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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1791 of 2017

- 1.Pavithra
  - 2.Minor Praveen Raj,  
represented by mother and natural  
guardian Pavithra
  - 3.Sudha
  - 4.Punniyakotti
  - 5.Pavinesh (minor)  
represented by mother and natural  
guardian Pavithra
- ...Appellants / Petitioners

Vs

- 1.Tamil Nadu State Transport Corporation Ltd.  
Rep by its Managing Director, Villupuram.
  - 2.Tamil Nadu State Transport Corporation Ltd.,  
Rep by its General Manager, Vellore.
  - 3.Tamil Nadu State Transport Corporation Ltd.,  
Rep by its General Manager, Tiruvannamalai.
- ...Respondents / Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree dated 06.07.2016 made in M.C.O.P.No.47 of 2011 passed by the Motor Accidents Claims Tribunal, Sub Court, Arni.

For Appellants : M/s.Rebecca

For Respondents : Mr.C.S.K.Sathish of R1 to R3

#### JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for the respondents.

2. This Civil Miscellaneous Appeal is filed for enhancement of compensation awarded by the Tribunal being aggrieved by the lesser quantum of compensation.



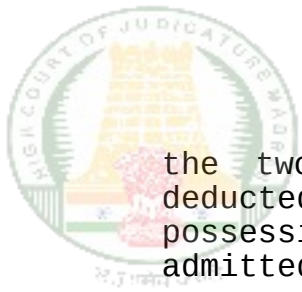
3. The brief facts of the case is that on 24.01.2011, while the deceased Vigneshkumar along with Devaraj were travelling in a two wheeler bearing registration No.TN 29 R 9308 from Arni to Vellore near Kaniyambadi, the bus owned by the Tamilnadu Transport Corporation bearing registration No.TN 21 N 0801 dashed against the two wheeler, in which, the rider Vigneshkumar sustained grievous head injury. He was taken to the hospital. He could not survive the injuries and died on the same day. Criminal case was registered against the driver of the Transport Corporation by the Taluk police, Vellore. The wife, two minor children and the parents of the deceased laid claim petition seeking compensation of Rs.20,00,000/- on the ground that the deceased was about 28 years old at the time of accident earning Rs.15,000/- by hiring auto and running auto carriage.

4. The said claim was contested by the Transport Corporation on the ground that the accident took place due to the negligence of the two wheeler rider, who tried to over take the tourist bus. and dashed against the Transport Corporation bus. The Two wheeler rider had no valid driving license and he was not wearing helmet, therefore, the Transport Corporation is not liable to pay any compensation to the claimants.

5. Before the Tribunal, the first claimant Pavithra and the pillion rider Devaraj were examined as PW.1 and PW.2. Six exhibits were marked on behalf of the claimants. [In the judgment it is wrongly mentioned as 3 exhibits and Nil Evidence on the side of the respondents.] For the Transport Corporation, the driver of the Corporation was examined as DW.1. The Tribunal after considering the evidence has held that the accident was occurred due to negligence of the Transport Corporation driver and therefore, the Corporation is liable to pay the compensation. Taking note of the deceased age as found in the post-mortem certificate, the Tribunal has fixed the age of the deceased as 28 years and in view of absence of proof regarding income of the deceased, has fixed as Rs.5,000/-. Multiplier method has been applied to arrive at compensation.

6. In this appeal, the learned counsel for the appellant would point out that the Tribunal has failed to consider the future prospects of the deceased and also under other heads it ought to have awarded substantially higher amount taking note of the dependency.

7. The learned counsel appearing for the Transport Corporation would submit that the Tribunal has failed to consider the evidence of DW.1, the driver of the Transport Corporation who has categorically explained the manner in which the accident occurred due to the negligence on the part of the victim. Further the learned counsel would also state that the Tribunal having accepted the accident occurred due to failure of



the two wheeler rider, substantial amount should have been deducted for his negligence for not wearing the helmet and not possessing valid driving license, which has been specifically admitted by the claimant herself.

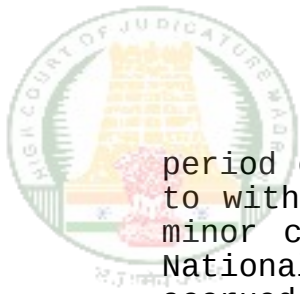
**WEB COPY** 8. On considering the rival submissions, this Court finds that there is considerable cross submissions by either side.

9. The Tribunal considering the evidence had taken note of the contributory negligence of the deceased for not wearing the helmet and driving the two wheeler without valid driving license. However not deducted any money for the contributory negligence. At the same time not considered future prospects while computing loss of income. Therefore, applying the principle laid down in Pranay Sethi case, this Court fix 40% towards future prospects of the deceased and the notional income inclusive of future prospects is fixed at Rs.7,000/- (Rs.5,000 + Rs.2,000/-) out of which  $\frac{1}{4}$ <sup>th</sup> deducted for the personal expenditure of the deceased. For loss of consortium to the wife Rs.40,000/- and for the loss of love and affection to the minor children and parents Rs.20,000/- each is fixed. Since it is proved through the evidence that the deceased had no valid driving license and driven the two wheeler without helmet necessarily the contribution for the statutory violation and policy violation of the Motor Vehicles Act, amount has to be deducted towards negligence. Accordingly 10% of the award amount is deducted towards contributory negligence and the award of the Tribunal is modified as below:-

|                                                                                              |                     |
|----------------------------------------------------------------------------------------------|---------------------|
| Loss of monetary contribution to the claimants.<br>(Rs.5000+2000) x $\frac{1}{4}$ x 17 x 12) | Rs: 10,71,000       |
| Loss of consortium: Payable to 1 <sup>st</sup> claimant (wife)                               | Rs: 40,000          |
| Loss of love and affection: Payable to claimants 2 to 5<br>(Rs. 20,000 each x 4)             | Rs:80,000           |
| Funeral expenses                                                                             | Rs.15,000           |
| Loss of estate                                                                               | Rs.15,000           |
| <b>TOTAL</b>                                                                                 | <b>Rs.12,21,000</b> |
| Less 10% towards contributory negligence Rs.1,22,100/-                                       | Rs.10,98,900        |

Rounded off to Rs.11,00,000/-

10. The Transport Corporation is directed to deposit the modified award amount with interest at the rate of 7.5% p.a., from the date of petition till the date of deposit, less the



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period of default if any. The claimants 1, 3 and 4 are permitted to withdraw the modified award amount. The share amounts of the minor claimants/appellants 2 and 5 shall be deposited into the Nationalised Bank till the minors attain majority. The interest accrued on the deposited amount of the minor claimants/appellants 2 and 5 shall be withdrawn by the 1<sup>st</sup> appellant/mother of the minor claimants once in every six months and the same shall be spent for the welfare of the children.

11. The entitlement of the compensation of Rs.11,00,000/- among the claimants/appellants shall be as under:

(i) The first claimant (wife) is entitled for Rs.3,00,000/- with proportionate interest.

(ii) The second and fifth claimants (children) are entitled for Rs.3,00,000/- each with proportionate interest. Same to be invested in any one of the Nationalised bank till they attain majority with permission to the mother and natural guardian to withdraw interest once in 6 months and spent for the welfare of the minors.

(iii) The third and fourth claimants (parents) are entitled for Rs.1,00,000/- each with proportionate interest.

12. In the result, this Civil Miscellaneous Petition is partly allowed. No costs.

Sd/-  
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

rpl

To

The Subordinate Judge,  
The Motor Accidents Claims Tribunal,  
Arni.

+1cc to M/s.M.Rebecca, Advocate SR.No.10488

C.M.A.No.1791 of 2017

KK(CO)  
RVM(22/09/2021)