22 years, they have lost dependency and his income.

## WEB COPY

4. The Transport Corporation has filed counter stating that the accident occurred due to the negligence of the motorcycle rider. The Transport Corporation lorry driver was carefully driving the lorry by observing all the traffic rules and regulations. Near A.P.Timber Traders, Sydenhmas Road, the motorcyclist coming on the same direction hit the cyclist and fell down in the road. The motorcyclist and the pillion rider fell before the lorry. The motorcyclist went under the wheels of the lorry. The F.I.R was wrongly registered by the police against the driver of the Transport Corporation lorry, based on the wrong information given to the police, hence measures taken to cancel the F.I.R.

5. Before the Tribunal, the 1<sup>st</sup> petitioner/Chitra and one Thiru. Senthil Kumar eye witness to the accident were examined. 7-exhibits were marked on the side of petitioners. On behalf of the respondents one Thiru.S.Natarajan, Driving Trainer attached to the Transport Corporation was examined as R.W.1. No documentary evidence relied by the respondents.

6. The Tribunal, on consideration the first information recorded by the police held that the accident took place due to the negligence of the Transport Corporation driver. The evidence of R.W.1 Thiru.S.Natarajan, Driving Training Officer did not inspire confidence of the Tribunal since the narration of the accident by R.W.1 was contrary to the documentary evidence Ex.P.1 and ocular evidence of P.W.2.

7. Regarding the income of the deceased, since there was no evidence to show that the deceased was working as driver in the Apollo Hospital as claimed in the petition, the Tribunal has notionally fixed the income at Rs.7,000/- including future prospects. While applying multiplier, the Tribunal has adopted the age of the mother and fixed multiplicand 15, a sum of Rs.7,50,000/- was awarded as compensation to the claimants which was to be apportioned between them in the ratio of i.e., Rs.6,00,000/- (1<sup>st</sup> claimant/mother), Rs.1,00,000/- (2<sup>nd</sup> claimant/father) and Rs.50,000/- (3<sup>rd</sup> claimant sister) with 7.5% interest from the date of numbering (23.11.2011) the petition, till the date of deposit.

8. The Appeal in C.M.A.No.397 of 2016 is filed by the Transport Corporation questioning the quantum on the ground that the Tribunal ought not to have relied upon the evidence of P.W.2 for fixing the negligence on the lorry driver since he was not



eye witness to the occurrence. There is no evidence to show that the deceased was employed in the Apollo Hospital as driver. Fixation of Rs.7,000/- as notional income inclusive of future prospect is excessive and exorbitant.

WEB COPY

9. The Learned Counsel appearing for the Transport Corporation/Appellant would emphasis that the Tribunal has erred in rejecting the evidence of R.W.1 who is the eye witness to the occurrence and has spoken about the manner in which the accident occurred. Therefore, the Learned Counsel for the Transport Corporation would submit that the award has to be set aside since the accident occurred due to the negligence of the deceased, who had no valid driving license and invited the accident due to his rash and negligent driving.

10. Per contra, the Learned Counsel appearing for the claimants who are the appellants in C.M.A.No.512 of 2017 would submit that the claimants are the parents and sisters of the deceased Thiru.Balaji. The Tribunal had fixed a merger sum of Rs.7,000/- inclusive of future prospects and also erred in fixing the multiplier as 15, taking the age of the mother instead of taking the age of the deceased. Further, the Learned Counsel would submit that the I.D. card of the deceased Ex.P.7 and oral evidence of P.W.1 regarding the occupation of the deceased has been overlooked by the Tribunal. Hence, prayed the compensation has to be enhanced by fixing fair and just compensation.

11. Heard the Learned Counsel appearing for the Appellants and the Learned Counsel for the respondents.

12. It is a case of fatal accident occurred on 27.09.2011. The victim was 22 years old bachelor. He died on the next day of the accident, in view of the multiple injury sustained in the road accident. While considering the negligence and cause for accident, the Tribunal has relied upon the F.I.R and ocular evidence of P.W.2. Though R.W.1 has spoken contrary to evidence of P.W.1, the Tribunal has given weightage to the F.I.R, which is in consonance to the ocular evidence of P.W.2. This Court finds no error in the finding of the Tribunal, regarding the negligence.

13. As far as the quantum, in the absence of any document to prove employment except the I.D card Ex.P.7, there is no reason to accept the plea of the claimants regarding the loss of income. The specific case of the claimants is that the deceased was working as a driver in the Apollo Hospital and earning a sum of Rs.9,000/- per month. Neither the driving license of the deceased nor income certificate for the deceased produced before the Court. In fact, whether the deceased had



valid driving license at all to be a professional driver is a question not been answered by the claimants.

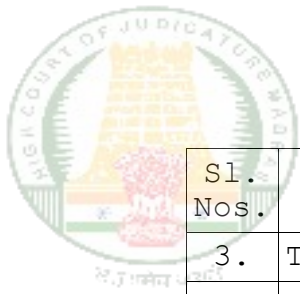
14. The Transport Corporation in their counter had taken specific plea about non-possession of the valid driving license. The another fact which has not been properly elicited by the claimants through evidence is that, both in the F.I.R as well as in the claim petition, it is specifically stated that the deceased was riding the two wheeler with the pillion rider. The pillion rider, could have been better witness to speak about the accident and whether the rider who died in the accident had a valid driving license.

15. Be it as it may, as far as the income is concerned, there should have been some basic document to show that the deceased was a professional driver and earning his livelihood as a driver. In the absence of evidence, this Court taking into consideration the age of the victim the notional income fixed by the Tribunal at Rs.7,000/- inclusive of the future prospects, is enhanced to Rs.8,000/- inclusive of future prospect.

16.Regarding application of multiplier, the contention of the Learned Counsel appearing for the claimants that the Tribunal has erred in fixing the multiplier "15" based on the age of the claimant instead of "18" based on the age of the victim is a valid contention and has to be upheld.

17. On over all appreciation of evidence, this Court finds that the claimants have failed to prove that the deceased was gainfully employed as a driver in the Apollo Hospital and earning a sum of Rs.9,000/-. At the same time, the contention of the Transport Corporation that the deceased at the time of accident had no valid driving license, not proved. Therefore, balancing the evidence and to award fair compensation, the loss income of the deceased is taken as Rs.8,000/- per month inclusive of future prospects, after deducting 50% towards personal expenditure, multiplier "18" applied. Thus, taking note of the age of the deceased, the award of the Tribunal is modified as below:-

| Sl. Nos. | Compensation under various heads                                              | Award passed by this Court |
|----------|-------------------------------------------------------------------------------|----------------------------|
| 1.       | Loss of income<br>(Rs.8,000 inclusive of F.P x 12 ) -<br>50% (deduction) x 18 | Rs.8,64,000/-              |
| 2.       | Loss of love and affection (Claimants<br>1 to 3)<br>(Rs.20,000 x 3)           | Rs.60,000/-                |



| Sl. Nos. | Compensation under various heads | Award passed by this Court |
|----------|----------------------------------|----------------------------|
| 3.       | Transport to Hospital            | Rs.5,000/-                 |
| 4.       | Funeral Expenses                 | Rs.15,000/-                |
| 5.       | Loss of Estate                   | Rs.15,000/-                |
|          | Total                            | Rs.9,59,000/-              |

18. The award of the Tribunal is modified from Rs.7,50,000/- to Rs.9,59,000/-. The Transport Corporation is directed to deposit the amount in the M.C.O.P. account with 7.5% from the date of numbering the petition (23.11.2011) till the date of realization, within a period of 8 weeks, from the date of receipt of a copy of this judgment.

19. The compensation shall be apportioned by the claimants as below:-

|                                 |               |
|---------------------------------|---------------|
| 1 <sup>st</sup> claimant/mother | Rs.5,00,000/- |
| 2 <sup>nd</sup> claimant/father | Rs.3,00,000/- |
| 3 <sup>rd</sup> claimant/sister | Rs.1,59,000/- |

20. The Learned Counsel for the Transport Corporation submits that the award amount has already been deposited in the M.C.O.P account pursuant to the order of this Court.

21. In such circumstances, the Transport Corporation/Appellant is directed to deposit the enhanced amount, as modified under this order passed by this Court, within a period of 8 weeks, from the date of receipt of a copy of this judgment. The claimants are permitted to withdraw the award amount with proportionate interest on filing proper application, less the amount already withdrawn by them.

22. Accordingly, the Civil Miscellaneous Appeal No.397 of 2016 is dismissed and Civil Miscellaneous Appeal No.512 of 2017 is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

bsm



To:-

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

2. The Section Officer,  
V.R.Section, High Court, Madras.

+2CCs to M/s.K.Kathiresan, Advocate, Sr.Nos.254 and 255

C.M.A.No.397 of 2016  
& C.M.A.No.512 of 2017  
& C.M.P.No.2997 of 2016

CNR (CO)  
K.RK. (14.09.2021)