



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 26.02.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.1257 of 2011

and

M.P. (MD) No.3 of 2011

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The Managing Director,
Tamil Nadu State Transport Corporation,
Chennai. .. Appellant/1st Respondent

vs.

1.Anjalai
2.Prabakaran
3.Parthiban
(respondents 2 & 3 suo Motu declared as major and
guardianship discharged vide Court
Order dated 26.02.2021) .. Respondents 1 to 3/Petitioners

4.The Branch Manager,
Bajaj Alines General Insurance Company Ltd.,
Madurai. .. 4th respondent/2nd Respondent

5.Mookaiah .. 5th Respondent/3rd Respondent
6.M.Manikkam .. 6th respondent/4th respondent
7.M.Thiyagarajan .. 7th respondent/5th respondent
8.M.Ramaiah .. 8th respondent/6th respondent
9.Lakshmanan .. 9th respondent/7th respondent
10.M.Subramani .. 10th respondent/8th respondent

11.Ponnazhagi .. 11th respondent/9th respondent
12.M.Narayanan .. 12th respondent/10th respondent
13.M.Mariappan .. 13th respondent/11th respondent

(Amended as per order in I.A.No.850/2009
dated 11.12.2009 respondents 4 to 11)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and award dated 23.09.2010 made in M.C.O.P.No.58 of 2005 on the file of the learned Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Pudukkottai and praying for set aside the same.

For Appellant : Mr.Royce Immanuel
For R1 to R3 : Mr.M.Rahamadullah
For RR5 to 9, 12 & 13 : No appearance
For RR 4,10,11 : dismissed vide court order
dated 10.04.2019

J U D G M E N T

This is a case of fatal accident. The claim petition was originally filed by the wife and minor children of the deceased Murugesan. The fifth respondent herein, namely, Mookaiah, who is



the father of the deceased, was impleaded as second respondent in the claim petition. Pending claim petition, brothers of the deceased impleaded themselves as respondents 4 to 11 in the claim petition. It appears that on the date of filing of the claim petition, the mother of the deceased was no more and hence, she was not impleaded. The respondents 4 to 11 were impleaded on the ground that they are entitled to claim compensation in the share of their mother.

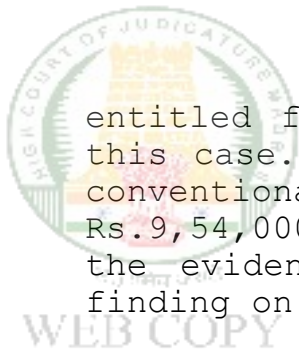
2. It is the case of the claimants that on 07.03.2005 the deceased Murugesan was riding a motorcycle bearing registration No.TN-55-K-6792 from Trichy to Pudukkottai. When he was proceeding near Mathoor, the bus bearing Registration No.TN-1-N-6625 owned by the appellant transport corporation rammed his two-wheeler and caused his death. The claimants further stated that the deceased was working as an Administrative Commercial Assistant in the Keeranur Electricity Board and he was paid Rs.6,897/- per month. The claimants are the only dependents of the deceased Murugesan.

3. The appellant resisted the claim petition disputing the age, avocation and the manner of accident in their counter. It is specifically stated that when the bus was proceeding slowly, the deceased was coming in a rash and negligent manner and suddenly tried to over take another vehicle and in the process, he fell down and sustained injury.

4. A perusal of the records shows that the claimants examined P.W.2 as an eye witness to the incident and he spoke about the manner of accident. In support thereof, Ex.P1-FIR, Ex.P2-charge-sheet have been filed to show that the criminal case was proceeded against the driver of the offending vehicle.

5. After analysing the evidences of P.W.1, R.W.1 and R.W.2, the Tribunal rejected the evidence of the appellant and held that the accident took place due to the negligence of the driver of the bus. It was established before the Tribunal that the bus hit behind the motorcycle and caused the death of the deceased, so, the Tribunal applied the principles of "*RES IPSA LOQUITUR*". Hence, the finding on negligence is confirmed.

6. P.W.3 an official from the Electricity Board has stated that the deceased was earning Rs.6,897/- at the time of accident. Ex.P.6 is the salary certificate issued by the Executive Engineer, Electricity Board, Keeranur. The Tribunal has rounded off the income as Rs.6,900/- after deducting 1/3rd for his personal expenses, has taken the monthly income at Rs.4,600/- and by applying multiplier '16' awarded a sum of Rs.8,83,200/-. At this juncture, it is relevant to note that as per the decision of the Apex Court reported in **2017(2) TNMAC 609 (SC)** [**National Insurance Co. Ltd., v. Pranay Sethi**], the claimants are



entitled for future prospects also, but it has not been given in this case. The Tribunal has awarded another sum of Rs.70,800/- as conventional damages. In total, the Tribunal awarded a sum of Rs.9,54,000/- as compensation. The quantum has been arrived based on the evidence and hence, I find no reason to interfere with the finding on quantum also.

7. As rightly pointed out by the learned counsel for the claimants that the respondents 4 to 11 in the claim petition and the respondents 6 to 13 herein were impleaded as legal heirs of the mother of the deceased. It is no doubt, they are the legal heirs of the mother of the deceased Murugesan. But the fact remains that on the date of filing of the claim petition, the mother of the deceased was no more. The claimants have let in evidence to show that they are only dependents of the deceased. On the other hand, subsequent impleaded parties have not given any material to show that they are the dependants of the deceased, but the Tribunal awarded Rs.33,000/- each to the impleaded parties. When the wife and minor children of the deceased have proved that they are the dependents of the deceased, awarding of Rs.33,000/- each in total Rs.2,64,000/- to the impleaded respondents cannot be sustained. Hence, the award of the Tribunal against the respondents 4 to 11 in the claim petition and respondents 6 to 13 herein, is set aside. The father of the deceased, the fifth respondent herein is entitled for Rs.40,000/- and the remaining amount of Rs.9,14,000/- shall be equally shared by the original claimants.

8. By this time, the claimants 2 & 3/Respondents 2 & 3 also should have become major and hence, the respondents 2 & 3 herein are *suo motu* declared as major.

9. In that view, the Civil Miscellaneous Appeal is dismissed, as devoid of merits. The appellant-Transport Corporation is directed to deposit the entire award amount, with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 to 3/Claimants 1 to 3 and the third respondent/fifth respondent herein are permitted to withdraw their share along with interest and cost by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSIII)

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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



1.The Chief Judicial Magistrate
The Motor Accident Claims Tribunal,
Pudukkottai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A (MD) No.1257 of 2011
26.02.2021

KB(29.04.2021) 4P 4C