



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

C.M.A.No.2285 of 2021
and CMP.No.12719 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam, having office at Railway Station
New Road, Kumbakonam Town
and District Munisifi.

...Appellant/Respondent No.3

Vs.

1. Stella Mary
2. Meera Jasmin Mary (Minor)
3. Darjan Felix (Minor) ..Respondents 1 to 3/Petitioner
(Minors rep.by their elder sister Stella Mary)
4. Mahesh
5. Rajesh ..Respondents 4 & 5/Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.01.2021 made in M.C.O.P.No.214 of 2018 on the file of the Motor Accident Claims Tribunal, District Judge, Karaikal.

For Appellant: Mr.D.Venkatachalam

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

This Civil Miscellaneous Appeal has been filed to set aside the award dated 29.01.2021 made in M.C.O.P.No.214 of 2018 on the file of the Motor Accidents Claims Tribunal, District Court, Karaikal.

2. The appellant is the 3rd respondent in M.C.O.P.No.214 of 2018 on the file of the Motor Accidents Claims Tribunal, District Court, Karaikal. The respondents 1 to 3 filed the above said claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of one Jayaraj in the accident that took place on 18.01.2017.



3. On 18.01.2017, the deceased Jayaraj, was travelling in TNSTC Bus bearing Registration No.TN49-1416 from Polagam Bus Stop to Karaikal Port, while the Bus was nearing Polagam T.R.Pattinam Bypass road at about 12:30 hours by the negligence of the conductor and driver, the respondents 1 and 2, the said Jayaraj fell down from the back entrance of the bus. The driver of the bus drove the bus at a high speed in a rash and negligent manner and the conductor has not controlled and also not taken care of the passengers in the bus. Both the respondents 1 and 2 were negligent in their duty and caused the accident and made the said Jayaraj to be thrown away on the road from inside the bus and hence he sustained heavy injuries. Immediately, the deceased was taken to Government General Hospital, Karaikal through Ambulance after the first aid was given he was taken to Indira Gandhi College and Research Institute, Puducherry for further treatment. In spite of the efforts taken to save his life he died. A case was registered in Cr.No.06/2017 by Traffic Police, Karaikal. The deceased was employed as a Coolie in Karaikal Port and was earning a sum of Rs.500/- per day. Due to the death of the deceased his family is suffering monetary loss. Therefore, the claimants 1 to 3 filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of Jayaraj.

4. Before the Tribunal, the 1st respondent examined herself as P.W.1 and 16 documents were marked as Exs.P1 to P16. On behalf of the appellant, one Rajesh, Driver of the bus belonging to appellant-Transport Corporation was examined as R.W.1 and no documentary evidence was let in.

5. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation and directed the appellant to pay a sum of Rs.20,26,392/- as compensation to the claimants 1 to 3.

6. The learned counsel appearing for the appellant-Transport Corporation contended that the driver of the bus belonging to the appellant-Transport Corporation drove the bus cautiously by observing the road traffic rules. The deceased was standing in the back door step of the bus and he himself fell down and invited the accident. The accident has not occurred as alleged by the respondents, whereas the accident has occurred only due to the negligence on the part of the deceased. The Tribunal ought not to have held that mere registering of F.I.R. is more enough for fixing negligence on the part of the driver of the



bus. The Tribunal erroneously fixed negligence on the driver of the bus merely relying on the F.I.R. It is well settled that negligence cannot be fixed relying on the F.I.R. or judgments of the Criminal Court. He further submitted that the 1st respondent failed to prove the age, avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.13,302/- as notional income by applying inflation index method. In any event, the quantum of compensation claimed by the respondents is highly excessive and prayed for dismissal of the claim petition.

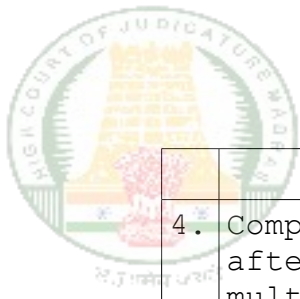
7. Heard the learned counsel appearing for the appellant-Transport Corporation and perused the entire materials on record.

8. It is the case of fatal accident and the Transport Corporation in order to prove their case, examined the driver of the bus as R.W.1 to establish that the negligence was on the part of the deceased who travelled in the bus. The accident took place on 18.01.2017 and that the sister of the deceased stated that due to the negligence of the driver and conductor her brother was thrown away on the road from inside the bus and sustained injury. Thereafter immediately he was admitted at Indira Gandhi College and Research Institute, Puducherry but unfortunately he succumbed to death on account of injuries. Even assuming for the sake of argument that PW1 the sister/first respondent of the deceased is an interested witness, who was not an eye witness, the driver of the bus is also not competent to speak about the incident. According to the Transport Corporation while taking tickets from the conductor the deceased fell down and suffered injury. The right and competent person should speak about the accident and not the conductor or the driver of the bus. Apart from this there is also an individual eye witness who was examined as PW2 and stated that he was traveling along with the victim in the bus and due to the rash and negligent driving of the bus, the victim sustained injuries and thereafter died. Karaikal Traffic Police registered a case in Cr.No.6/2017. Even for the sake of argument, the contention of the FIR that itself establish the case of the victim. In the present case of hand, as there is an eye witness, the Tribunal has rightly held that there is no negligent on the part of the victim. The appellant-Transport Corporation neither examined any eyewitness to the accident nor filed any objection to the F.I.R., which was registered against the driver of the bus belonging to appellant. Further, R.W.1-driver of the bus was an interested witness. Hence the Tribunal has rightly held that there is no negligent on the part of the deceased.



9. As far as quantum of compensation is concerned, since the deceased was working as a Coolie in Karaikal Port and earning a sum of Rs.500/- per day, taking note of the decision of this Court reported in 2019 (1) TN MAC 54 (DB) in the case of Andal and 2 others Vs Avinav Kannan & another the Tribunal has applied the same notional income of Rs.6,500/- and by applying the principles set out in the above judgment and considering the inflation index of the year (the accident took place in the year 2017) the Tribunal has fixed a sum of Rs.13,302/- as notional income of the deceased. The deceased was a bachelor, aged 20 years at the time of accident, the Tribunal following the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC [Sarla Verma & others vs. Delhi Transport Corporation & another] and 2017 (2) TNMAC 609 (SC) [National Ins. Co. v. Pranay Sethi] applied multiplier '18', granted 40% enhancement towards future prospects and deducted 50% towards personal expenses and awarded a sum of Rs.20,11,392/- as compensation and awarded Rs.15,000/- towards funeral expenses and arrived at Rs.20,26,392/- as total compensation which is just proper and reasonable. Though no appeal has been preferred by the claimants this Court is inclined to award compensation under the heads love and affection and transportation. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
1.	Income	Rs.6,500/-	Rs.6,500/-	Confirmed
2.	Inflation Index	Rs.6500x264/129 = Rs.13302	Rs.6500x264/129 = Rs.13302	Confirmed
3.	1/2 of the income deducted as personal expenses of the deceased	Rs.13302/- Add:40% of income towards future prospects Rs.13302 + Rs.5321 = Rs.18623/- Less:1/2 of income Rs.18,623 -Rs.9311.5 = Rs.9311.50 rounded off to Rs.9312	Rs.13302/- Add:40% of income towards future prospects Rs.13302 + Rs.5321 = Rs.18623/- Less:1/2 of income Rs.18,623 - Rs.9311.5 = Rs.9311.50 rounded off to	Confirmed



WEB COPY

			Rs.9312	
4.	Compensation after multiplier of 18 is applied	Rs.9312x18x12 =Rs.20,11,392	Rs.9312x18x12 =Rs.20,11,392	Confirmed
5.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
6.	Love and affection	-	Rs.1,25,000/-	Granted
7.	Transportation	-	Rs.15,000/-	Granted
	Total	Rs.20,26,392/-	Rs.21,66,392/-	enhanced by Rs.1,40,000/-

10. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.20,26,392/- is hereby enhanced to Rs.21,66,392/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimants are directed to pay the Court fee, if any on the enhanced amount of compensation. The appellant-Transport Corporation is directed to deposit the modified award amount now determined by this Court, along with interest and costs, less the amount if any already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.214 of 2018 on the file of the Motor Accident Claims Tribunal, District Judge, Karaikal. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the modified award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any already withdrawn by making necessary applications before the Tribunal. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

Dpq



To

1. The Motor Accident Claims Tribunal
District Judge, Karaikal.

2. Tmt. Stella Mary and (Minor Meera Jasmin Mary
Minor Darjan Felix
Rep by their Elder Sister Stella Mary)
18, Kaveri Street
Nagapattinam Town and District Munsif Puducherry

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.D.Venkatachalam, Advocate sr 40142.

C.M.A.No.2285 of 2021

PL(CO)
SP(24/11/2021)