



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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C.M.A(MD) No.719 of 2020

and

CMP(MD) .No.7303 of 2020

M/s.Tamilnadu State Transport
Corporation Limited,
Rep. by its Managing Director,
Ranithottam, Nagercoil,
Agastheeswaram Taluk,
Kaniyakumari District.

... Appellant/2nd respondent

vs.

1. Benedict Mary

2. Seethabhai

...1st & 2nd Respondents/Petitioners

3. Kobakumar

4. Krishna Prasad

...3rd&4th Respondents/R1 and R3

5. The Branch Manager,

National Insurance Company Limited,
(Insurer of Motorcycle bearing No.TN 75 C 5787)
Anguvilas Building, Near Head Post Office,
Nagercoil, Agastheeswaram Taluk,
Kaniyakumari District.

... 5th Respondent/R4

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to call for the records relating to the order and decreetal order dated 19.02.2020 passed in M.C.O.P.No.17 of 2017 by the Motor Accident Claims Tribunal Cum Principal Sub-Court, Nagercoil and to set aside the same.

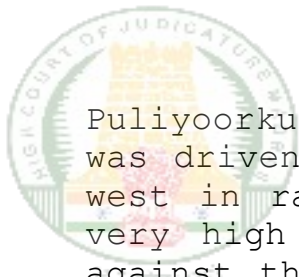
For Appellant : Mr.R.Rajamohan

J U D G M E N T

This appeal has been filed against the judgment and decree dated 19.02.2020 made in M.C.O.P.No.17 of 2017, on the file of the Motor Accident Claims Tribunal Cum Principal Sub-Court, Nagercoil.

2. The case of the claimants before the Tribunal:-

The deceased Sam Surjit Singh was riding his motorcycle bearing registration number TN 75 C 5787, on 29.07.2016, from Nagercoil to Thuckalay road. When he was nearing the place of occurrence, at about 10.30 p.m., in front of the petrol bunk at



Puliyoorkurichi, a bus bearing registration number TN 74 N 0875 was driven by its driver from the opposite direction from east to west in rash and negligent manner without blowing horn and in a very high speed came in the wrong side of the road and dashed against the deceased. As a result of which, he sustained injuries and was taken to Thuckalay Government Hospital and he died on the way to Kanyakumari District Head Quarters Hospital. In respect of the occurrence, a case in Crime No.669 of 2014 was registered on the file of Thakkalai Police Station for the offences under Sections 279 and 304(A) IPC against the first respondent/vehicle driver. The deceased was aged about 35 and was working as Mechanic in a service station.

3. The deceased was earning Rs.20,000/- per month. The claimants who are the wife and mother of the deceased claiming compensation amount of Rs. 40 lakhs, approached the Tribunal.

4. According to the appellant, the deceased failed to wear helmet and drove the motorcycle from the left of the petrol bunk to right side in rash and negligent manner, suddenly crossed the National Highway road, as a result of which, the deceased lost his control and voluntarily hit against the bus.

5. On the side of the claimants, the wife of the deceased was examined herself as PW1 and another independent witness was also examined as PW2 and 13 documents were marked. On the side of the respondents, no witness was examined and no document was marked.

6. At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident took place only due to rash and negligent driving on the part of the first respondent vehicle and liability was fixed upon the owner of the vehicle. Regarding the compensation, it fixed the same at Rs. 24,93,490/- with 7.5% interest.

7. Challenging the same, the instant appeal has been preferred by the Corporation on the ground that the occurrence took place only due to the negligence on the part of the deceased and the Tribunal ought to have fixed the notional income of the deceased as Rs.9,000/- instead of Rs.13,300/-.

8. Insofar as the liability, the Tribunal on appreciation of evidence and documents on records filed by both sides, particularly the evidence adduced by PW2, came to the conclusion that the accident took place only due to rash and negligent driving on the part of the driver of the respondent/appellant vehicle, who drove the vehicle in the wrong side of the road and liability was fixed upon the driver of the vehicle. Though the appellant stated that the Tribunal ought to have fixed



contributory negligence on the deceased, the appellant has not produced any document to substantiate his claim. It is evident from the award that the driver of the respondent/appellant vehicle is liable for the accident and I do not find any reason to interfere with the said finding.

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9. Perusal of record shows that the deceased was working as a Mechanic in a service station and was earning Rs.20,000/- per month and there was no documentary proof produced in support of the claim. In the absence of proof, as per the decision in **Andal and Others Vs. Avinav Kanna & Ors.**, reported in **2019 (1) TNMAC 54 (DB)**, the Tribunal fixed the monthly salary of the deceased at Rs.13,300/- per month.

10. The deceased was aged 35 years at the time of accident. The Tribunal had rightly fixed a minimum monthly income at Rs.13,300/- and therefore, in my opinion, the monthly income fixed by the learned Judge is very reasonable and there is no infirmity in the award passed by the Tribunal.

11. In the result, this **Civil Miscellaneous Appeal is dismissed** and the award passed by the Tribunal is confirmed. The appellant/Transport Corporation is directed to deposit the entire award amount to the credit of M.C.O.P.No.17 of 2017, on the file of the Motor Accident Claims Tribunal cum Principal Sub-Court, Nagercoil, less the amount already deposited, if any, along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to transfer the said amount and deposit the same to the credit of C.M.A.(MD)No.17 of 2017, before the Indian Bank, High Court Branch, Madurai, which amount shall be deposited by the Indian Bank in an interest bearing account. On such deposit, the major claimants are permitted to withdraw the entire award amount along with accrued interest as apportioned by the Tribunal. No costs. Consequently, connected civil miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar (CS)



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To

The Principal Sub Judge,
Motor Accident Claims Tribunal,
Nagercoil.

Copy to

The Section Officer, VR Section-2 copies
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.R.RAJA MOHAN, Advocate (SR-21[F] dated 04/01/2021)

C.M.A(MD) No.719 of 2020
04.01.2021

KM (01.02.2021) 4P 5C