



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4367 of 2019

and

C.M.P.No.24878 of 2019

The Managing Director
Tamil Nadu State Transport
Corporation, Kaspas Kumbakonam
Kumbakonam Town and Taluk.

... Appellant/Respondent

Vs.

Rajamanikkam

.. Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.01.2019 made in M.C.O.P.No.82 of 2017 on the file of Motor Accident Claims Tribunal, Sub Court, Tiruvarur.

For Appellant : Mr.D.Venkatachalam
For Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation to set aside the award dated 23.01.2019 made in M.C.O.P.No.82 of 2017 on the file of Motor Accident Claims Tribunal, Sub Court, Tiruvarur.

2.The appellant/Transport Corporation is respondent in M.C.O.P.No.82 of 2017 on the file of Motor Accident Claims Tribunal, Sub Court, Tiruvarur. The respondent filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of his son viz., Lakshmanan, who died in the accident that took place on 12.05.2011.

3.According to the respondent, on the date of accident, i.e., on 12.05.2011 at about 2.00 p.m., while one Rajeshkannan was riding the Bajaj pulsar motorcycle along with the deceased Lakshmanan as a pillion rider on Nagapattinam to Tanjore road, near Kannan hospital, Koradacheri, on the left hand side of the road, the driver of the bus belonging to the appellant/Transport



Corporation, who was coming in the opposite direction, from West to East direction, drove the same in a rash and negligent manner, dashed against the motorcycle in which the deceased travelled as pillion rider, due to the said impact, both the rider as well as the pillion rider of the motorcycle were thrown out and thus, the accident has occurred. In the accident, the said Rajeshkannan, the rider of the motorcycle died on the spot and the deceased Lakshmanan succumbed to his injuries in the hospital. Therefore, the respondent filed the above claim petition claiming compensation as against the appellant/Transport Corporation.

4.The appellant/Transport Corporation filed counter statement denying the averments made in the claim petition and stated that while the driver of the bus was driving the same in a careful manner, on seeing the motorcycle, which was coming in the opposite direction wrongfully, driven by its rider in a rash and negligent manner, stopped the bus on the left side of the road. At that time, the rider of the motorcycle dashed against the bus and invited the accident. The driver of the bus was not responsible for the accident. The respondent has to prove that the rider of the motorcycle was wearing helmet and possessing driving license at the time of accident. The insurer of the motorcycle was not made as party to the claim petition and hence, the claim petition is bad for non-joinder of necessary party. Therefore, the appellant/Transport Corporation is not liable to pay any compensation to the respondent. The appellant has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondent is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the respondent, father of the deceased, examined himself as P.W.1, one Manikandan, was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. The appellant/Transport Corporation examined one Senthilkumar, the driver of the bus as R.W.1 and did not file any document.

6.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 the appellant/Transport Corporation and directed the appellant to pay a sum of Rs.19,85,000/- as compensation to the respondent.

7. Challenging the quantum of compensation awarded by the Tribunal in the award dated 23.01.2019 made in M.C.O.P.No.82 of 2017, the appellant/Transport Corporation has come out with the present appeal.

8.The learned counsel appearing for the appellant/Transport Corporation contended that the respondent has stated that the

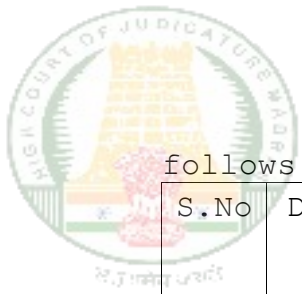


deceased was working as an electrician and was earning a sum of Rs.18,000/- per month. In the absence of any material evidence with regard to income of the deceased, the Tribunal erred in fixing a sum of Rs.10,500/- per month as notional income of the deceased. The deceased was a bachelor at the time of accident. As per the judgment of the Hon'ble Apex Court reported in 2017 (2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), 50% has to be deducted towards personal expenses. The Tribunal has not made any deduction towards personal expenses. It is a case of fatal and the Tribunal erroneously awarded a sum of Rs.15,000/- towards pain and suffering and prayed for setting aside the award of the Tribunal.

9. Though notice has been served on the respondent and his name is printed in the cause list, there is no representation for the respondent either in person or through counsel.

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

11. It is the contention of the respondent that the deceased was working as an electrician and was earning a sum of Rs.18,000/- per month. The respondent failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.10,500/- per month as notional income of the deceased. The accident is of the year 2011 and the notional income fixed by the Tribunal is not excessive. The deceased was aged 38 years at the time of accident. The Tribunal applied multiplier '15', which is proper. The Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), the respondent is entitled to 40% enhancement towards future prospects. The Tribunal has not made any deduction towards personal expenses. The deceased was a bachelor at the time of accident, the respondent, who is the father of the deceased, is the only dependant and hence, 50% is deducted towards personal expenses. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.13,23,000/- (Rs.10,500/- + 4200 [Rs.10,500/- X 40%] X 12 X 15 X 1/2). The Tribunal has awarded a sum of Rs.50,000/- towards loss of love and affection, which is excessive and hence, the same is hereby reduced to Rs.40,000/-. Since the Tribunal has not awarded any compensation towards loss of estate, a sum of Rs.15,000/- awarded by the Tribunal towards pain and suffering is not interfered with. The amounts awarded by the Tribunal towards funeral expenses and transportation 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 or reduced
1.	Loss of dependency	18,90,000	13,23,000	Reduced
2.	Loss of love and affection	50,000	40,000	Reduced
3.	Funeral expenses	15,000	15,000	Confirmed
4.	Transportation	15,000	15,000	Confirmed
5.	Pain and suffering	15,000	15,000	Confirmed
	Total	19,85,000	14,08,000	Reduced by Rs.5,77,000 /-

12. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.19,85,000/- awarded by the Tribunal is hereby reduced to Rs.14,08,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Transport Corporation is directed to deposit the award amount now determined by this Court along with 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 judgment. On such deposit, the respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.82 of 2017 on the file of Motor Accident Claims Tribunal, Sub Court, Tiruvarur, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar



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To

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1.The Subordinate Judge
Motor Accident Claims Tribunal
Tiruvavarur.

+lcc to Mr.D.Venkatachalam, Advocate, S.R.No.7952

C.M.A.No.4367 of 2019
and
C.M.P.No.24878 of 2019

RSI (CO)
CB(09/09/2021)