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C.M.A.(MD)Nos.488 and 814 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.11.2021

Delivered on : 23.11.2021

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

C.M.A. (MD)Nos.488 and 814 of 2019
and
C.M.P. (MD)No.10597 of 2019 in C.MA. (MD)No.814 of 2019

C.M.A. (MD)No.488 of 2019:-

1.P.Ramalingam
2.R.Rajalakshmi ... Appellants/ Claimants

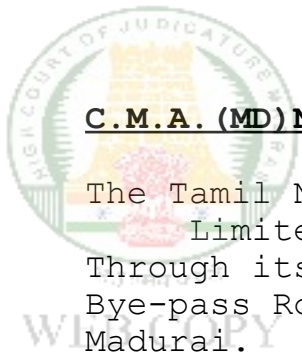
-vs-

1.M/s.Tamil Nadu State Transport Corporation,
Rep. by its Managing Director,
Periyamilaguparai,
Cantonment,
Trichy - 620 001.

2.M/s.Tamil Nadu State Transport Corporation,
Rep. by its Managing Director,
Bye-Pass Road,
Madurai. ... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicle Act, 1988, to enhance the compensation award passed by the learned Principal District Judge, Motor Accident Claims Tribunal, Tiruchirappalli, in M.C.O.P.No.152 of 2015, dated 28.08.2017.

For Appellants	:	Mr.K.P.Narayanakumar
For Respondent No.1	:	Mr.D.Sivaraman
For Respondent No.2	:	Mr.K.Sudalaiyandi



C.M.A. (MD)No.814 of 2019:-

The Tamil Nadu State Transport Corporation
Limited,
Through its Managing Director,
Bye-pass Road,
Madurai.

... Appellant/ 2nd Respondent

-vs-

1.P.Ramalingam

2.R.Rajalakshmi

... R1 & R2/ Petitioners

3.The Tamil Nadu State Transport Corporation,
Rep. by its Managing Director,
Periyamilaguparai,
Cantonment,
Trichy - 620 001.

... R3/ 1st Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, against the judgment and decree dated 28.08.2017, passed in M.C.O.P.No.152 of 2015, on the file of the Motor Accident Claims Tribunal [Principal District Judge], Tiruchirappalli.

For Appellant : Mr.K.Sudalaiyandi

For Respondent Nos.1 and 2 : Mr.K.P.Narayanakumar

For Respondent No.3 : Mr.D.Sivaraman

COMMON JUDGMENT

S.VAIDYANATHAN, J.

and

G.JAYACHANDRAN, J.

These two Civil Miscellaneous Appeals arise out of the award dated 28.08.2017, made in M.C.O.P.No.152 of 2015, on the file of the Motor Accident Claims Tribunal [Principal District Judge], Tiruchirappalli.

2.C.M.A.(MD)No.488 of 2019 is preferred by the claimants for enhancement of compensation. Whereas C.M.A.(MD)No.814 of 2019 is preferred by the Tamil Nadu State Transport Corporation Limited through its Managing Director, Madurai, questioning the liability.

3.The facts of the case leading to the filing of these appeals is as below:-

(i) One Deeran [aged 18 years] on 27.08.2013 after attending his College, returned to home in the public transport bus



owned by the Tamil Nadu State Transport Corporation, bearing Registration No.TN-67-N-0490. At S.R.M. Medical College Stop, when the bus driver suddenly halted the bus, the said Deeran, who was travelling in the said bus on the footboard, was thrown out and sustained severe head injury and died on the spot. A case was registered against the driver of the bus for rash and negligent driving in Crime No.211 of 2013 under Section 304-A of I.P.C. At the time of death, Deeran was 18 years old and studying second year B.E. Mechanical Engineering at M.A.M. Engineering College.

(ii) For the death of Deeran, his parents [father and mother] had filed M.C.O.P.No.5782 of 2013 before the Motor Accident Claims Tribunal, Tiruchirappalli. Later, it was transferred to the Motor Accident Claims Tribunal, Principal District Judge, Tiruchirappalli, and re-numbered as M.C.O.P.No.152 of 2015. In the said claim petition, the claimants sought for compensation of Rs.45,00,000/- on the premise that the deceased son Deeran, who was pursuing his engineering course, had bright prospect and due to his sudden death, they have lost their dependency on him, both financial and emotional. Since the death was caused due to the rash and negligent driving of the driver of the bus, his employee viz., the State Transport Corporation is vicariously liable to compensate the loss.

(iii) The said claim petition was resisted by the Transport Corporation, Madurai, stating that the vehicle bearing Registration No.TN-67-N-0490 does not belong to the respondent Corporation i.e., Tamil Nadu Transport Corporation Limited, Madurai, and there is no such vehicle under their possession. In fact, the said vehicle belongs to Trichy Region. The driver against whom the case has been registered is not an employee of the second respondent TNSTC, Madurai, but he is employed under the Managing Director, TNSTC [Kumbakonam] Limited, Trichy Region. Therefore, the claimants have to implead the Managing Director, Tamil Nadu State Transport Corporation (Kumbakonam) Limited, Trichy Region, who is the necessary party. In view of the said counter, the claimants have impleaded the Managing Director, TNSTC [Kumbakonam] Limited, Trichy Region as respondent.

(iv) To prove their claim, the claimants have examined two witnesses and marked 7 exhibits. On behalf of the Transport Corporation, one exhibit was marked and two witnesses were examined.

(v) After considering the evidence placed by the respective parties, the Tribunal has awarded a sum of Rs.6,88,000/- with interest at 7.5% p.a. from the date of petition till the date of deposit and the same has to be apportioned by the claimants equally.

4.In the appeal filed for enhancement of compensation viz., in C.M.A.(MD)No.488 of 2019, the claimants have stated that the Tribunal erred in not awarding adequate compensation for the loss of



bachelor boy, aged about 18 years, who was pursuing his engineering course. The notional income of Rs.6,000/- p.m. fixed by the Tribunal is very meagre comparing to the educational qualification and future prospects. The Tribunal failed to consider the future prospects of the deceased and has not awarded any compensation under the head of future prospects. It is also contended that for the loss of love and affection of the only son, the claimants ought to have adequately awarded. Whereas the Tribunal has awarded only a sum of Rs.10,000/- each towards loss of love and affection, which is contrary to the settled principles of law. Therefore, prayed for enhancement of the compensation from Rs.6,88,000/- to Rs.45,00,000/-.

5.Whereas, in the appeal filed by the Transport Corporation viz., in C.M.A.(MD)No.814 of 2019, it is contended that the Tribunal has not applied its mind properly in spite of stating that the Transport Corporation, Madurai, is not the owner of the offending vehicle, has erroneously fastened the liability on the appellant viz., Tamil Nadu State Transport Corporation, Madurai, instead of the Tamil Nadu State Transport Corporation [Kumbakonam] Limited, Trichy Region. Furthermore, the accident had occurred only due to the negligence of the victim boy, who was travelling in the footboard and fell down when the vehicle halted at S.R.M. Medical College Bus Stop for alighting and boarding of passengers. There was no negligence on the part of the bus driver and the fact that the accident has occurred after the bus stopped at S.R.M. Medical College Bus Stop, it is not a road accident. Therefore, there can be no negligence on the part of the bus driver.

6.This Court on considering the submissions and the evidence placed before the Tribunal finds that the factum of accident well proved and the death of the victim boy had occurred when the bus halted at S.R.M. College Bus Stop. The Postmortem report indicates that the deceased had sustained the following injuries:-

'1.Contusion on the left side of forehead, 10 cm x 7 cm.

2.Dark brown colour abrasions:- On the left side of forehead 7 cm x 3 cm, left temple region 3 cm x 2 cm, back of left elbow 5 cm x 3 cm, centre of occipital region of the scalp 3 cm x 2 cm.

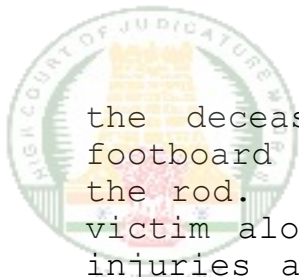
3.Bruising of right temporal and occipital region of the scalp - Dark red.

4.Sub-dural hemorrhage and sub arachnoid hemorrhage on both cerebral hemisphere.

5.Bony bruising of both middle cranial fossae present.'

7.P.W.2 - Mahadevan, who is the co-passenger, travelling along with the deceased person, had admitted in his cross-examination that

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the deceased was one among 6 to 7 persons travelling in the footboard and victim fell down from the bus, since he did not hold the rod. While 6 to 7 persons are travelling in the footboard, the victim alone had fallen down from the footboard and has sustained injuries as stated above. Therefore, if the driver had rash and negligently halted the bus suddenly, it is not possible for this person alone fall down from the bus when other six to seven persons on the footboard were safe. Unless there is some degree of negligence on the part of the victim, the accident could not have occurred. Therefore, this Court holds that 20% negligence on the part of the victim, who travelled in the footboard carelessly and has fallen down from the halted bus.

8.Regarding the quantum of compensation, it is clear that the Tribunal has fixed the notional income of the deceased as Rs.6,000/- per month, since the claimants have not produced any document to show the skill of the deceased and his earning capacity. However, considering the fact that he was a student of Engineering College and there is a bright chance for completing the course and earning substantially as an Engineering graduate, this Court is of the opinion that Rs.10,000/- per month has to be fixed as notional income of the deceased instead of Rs.6,000/- per month. Also, the future prospects could not be ruled out and applying the principles laid down by the Hon'ble Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in 2009 (6) SCC 121 followed by **National Insurance Company Limited Vs. Pranay Sethi and others** reported in 2017 (16) SCC 680, the loss of income is arrived as follows:-

Notional income	Rs.10,000/- p.m.
Add:- Future Prospects 40%	Rs. 4,000/- p.m.

	Rs.14,000/- p.m.
Less: personal expenses 50%	Rs. 7,000/- p.m.

Total	Rs. 7,000/- p.m.

Since the deceased was 18 years old at the time of accident, applying the multiplier and adopting multiplicand ''18'', the loss of income is fixed at Rs.15,12,000/- [Rs.7,000/- x 12 x 18]. After deducting 20% towards contributory negligence, i.e., Rs.3,02,400/-, the loss of income comes to Rs.12,09,600/-. The Tribunal has awarded only a meager sum of Rs.10,000/- each towards loss of love and affection. Following **Pranay Sethi's** judgment [supra], Rs.40,000/- each is awarded towards loss of parental consortium. The Tribunal has awarded Rs.10,000/- each towards funeral and transport expenses. The same is enhanced to Rs.15,000/- each. Accordingly, the award of the Tribunal is modified as follows:-



Loss of income	:	Rs.12,09,600/-
Loss of Parental Consortium (Rs.40,000/- each)	:	Rs. 80,000/-
Transport expenses	:	Rs. 15,000/-
Funeral expenses	:	Rs. 15,000/-

WEB COPY Total	:	Rs.13,19,600/-

The award amount now arrived at by this Court viz., Rs.13,19,600/- with interest at 7.5% p.a. from the date of filing the claim petition till the date of realization is liable to be paid by the Tamil Nadu State Transport Corporation, Trichy Region, who is the employer of the offending bus driver Manoharan and owner of the offending bus bearing Registration No.TN-67-N-0490.

9.Accordingly, the Tamil Nadu State Transport Corporation, Trichy Region/ the first respondent in C.M.A.(MD)No.488 of 2019, is directed to deposit the award amount now modified by this Court along with the accrued interest to the credit of M.C.O.P.No.152 of 2015, on the file of the Principal District Court, Motor Accident Claims Tribunal, Tiruchirappalli, less the amount, if any already deposited, within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the said amount shall be credited to the claimants' account as per the ratio of apportionment mentioned in the award of the Tribunal. The Tribunal is expected to follow the ratio laid down by this Court in **The Divisional Engineer, The Oriental Insurance Company Ltd., Kannur Vs. Rajesh and others** reported in **2016 (3) CTC 128**. The methodology prescribed by this Court for remittance of compensation has been affirmed by the Hon'ble Supreme Court in the case of **Bajaj Allianz General Insurance Company Private Ltd., Vs. Union of India and others [W.P.(Civil) No.534 of 2020, dated 16.11.2021]**.

10.In the result, C.M.A.(MD)No.488 of 2019 is partly allowed and C.M.A.(MD)No.814 of 2019 is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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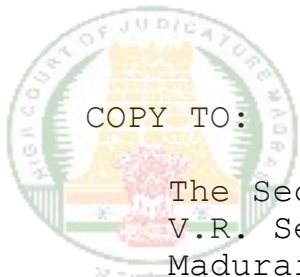
/ /2021

Sub Assistant Registrar(CS)

To

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

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COPY TO:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

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+1 CC to M/s.K. SUDALAIYANDI, Advocate (SR-35665[F] dated 24/11/2021)

+1 CC to M/s.K.P. NARAYANAKUMAR, Advocate (SR-35729[F] dated 24/11/2021)

+1 CC to M/s.D. SIVARAMAN, Advocate (SR-35565[F] dated 23/11/2021)

C.M.A. (MD) Nos. 488 and 814 of 2019
23.11.2021

RD(04.12.2021) 7P 7C