



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

C.M.A. (MD) .No.871 of 2013
and
M.P (MD) No.1 of 2013

M/s State Express Transport Corporation Limited,
Represented by its Managing Director,
Having Office at
Chennai - 600 002.

... Appellant/ 1st Respondent

Vs.

1.S.Natarajan
2.Saraswathi
3.Mariyappan
4.K.Mahesh

...1 to 3 Respondents/Petitioner

5.M/s Bajaj Allianz General Insurance Company Limited,
Represented by its
Branch Manager,
Having Branch office at
No.25/26, Prince Towers
4th Floor, College Road,
Nungambakkam.

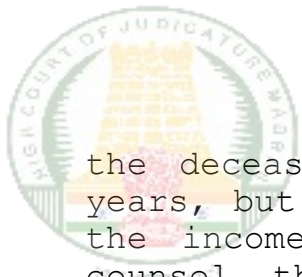
... Respondents 4 & 5/Respondents 2 & 3.

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the Judgment and Decree dated 17.07.2012 passed in MCOP No.959 of 2008 on the file of the Motor Accidents Claims Tribunal/III Additional District Court, Tiruchirappalli.

For Appellant : Mr.P.Prabhakaran

For Respondents : Mr.N.Sudhagar Nagaraj (for R1 to R3)
Mr.G.Maruthiah (for R5)

No appearance for R4



the deceased was paid Rs.16,285/- and he died at the age of 27 years, but the Tribunal has not applied proper multiplier and taken the income as Rs.18,000/- per month. According to the learned counsel, the award amount is excessive and exorbitant.

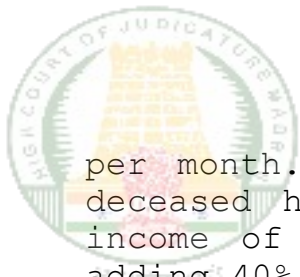
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6.Per contra, Mr.N.Sudhakar Nagaraj, learned counsel appearing for the respondents 1 to 3/claimants and Mr.G.Maruthiah, learned counsel appearing for the 5th respondent submitted that the appellant has not filed any appeal against the award passed in MCOP No.1619 of 2008. Since both the claim petitions were disposed of by a common Judgment, the appellant is estopped from raising the plea on the negligence. It is the submission of the learned counsel for the claimants that the Tribunal has rightly arrived at the compensation and it cannot be said to be excessive.

7.This Court carefully considered the rival submissions and perused the materials available on record.

8.It is the case of the claimants that when the deceased Thanesh was travelling in a TAVERA maxi cap along with his friends from Sriperumputhur to Tenkasi and they met with an accident at 01.30 p.m on 11.01.2008. The co-passenger, who sustained injuries in the same accident, gave evidence as P.W.2. He deposed that the driver of the TAVERA car was driving in normal speed on the left side of the road, but the bus, which was coming from the opposite direction, rammed the car and suddenly fell into the ditch on the right side of the road. P.W.2 clearly deposed that the speedy bus came to the wrong side of the road and after hitting the car, fell into the ditch on the right side of the road. On the basis of a complaint, a criminal case was registered against the driver of the bus, which was marked as Ex.P.1. The Tribunal having found that the bus went down to road side ditch, has observed that if the accident had taken place as narrated by R.W.1, it would not have been fallen into the ditch. So, while disbelieving the evidence of R.W.1, the Tribunal held that the accident had taken place due to the negligence of the driver of the bus. As rightly pointed out by the learned counsel for the fifth respondent, against the order passed in MCOP No.1619/2008, no appeal was filed. In view of the above, this Court finds no merits in the contention of the learned counsel for the appellant with regard to the finding on negligence.

9.Insofar as the quantum is concerned, the claimants have categorically stated that the deceased was a bachelor and he died at the age of 27 years. To prove the age, the claimants have marked Ex.P.4-Transfer Certificate, which shows that the deceased was born on 20.06.1981. Ex.X.1 is the Salary Certificate and Ex.X.2 is the Extract of the Employees' Register. In the present case, P.W.2 to P.W.4 are the employees in the HWASHIN Automotive India Pvt. Ltd. They have consistently stated that the deceased was an employee of the Company and he had bright future in the Company. Ex.X.1 shows that the deceased was paid Rs.16,285/- per month. P.W.4 has stated that the salary was revised and the present salary is Rs.26,450/-



per month. It is settled legal position that the salary of the deceased has to be taken on the date of the accident. So, the income of the deceased is fixed as Rs.16,000/- per month and by adding 40% towards future prospects, it comes to Rs.22,400/-.

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10. It is not disputed that the deceased was a bachelor and therefore, 50% of the salary shall be deducted towards his personal and living expenses. Hence, the contribution to the family would be Rs.11,200/-. As per the decision of the **Sarla Verma and others vs. Delhi Transport Corporation and another** reported in (2009) 6 SCC 121, proper multiplier would be '17', but the Tribunal has applied multiplier '18'. So, the loss of income is assessed as Rs.22,84,800/- (Rs.11,200 x 12 x 17). As per the ratio in the case of **National Insurance Co., Ltd., vs. Pranay Sethi** reported in (2017) 16 SCC 680, the claimants are entitled for Rs.70,000/- for conventional damages. Thus, the claimants 1 and 2 would be entitled to Rs.23,54,800/-, which is rounded off Rs.23,55,000/-. In fine, the amount awarded by the Tribunal Rs.26,50,000/- is reduced to Rs.23,55,000/-. The rate of interest is maintained. There is no material to prove that the 3rd claimant/third respondent/Mariyappan was the dependent of the deceased. Hence, his claim is rejected.

11. In that view, the Civil Miscellaneous Appeal is partly allowed. The appellant is directed to deposit the modified 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, the claimants 1 and 2 alone, who are the parents of the deceased, are permitted to withdraw the award amount, equally, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The Motor Accident Claims Tribunal
III Additional District Court,
Tiruchirappalli.

2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.N.SUNDAR NAGARAJ, Advocate (SR-22611[F] dated
15/07/2021)

+1 CC to MR.P.PRABHAKARAN, Advocate (SR-22612[F] dated 15/07/2021)

C.M.A. (MD) .No.871 of 2013

and

M.P (MD) No.1 of 2013

14.07.2021

MGJ(05.08.2021) 5P 6C