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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.3462 of 2017 and 3048 of 2019 and
C.M.P.No.16687 of 2019

C.M.A.No.3462 of 2017

1. Mookkan
2. Rani

... Appellants/Petitioners

Vs.

The Managing Director,
M/s. Tamil Nadu State Transport Corporation (Kumbakonam
Division) Ltd,
Periyamaligaparai,
Trichy-1.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 15.04.2014 made in M.C.O.P.No.785 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellants : Mr.T.Gobinath
for M/s.Royan Law Association

For Respondent :Mr.L.Ramnath
for Mr.D.Venkatachalam

C.M.A.No.3048 of 2019:

The Managing Director
M/s.Tamil Nadu State Transportation
Corporation (Kumbakonam Division) Ltd,
Periya Melakuparai, Trichy-1.

...Appellant/Respondent

Vs.



1. Mookan
2. Rani

...Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 15.04.2014 made in M.C.O.P.No.785 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellants : Mr.L.Ramanathan
for Mr.D.Venkatachalam

For Respondents: Mr.T.Gobinath (R1)
for M/s. Royan Law Associates

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

C.M.A.No.3462 of 2017 has been filed by the claimants for enhancement of compensation granted vide award dated 15.04.2014 made in M.C.O.P.No.785 of 2013 on the file of the Motor Accident Claims cum Principal District Judge, Perambalur.

2.C.M.A.No.3048 of 2019 has been filed by the Transport Corporation challenging both negligence as well as quantum granted vide award dated 15.04.2014 made in M.C.O.P.No.785 of 2013 on the file of the Motor Accident Claims cum Principal District Judge, Perambalur.

3. Since both the Appeals arising out the same accident and since parties in both the appeals are one and the same, they are taken up together and disposed of vide common Judgment.

4. For the sake of convenience, the parties are referred to as claimants and Transport corporation.

5. The deceased aged 27 years who was a driver, met with an accident that occurred on 07.08.2013, due to which he sustained multiple injuries and succumbed while taking to the hospital. Hence, his parents filed a claim petition, in M.C.O.P.No.785 of 2013, before the Motor Accidents Claims Tribunal, Perambalur, seeking compensation for a sum of Rs.15,00,000/-.

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 Transport Corporation and directed the Transport Corporation to pay a sum of Rs.11,40,000/- (Rupees Eleven Lakh Fourty Thousand) as compensation to the claimants.

7. Not being satisfied with the amounts awarded by the Tribunal, the claimants has come out with the C.M.A.No.3462 of 2017 seeking enhancement of compensation and challenging the quantum of compensation and liability fastened on the Transport Corporation, the Transport Corporation has filed C.M.A.No.3048 of 2019.

8. As far as contributory negligence is concerned, the learned standing counsel appearing for the Transport Corporation submitted that the Ex.P1-F.I.R. was filed against the rider of the two wheeler and therefore the contributory negligence should be fixed against the rider of the two wheeler atleast to the extent of 50%. However, the Court has proceed to pass award as if the FIR was filed against the driver of the bus. He further submitted that the quantum of compensation awarded by the Court below is too high and the same needs to be reduced.

9. The learned counsel for the claimants though initially opposed for the fixation of contributory negligence fairly admitted for fixation for contributory negligence to the extent of 25%. He further submitted that the compensation awarded by the Claims tribunal needs to be enhanced. He would further submit that the deceased was a driver and earning a sum of Rs.15,000/- per month and therefore the same may be fixed as notional income of the deceased.

10. On behalf of the claimant, P.W.1 was examined. Exs.P1 to P8 were marked and no documents was produced. No one was examined on behalf of the respondent Corporation.

11. There are two vehicles involved in the present case, one is the bus belonging to the Transport Corporation bearing Registration No.TN-46P-8163 and the another vehicle is the two wheeler bearing Registration No..TN-46P-8163. A perusal of the FIR would go to show that the rider of the two wheeler drove the vehicle in a rash and negligent manner and hit the bus on the back side due to said accident, the rider of the two wheeler sustained serious injuries and thereafter he succumbed.

12. A perusal of FIR and perusal of the deposition of P.W.1 shows that accident occurred due to negligence on the part of the rider of the two wheeler as well as the driver of the bus. Therefore, this Court is of the view that it would be



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appropriate to fix the negligence on the part of the rider of the two wheeler as well as the driver of the bus in the ratio of 40:60. Accordingly, this Court awards contributory negligence to the extent of 40% with respect to the rider of the two wheeler and 60% with respect to the driver of the bus.

13. As far as quantum of compensation is concerned, the Tribunal fixed the income of the deceased at Rs.10,000/- at the time of accident. The deceased is a bachelor and aged 27 years and was working as a driver in abroad and earning a sum of Rs.15,000/- per month at the time of accident. The accident was occurred only on 07.08.2013. Though this Court is inclined to fix Rs.15,000/- taking into consideration of the employment of the deceased, since the claimants have not produced any proof for employment of the deceased, this Court is of the view that a sum of Rs.12,000/- can be fixed as notional income of the deceased. Accordingly a sum of Rs12,000/- is fixed as notinal income of the deceased.

14. The age of the deceased at the time of accident is 27 years. Therefore, the multiplier to be adopted is 17 and this court is inclined to add 40% towards future prospects. Since the deceased was bachelor 50% needs to be deducted towards personal expenses.

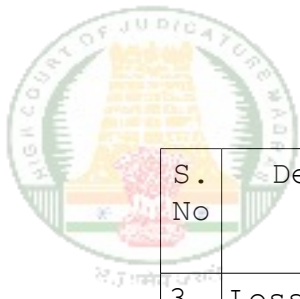
15. Accordingly, loss of income is determined as follows:
 $12,000 + 4800 - 8,400 \times 12 \times 17 = \text{Rs.}17,13,600/-$

16. The Court below awarded a sum of Rs. 1,00,000/- towards loss of love and affection to both the claimants which is too high and therefore the same is reduced to Rs.80,000/- (Rs.40,000/- to each claimants).

17. A sum of Rs.10,000/- was awarded towards loss of estate which is too low and therefore it was increased to Rs.15,000/-. A sum of Rs.5,000/- awarded towards transport charges stand confirmed.

18. 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)
1.	Loss of income	10,20,000	17,13,600/-
2.	Loss of love and affection	1,00,000/-	80,000/-



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
3.	Loss of estate	10,000/-	15,000/-
4.	Funeral expenses	5,000/-	15,000/-
5.	Transport charges	5,000/-	5,000/-
	Total	Rs.11,40,000/-	Rs. 18,28,600/-

Thus the compensation, awarded by the Claims Tribunal is enhanced from Rs.11,40,000/- to Rs.18,28,600/-. The petitioners are entitled for equal apportionment. As the driver of the bus contributed 60% negligence, the Transport Corporation is liable to pay a sum of Rs. 10,97,160/- (60% of Rs.18,28,600/-) to the claimants.

9. In the result, the Civil Miscellaneous Appeals are partly allowed. The compensation awarded by the Tribunal at Rs.11,40,000/- is hereby enhanced to Rs.18,28,600/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The claimants shall pay necessary Court fee, if any, on the enhanced compensation. The Transport Corporation is directed to deposit 60% of the enhanced award amount i.e., Rs.10,97,160/- along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to transfer the said amount to the claimants equally by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details from the claimants or application made by the claimants for withdrawal, whichever is later and the claimants are permitted to withdraw their respective shares along with interest and costs, less the amount if any, already withdrawn. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR



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To

1.The Motor Accident Claims Tribunal,
Principal District Judge,
Perambalur.

2.The Section Officer,
VR Section,
High Court, Madras.

+lcc to M/s.Royan Law Associates, Advocate Sr.26174
+lcc to Mr.D.Venkatachalam, Advocate Sr.26037

C.M.A.Nos.3462 of 2017 and 3048 of 2019 and
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