



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2021

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)Nos.507 to 511 of 2019

and

C.M.P(MD)Nos.5926 to 5930 of 2019

C.M.A(MD)No.507 of 2019:

The Managing Director,
Tamil Nadu State Transport Corporation
Villupuram Division,
Villupuram District.

... Appellant/1st Respondent

vs.

1. Rahul Karthick
2. Vinayaga Lakshmi ...Respondents 1 & 2/Petitioners
(The respondents are rep. by their
power agent Rajagopal S/o.Iyappan)
3. The Branch Manager,
ICICI Lombard General Insurance Company Ltd.,
Door No.11/1B, 3rd Floor,
V.Complex, Bye Pass Road,
Madurai - 10. ...3rd Respondent/2nd Respondent

C.M.A(MD)No.508 of 2019:

The Managing Director,
Tamil Nadu State Transport Corporation
Villupuram Division, Door No.3/137, Salamedu,
Villupuram District.

... Appellant/Respondent

vs.

1. Rajagopal
2. Asok Kannan
(The 2nd respondent is rep. by his
power agent Rajagopal S/o.Iyappan)
3. Saravana Prabhu
4. Vinayaga Lakshmi ...Respondents 1 to 4/Petitioners



5. Rahul Karthick
6. The Branch Manager,
ICICI Lombard General Insurance Company Ltd.,
Door No.11/1B, 3rd floor, V.Complex,
Bye Pass Road,
Madurai - 10.

...Respondents 5 & 6/Respondents 2,3

C.M.A(MD)No.509 of 2019:

The Managing Director,
Tamil Nadu State Transport Corporation
Villupuram Division, Door No.3/137, Salamedu,
Villupuram District.

... Appellant/Respondent

vs.

1. Vinayaga Lakshmi
(The 1st respondent is rep. by her
power agent Rajagopal S/o.Iyappan) ...1st Respondent/Petitioner

2. Rahul Karthick
3. The Branch Manager,
ICICI Lombard General Insurance Company Ltd.,
Door No.11/1B, 3rd floor, V.Complex,
Bye Pass Road,
Madurai - 10.

...Respondents 2 & 3/Respondents 2,3

C.M.A(MD)No.510 of 2019:

The Managing Director,
Tamil Nadu State Transport Corporation
Villupuram Division, Door No.3/137, Vazhuthareddy post,
Villupuram District.

... Appellant/1st Respondent

vs.

1. Nagarani
2. Amarnath
3. Sree Ram Kumar
4. Mariammal ...Respondents 1 to 4/Petitioners

5. Rahul Karthick
6. The Branch Manager,
ICICI Lombard General Insurance Company Ltd.,
Door No.11/1B, 3rd floor, V.Complex,
Bye Pass Road,
Madurai - 10.

...Respondents 5 & 6/Respondents 2,3



C.M.A(MD)No.511 of 2019:

The Managing Director,
Tamil Nadu State Transport Corporation
Villupuram Division,
Villupuram District.

... Appellant/1st Respondent

vs.

1. Rahul Karthick
(The 1st respondent is rep. by his
power agent Rajagopal S/o.Iyappan)

...1st Respondent/Petitioner

2. The Branch Manager,
ICICI Lombard General Insurance Company Ltd.,
Door No.11/1B, 3rd floor, V.Complex,
Bye Pass Road,
Madurai - 10.

...2nd Respondent/2nd Respondent

Common Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.43, 44, 49,50 and 51 of 2012 dated 03.07.2017 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Aruppukottai.

CMA(MD).No.507 of 2019:

For Appellant : Mr.P.Prabhakaran
For R1 and R2 : Mr.V.Sasikumar
For R3 : Mr.P.Pethurajesh

CMA(MD).No.508 of 2019:

For Appellant : Mr.P.Prabhakaran
For R1 and R2 : Mr.V.Sasikumar
For R6 : Mr.P.Pethurajesh
For R3 to R5 : No Appearance

CMA(MD).No.509 of 2019:

For Appellant : Mr.P.Prabhakaran
For R1 : Mr.V.Sasikumar
For R3 : Mr.P.Pethurajesh
For R2 : No Appearance

CMA(MD).No.510 of 2019:

For Appellant : Mr.P.Prabhakaran
For R1 to R4 : Mr.V.Sasikumar
For R6 : Mr.P.Pethurajesh
For R5 : No Appearance



CMA (MD) .No.511 of 2019:

For Appellant : Mr.P.Prabhakaran
For R1 : Mr.V.Sasikumar
For R2 : Mr.P.Pethurajesh

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COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellant/Transport Corporation against the Judgment and Decree made in M.C.O.P.Nos.43, 44, 49, 50 and 51 of 2012 dated 03.07.2017 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Aruppukottai.

2. Since the facts involved in all these civil miscellaneous appeals are one and the same and the Court below also decided the issue by way of a common judgment, these matters are taken up together and decided by this common judgment.

3. Brief facts necessary to dispose of these appeals are as follows:-

(i) All the five civil miscellaneous appeals has arisen out of the same accident. On 17.01.2012, the passengers namely Prajan Abinandan, Nagasubbuulakshmi, Vinayagalakshmi and Rahul Karthick along with the driver of a car bearing registration No.TN 22 CY 9675, driven by Alwar Samy were proceeding from Aruppukottai towards Chennai. When the car nearing Thirumavathur Bye-pass road, opposite to Ponnusamy Hotel, a Transport Corporation Bus bearing Registration No.TN 32 N 1995, which was driven by one Saravanan, the driver of the Transport Corporation came in a rash and negligent manner dashed against the car, as a result of which the deceased Prajan Abinandan, Nagasubbbulakshmi and Alwarsamy were killed instantaneously at the spot. Passengers namely Vinayagalakshmi and Ragul Karthick were sustained serious injuries. According to the claimants the accident took place due to the rash and negligent driving of the above mentioned car and the car was insured with ICIC Lombard Insurance Company.

(ii) In M.C.O.P.No.43 of 2012, the deceased Prajan Abinandan was the only son of the petitioners namely Ragul Karthick and Vinayagalakshmi. In M.C.O.P.No.44 of 2012, the deceased Nagasubbulakshmi was the wife of the first petitioner namely Rajagopal and the petitioners 2, 3 and 4 are the children of the deceased Nagasubbulakshmi. In M.C.O.P.No.49 of 2012, the injured Vinayagalakshmi is the wife of the second respondent namely Ragul Karthick. In M.C.O.P.No.50 of 2012, the deceased Alwar Samy was the husband of the first petitioner namely Nagarani and the petitioners 2 and 3 are the children of the deceased Alwar Samy and the 4th respondent is the mother of the deceased. In



M.C.O.P.No.51 of 2012, the injured Ragul Karthick is the petitioner, who is the father of deceased Prajan Abinandan.

4. The claimants filed applications in M.C.O.P.Nos.43, 44, 49, 50 and 51 of 2012 dated 03.07.2017 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Aruppukottai, seeking compensation.

5. Before the Tribunal, the respondents/Claimants examined five witnesses as P.Ws.1 to P.Ws.5 and marked 14 documents as Ex.P.1 to Ex.P.14. On the side of the appellant, 2 witnesses were examined and two documents were marked.

6. The Tribunal, after considering the pleadings, oral and documentary evidence adduced on either side, has held that the driver of the transport corporation bus was responsible for the accident and consequently, fastened the liability on the appellant transport corporation to pay the respective compensation to the respondents/claimants with 7.5% interest per annum. Aggrieved by the said award, the Transport Corporation has filed this appeal challenging both the liability and quantum.

7. On the aspect of liability, the learned counsel for the appellant would state that the Tribunal ought to have considered that the accident took place due to rash and negligent driving of the car, and the bus driver was in no way responsible for the said accident. The deceased driven the car in a rash and negligent manner dashed on the right side of the appellant's bus has invited the accident and therefore, the appellant is not liable to pay the compensation. As regards quantum, he would state that Tribunal has erred in fixation of monthly income of the deceased and the quantum of compensation as fixed by the Tribunal is erroneous and it is not just and proper and sought for setting aside the impugned order by allowing this appeal.

8. Heard the learned counsel for the appellant as well as the learned counsel for the respondents and perused the materials available on record.

9. Perusal of record shows that the driver of the appellant/Transport Corporation was not examined and the witnesses produced by the Transport Corporation namely R.W.1 and R.W.2, who were not the eye-witnesses has deposed that the present work station of the driver namely Saravanan is not known and therefore, the learned Judge came to the conclusion that the liability can only be fastened on the driver of the bus. In my considered opinion, the findings of the Tribunal regarding negligence cannot be said to be perverse and the same cannot be interfered with.

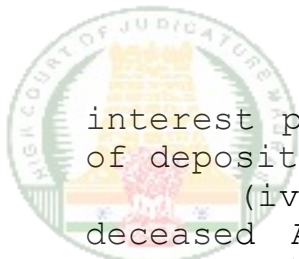


10. Regarding the quantum of compensation, the learned Judge relying on various judgments and as per the structured formula, calculated the total compensation for the deceased and injured victims as follows:-

(i) In respect of M.C.O.P.No.43 of 2012, as per the judgment of the Hon'ble Supreme Court reported in **2013 (2) TNMAC 358 (SC), [Kishan Gopal & Another., vs. V.Lala & Ors.,]**, the tribunal fixed the notional income at Rs.2,500/- per month for the deceased Minor Prajan Abinandan. The postmortem report of the deceased shows that he was aged six months at the time of accident and therefore, the correct multiplier as per **Sarla Verma's** case is '15'. After deducting $1/3^{\text{rd}}$ towards personal expenses and applying '15' multiplier, the loss of income is calculated as Rs.30,000/-
(-) $1/3^{\text{rd}} = \text{Rs.}20,000 \times 15 = \text{Rs.}3,00,000/-$; Further the Tribunal awarded Rs.2,00,000/- towards love and affection; awarded Rs.5,000/- for hospital expenses; awarded Rs.25,000/- for funeral expenses; awarded Rs.2,000/- for loss of clothes and ornaments. Altogether the Tribunal awarded the compensation of Rs.5,32,000/- along with 7.5% interest per annum from the date of claim petition till the date of deposit.

(ii) In respect of M.C.O.P.No.44 of 2012, since the deceased Nagasubbulakshmi was running a travel agency and hence, the tribunal fixed the notional income at Rs.16,000/- per month. The age of the deceased was 55 at the time of accident and therefore, the correct multiplier as per Sarla Verma's case is '11'. After deducting $1/4^{\text{th}}$ towards personal expenses and applying '11' multiplier, the loss of income is calculated as Rs.1,92,000/-
(-) $1/4^{\text{th}} = \text{Rs.}1,44,000 \times 11 = \text{Rs.}15,84,000/-$; Further the Tribunal awarded Rs.2,00,000/- towards love and affection; awarded Rs.25,000/- for funeral expenses; awarded Rs.1,00,000/- for loss of estate; awarded Rs.5,000/- for hospital expenses and Rs.2,000/- for loss of clothes and ornaments. Altogether the Tribunal awarded the compensation of Rs.19,16,000/- along with 7.5% interest per annum from the date of claim petition till the date of deposit.

(iii) In respect of M.C.O.P.No.49 of 2012, since the injured person Vinayagalakshmi sustained grievous injuries and based on Ex.X1 and Ex.X2, the Tribunal assessed the disability and fixed at 27% disability. Accordingly, Tribunal fixed Rs.54,000/- (27X2000) for 27% permanent disability. Though it was claimed that the injured person is a software engineer and she is earning Rs.25,000/- per month, without proof of income, the Tribunal fixed the notional income at Rs.6,000/- per month and therefore, the Tribunal awarded Rs.12,000/- towards loss of income; awarded Rs.10,000/- under the head of nutrition; awarded Rs.1,000/- for hospital expenses, awarded Rs.25,000/- towards pain and sufferings and Rs.1,000/- for loss of clothes and ornaments. Further based on the hospital bills Ex.P.10, Rs.44,651/- is awarded. Altogether the Tribunal awarded the compensation of Rs.1,47,651/- along with 7.5%



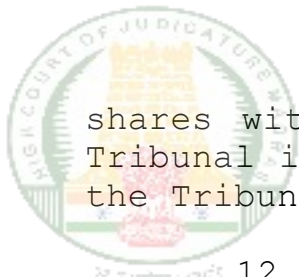
interest per annum from the date of claim petition till the date of deposit.

(iv) In respect of M.C.O.P.No.50 of 2012, since the deceased Alwarsamy was claimed as a Driver and he is earning Rs.10,000/- per month, without proof of income, the Tribunal fixed the notional income at Rs.6,500/- per month. The age of the deceased was 47 at the time of accident and therefore, the correct multiplier as per Sarla Verma's case is '13'. After deducting $1/4^{\text{th}}$ towards personal expenses and applying '13' multiplier, the loss of income is calculated as Rs.78,000/- $(-)$ $1/4^{\text{th}}$ = Rs.58,500 X 13 = Rs.7,60,500/-; Further the Tribunal awarded Rs.1,50,000/- towards love and affection; awarded Rs.25,000/- for funeral expenses; awarded Rs.1,00,000/- for loss of estate; awarded Rs.1,00,000/- towards demise of life partner; awarded Rs.5,000/- for hospital expenses and Rs.2,000/- for loss of clothes and ornaments. Altogether the Tribunal awarded the compensation of Rs.11,42,500/- along with 7.5% interest per annum from the date of claim petition till the date of deposit.

(v) In respect of M.C.O.P.No.51 of 2012, since the injured person Rahul Karthik sustained grievous injuries and based on Ex.X4, Ex.X5 and Ex.X6, the Tribunal assessed the disability and fixed at 51% disability. Accordingly, Tribunal fixed Rs.1,02,000/- (51×2000) for 51% permanent disability. Though it was claimed that the injured person is a software engineer and she is earning Rs.60,000/- per month, without proof of income, the Tribunal fixed the notional income at Rs.6,000/- per month and therefore, the Tribunal awarded Rs.18,000/- towards loss of income; awarded Rs.10,000/- under the head of nutrition; awarded Rs.1,000/- for hospital expenses, awarded Rs.25,000/- towards pain and sufferings and Rs.1,000/- for loss of clothes and ornaments. Further based on the hospital bills Ex.P.11, Rs.3,02,783/- is awarded. Altogether the Tribunal awarded the compensation of Rs.4,59,783/- along with 7.5% interest per annum from the date of claim petition till the date of deposit.

Therefore, the findings of the Tribunal in fixation of monthly income as well as the quantum in the above applications are very reasonable and the interference of this Court is not warranted.

11. The appellant/Transport Corporation is directed to deposit the entire award amount to the credit of respective claim petitions in M.C.O.P.Nos.43, 44, 49, 50 and 51 of 2012 with interest at 7.5% per annum and costs from the date of claim petitions till the date of deposit as awarded by the Tribunal, less the amount already deposited if any, to the credit of the claim petitions, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents/claimants are permitted to withdraw their respective



shares with proportionate accrued interest as apportioned by the Tribunal interest without filing formal permission petition before the Tribunal.

12. In the result, **these Civil Miscellaneous Appeals are dismissed.** No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

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To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Aruppukottai.

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Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.P.PETHU RAJESH, Advocate (SR-4129[F] dated 09/02/2021)

+5 CC to Mr.P.PRABHAKARAN, Advocate (SR-4098, 4099, 4100, 4101 and 4102[F] dated 09/02/2021)

+5 CC to Mr.V.SASI KUMAR, Advocate (SR-4350, 4351, 4348, 4349 and 4347[F] dated 10/02/2021)

C.M.A(MD)No.507 to 511 of 2019

and

C.M.P(MD)Nos.5926 to 5930 of 2019

09.02.2021

KM (22.03.2021) 8P 15C