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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.07.2021	Delivered on: 06.08.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.Nos.1342 of 2020 & 620 of 2021
and
C.M.P.No.3788 of 2021

C.M.A.No.1342 of 2020:

1.N.Mahalakshmi

2.Minor. N.Dhanshiga

...Appellants/Petitioners

(Minor 2nd appellant represented by
her Mother, Guardian and Next
Friend, N.Mahalakshmi, 1st
appellant herein)

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Railway Station New Road,
Kumbakonam - 612 001.

2.Kalavathy

...Respondents/Respondents

C.M.A.No.620 of 2021:

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Railway Station New Road,
Kumbakonam - 612 001.

...Appellant/1st Respondent

Vs.

1.N.Mahalakshmi

2.Minor. N.Dhanshiga

(Minor 2nd respondent represented by
her Mother, Guardian and Next
Friend, N.Mahalakshmi, 1st
respondent herein)

..1 & 2 Respondents/Petitioners



3. Kalavathy

...3rd Respondent/2nd Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.02.2020 made in M.C.O.P.No.1174 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court (Fast Track Court), Cuddalore.

In C.M.A.No.1342 of 2020:

For Appellants : Ms.Ramya V.Rao
for Mr.A.N.Viswanatha Rao

For R1 : Mr.D.Raghu

In C.M.A.No.620 of 2021:

For Appellant : Mr.D.Raghu
For RR 1 & 2 : Ms.Ramya V.Rao
for Mr.A.N.Viswanatha Rao

C O M M O N J U D G M E N T

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

These Civil Miscellaneous Appeals have been filed against the award dated 18.02.2020 made in M.C.O.P.No.1174 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court (Fast Track Court), Cuddalore.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The claimants filed the above said claim petition against the 1st respondent-Transport Corporation claiming a sum of Rs.25,00,000/- as compensation for the death of one V.Nandagopal, who died in the accident that took place on 23.03.2017. The 2nd respondent is the mother of the deceased.

4.According to the claimants, on 23.03.2017 at about 15.30 hours, while the said V.Nandagopal was driving the Tata Indica Car bearing Registration No.TN 07 AC 2584 from North to South direction on the extreme left side of the Pudukottai to Trichy NH-336 Road, near Sudarsan Engineering College, Sathiyamangalam, the driver of the bus bearing Registration No.TN 55 N 0739 belonging to 1st respondent drove the same in a rash and negligent manner from the opposite direction without following



the traffic rules and regulations and dashed against the car driven by the said V.Nandagopal and caused the accident. In the accident, the said V.Nandagopal was thrown out of the car, sustained fatal injuries and he was taken to Government Head Quarters Hospital, Pudukottai, where he was declared dead. Therefore, the claimants being the wife and minor daughter of the deceased filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation against the 1st respondent-Transport Corporation. The Mother of the deceased viz., Kalavathy was impleaded as 2nd respondent in the claim petition.

5.The 1st respondent-Transport Corporation filed counter statement and denied all the averments made by the claimants. The 1st respondent-Transport Corporation denied the manner of accident as alleged by the claimants. According to the 1st respondent, on 23.03.2017 at about 02.35 P.M., the driver of the bus has started the trip from Trichy Bus Stand and drove the bus towards Devakottai and at about 03.30 P.M., the driver of the bus stopped the bus at Sathyamangalam Bus Stop to alight and board the passengers. After alighting and boarding the passengers, the driver of the bus started the bus slowly and while he was driving the bus on the extreme left side of the road by blowing horn and by following the road traffic rules about 100 meters from the Sathyamangalam Bus Stop, he saw the driver of the car bearing Registration No.TN 07 AC 2584 was coming in the opposite direction in a rash and negligent manner at a high speed. On seeing this, the driver of the bus stopped the bus at the extreme left side of the road. In spite of best efforts taken by the driver of the bus, the driver of the car came in a rash and negligent manner and embraced on the front right side of the bus and invited the accident. Therefore, the accident has occurred only due to the negligence on the part of the driver of the car and there is no negligence on the part of the driver of the bus belonging to 1st respondent. The F.I.R. registered against the driver of the bus is based on the false complaint and it was registered only with an intention to grab money from the 1st respondent-Transport Corporation. The claimants have to implead the owner and insurer of the car driven by the deceased at the time of accident. The claimants have to prove the nature of accident and the fact that the said V.Nandagopal has died only due to the injuries sustained in the accident by acceptable evidence. The 1st respondent-Transport Corporation denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the claimants is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st claimant examined herself as P.W.1 and one Sudhakar, eyewitness to the accident was examined as P.W.2 and 7 documents were marked as Exs.P1 to P7. On behalf



of the 1st respondent-Transport Corporation, one Saravanan, driver of the bus was examined as R.W.1 and no document was marked.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to 1st respondent-Transport Corporation and directed the 1st respondent-Transport Corporation to pay a sum of Rs.14,70,000/- as compensation to the claimants and 2nd respondent.

8.Against the said award dated 18.02.2020 made in M.C.O.P.No.1174 of 2018, the 1st respondent-Transport Corporation has come out with an appeal in C.M.A.No.620 of 2021 and not being satisfied with the amounts awarded by the Tribunal, the claimants have come out with an appeal in C.M.A.No.1342 of 2020 seeking enhancement of compensation.

9.The learned counsel appearing for the 1st respondent-Transport Corporation contended that the driver of the car only drove the same in a rash and negligent manner and dashed against the front right side of the bus which was standing in the bus stop and caused the accident and the Tribunal erroneously fixed the liability on the part of the 1st respondent. The Tribunal ought not to have accepted the evidence of P.W.1, who is not an eyewitness to the accident. The Tribunal erroneously fixed negligence on the driver of the bus merely relying on the F.I.R. The Tribunal ought to have fixed entire negligence on the part of the deceased. The deceased was a Mechanic at the time of accident and a sum of Rs.10,000/- per month fixed by the Tribunal as his notional income is excessive. The amounts awarded by the Tribunal towards funeral expenses, loss of estate and loss of consortium are excessive. The Tribunal ought to have considered the Hon'ble Apex Court judgment dated 29.09.2011 made in CrI.A.No.7824 of 2011 and granted interest only at the rate of 6% per annum. The total compensation awarded by the Tribunal is highly excessive and prayed for setting aside the award passed by the Tribunal and also for dismissal of C.M.A.No.1342 of 2020 filed by the claimants.

10.Per contra, the learned counsel appearing for the claimants contended that the deceased was born on 02.02.1978 and he was aged 39 years at the time of accident. The postmortem report and death certificate also shows the age of the deceased as 39 years and the age of the deceased fixed by the Tribunal at 41 years is not correct. The Tribunal ought to have fixed the age of the deceased as 39 years, applied proper multiplier '15' and granted 40% enhancement towards future prospects instead of applying multiplier '14' and granting only 25% enhancement towards future prospects. At the time of accident, the deceased



was working as Car Mechanic cum Driver and was earning a sum of Rs.30,000/- per month. But a sum of Rs.10,000/- fixed by the Tribunal as notional income of the deceased is meagre and the Tribunal ought to have fixed a sum of Rs.20,000/- per month as notional income of the deceased and awarded compensation. The Tribunal failed to award any amount towards loss of love and affection to minor 2nd claimant and 2nd respondent, who are the daughter and mother of the deceased respectively and prayed for enhancement of compensation and for dismissal of C.M.A.No.620 of 2021 filed by the 1st respondent-Transport Corporation.

11.Heard the learned counsel appearing for the claimants as well as the learned counsel appearing for the 1st respondent-Transport Corporation and perused the entire materials on record.

12.It is the case of the claimants in the claim petition that on 23.03.2017 at about 15.30 hours, while the said V.Nandagopal was driving the Tata Indica Car bearing Registration No.TN 07 AC 2584 from North to South direction on the extreme left side of the Pudukottai to Trichy NH-336, near Sudarsan Engineering College, Sathiyamangalam, the driver of the bus bearing Registration No.TN 55 N 0739 belonging to 1st respondent drove the same in a rash and negligent manner from the opposite direction without following the traffic rules and regulations and dashed against the car driven by the said V.Nandagopal and caused the accident. To prove the said contention, the 1st claimant examined herself as P.W.1, one Sudhakar, eyewitness to the accident was examined as P.W.2 and marked F.I.R., which was registered against the driver of the bus as Ex.Pl. On the other hand, it is the case of the 1st respondent-Transport Corporation that on 23.03.2017 at about 02.35 P.M., the driver of the bus has started the trip from Trichy Bus Stand and drove the bus towards Devakottai and at about 03.30 P.M., the driver of the bus stopped the bus at Sathyamangalam Bus Stop to alight and board the passengers. After alighting and boarding the passengers, the driver of the bus started the bus slowly and while he was driving the bus on the extreme left side of the road by blowing horn and by following the road traffic rules about 100 meters from the Sathyamangalam Bus Stop, he saw the driver of the car bearing Registration No.TN 07 AC 2584 was coming in the opposite direction in a rash and negligent manner at a high speed. On seeing this, the driver of the bus stopped the bus at the extreme left side of the road. In spite of best efforts taken by the driver of the bus, the driver of the car came in a rash and negligent manner and embraced on the front right side of the bus and caused the accident. To prove the said contention, the 1st respondent examined the driver of the bus as R.W.1. R.W.1 is an interested witness and the 1st respondent-Transport Corporation has not examined any other independent witness to prove their



case that the accident has occurred only due to negligence on the part of the deceased. Further, the 1st respondent or the driver of the bus has not filed any objection to the F.I.R., which was registered against the driver of the bus and has not filed any complaint against the deceased. The Tribunal considering the evidence of P.W.1, P.W.2, R.W.1 and contents of Ex.P1/F.I.R. and failure on the part of the 1st respondent for not filing any objection to the F.I.R. and not filing any complaint against the deceased, held that accident has occurred only due to the negligence on the part of the driver of the bus belonging to 1st respondent-Transport Corporation. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, it is the claim of the claimants in the claim petition that at the time of accident, the deceased was aged 39 years, working as Car Mechanic cum Driver and was earning a sum of Rs.30,000/- per month. Except oral evidence, the claimants have not filed any document to prove the avocation and income of the deceased. In the absence of any document with regard to avocation and income, the Tribunal considering the age and nature of work done by the deceased, fixed a sum of Rs.10,000/- per month as notional income of the deceased. The accident is of the year 2017. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.12,000/- per month is fixed as notional income of the deceased. As per Ex.P2/Postmortem Certificate, Ex.P3/Death Certificate and Ex.P7/Driving License of the deceased, the deceased was aged 39 years at the time of accident and the Tribunal erroneously fixed the age of the deceased at 41 years and the multiplier '14' applied by the Tribunal and 25% enhancement granted by the Tribunal towards future prospects are also not correct. The correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] is '15' and as per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the claimants are entitled to 40% enhancement towards future prospects. There are three dependants of the deceased and the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased. Thus, by fixing a sum of Rs.12,000/- per month as notional income, granting 40% enhancement towards future prospects and applying multiplier '15', the compensation awarded by the Tribunal for loss of dependency is modified to Rs.20,16,000/- {Rs.16,800/- [Rs.12,000/- + Rs.4,800/- (40% of Rs.12,000/-)] X 12 X 15 X 2/3}. The Tribunal has not awarded any amount towards loss of love and affection to 2nd claimant and 2nd respondent. The 2nd claimant and the 2nd respondent, being the



minor daughter and mother of the deceased respectively are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The Tribunal has not awarded any amount towards transportation. The claimants and the 2nd respondent are entitled to a sum of Rs.15,000/- towards transportation. The amounts awarded by the Tribunal towards loss of estate, loss of consortium to 1st claimant and funeral expenses are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	14,00,000/-	20,16,000/-	Enhanced
2.	Loss of love and affection to 2 nd claimant and 2 nd respondent	-	80,000/-	Granted
3.	Loss of consortium to 1 st claimant	40,000/-	40,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of estate	15,000/-	15,000/-	Confirmed
6.	Transportation	-	15,000/-	Granted
	Total	Rs.14,70,000/-	Rs.21,81,000/-	Enhanced by Rs.7,11,000/-

14.The compensation awarded by the Tribunal at Rs.14,70,000/- is hereby enhanced to Rs.21,81,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st respondent-Transport Corporation is directed to deposit the award amount now determined by this Court, along with proportionate interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this common judgment, to the credit of M.C.O.P.No.1174 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court (Fast Track Court), Cuddalore. On such deposit, the 1st claimant and the 2nd respondent are permitted to withdraw their respective share of the award amount, now determined by this Court, 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. The share of the minor 2nd claimant is directed to be deposited in any one of the Nationalized Banks, till the



minor 2nd claimant attains majority. On such deposit, the 1st claimant, being the Mother of the minor 2nd claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor 2nd claimant.

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15. In the result, C.M.A.No.1342 of 2020, filed by the claimants is partly allowed and C.M.A.No.620 of 2021, filed by the Transport Corporation is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Fast Track Court,
Cuddalore.

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

+2 Ccs to Mr.D.Raghu, Advocate sr 38906, 38907
+2 CCs to Ms.Ramya V. Rao, Advocate sr 38975.

C.M.A.Nos.1342 of 2020 & 620 of 2021

SRA (CO)
SP (15/11/2021)