



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.10.2021

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1127 of 2014

- 1.Kalaiselvi
- 2.Venkatesan
- 3.Minor Muthu

(Minor third appellant is represented through
his next friend and natural guardian Kalaiselvi)

- 4.N.Valli .. Appellants/Claimants

Vs.

The Tamil Nadu State Transport Corporation,
Through its General Manager,
Maruthupathi, Karaikudi,
Sivagangai District.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to call for the records pertaining to judgment and award dated 08.11.2011 made in M.C.O.P.No.2 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Devakottai and to set aside the same.

For Appellants	: Mr.J.Anandkumar
For Respondent	: Mr.D.Sivaraman

ORDER

This Civil Miscellaneous Appeal has been filed against the judgment and decree passed in M.C.O.P.No.2 of 2011 dated 08.12.2011 on the file of the Motor Accident Claims Tribunal, Sub Judge, Devakottai.

2.The appellants herein are the claimants and the respondent herein is the respondent in the claim petition. The appellants herein have filed a claim petition in M.C.O.P.No.2 of 2011, claiming compensation for the death of one Naganatha Sethupathi, in an accident that took place on 09.06.2009. The Tribunal has awarded a sum of Rs.11,25,000/- (Rupees Eleven Lakhs and Twenty Five Thousand only) as compensation. Against which, the appellant has filed the present appeal.



3.A brief substance of the claim petition in M.C.O.P.No.2 of 2011 is as follows:

On 09.06.2009, at about 05.45 p.m., when the deceased was standing near the bus stop, a bus bearing registration No.TN-63-N-0801 was taken by the driver in a negligent manner without the conductor giving whistle, the driver reversed the bus and hit against the deceased. The deceased was working as the conductor and was earning Rs.10,000/- (Rupees Ten Thousand only) per month. The petitioners were dependants of the deceased and they claimed a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) as compensation.

4.The brief substance of the counter filed by the respondent herein is as follows:

The bus driver was careful and cautious. Only after hearing the whistle blown by the conductor, the bus driver slowly moved the bus. Though the deceased was advised to vacate the path, the deceased in a negligent manner was standing on the way and he invited the accident. The manner of the accident as narrated in the petition is wrong. The bus bearing registration No.TN-63-N-0801 was entering the bus stand, when the bus bearing registration No.TN-63-N-0643 was taken out in a reverse manner, the deceased in a negligent manner came in between both the buses and was crushed between both the buses. The deceased was negligent. The claim is excessive.

5.On the side of the claimants, four witnesses were examined and 13 documents were marked. On the side respondent in the claim petition, one witness was examined and no document was marked. After considering both sides, the Tribunal has awarded a sum of Rs.11,25,000/- (Rupees Eleven Lakhs and Twenty Five Thousand only) as compensation to be paid by the respondent. Against which, the appellant has preferred this appeal for enhancement of compensation.

6.On the side of the appellant, it is stated that the deceased was in service at the time of accident. He had a further period of 12 years service. The Tribunal failed to consider future prospects. The enhancement of income that may be received by the deceased if he is alive was not considered by the Tribunal. The multiplier applied is very low. Without considering Ex.P7, school certificate and Ex.P9, appointment order, the Tribunal has wrongly fixed the age of the deceased as 50. Whereas the age of the deceased is only 45 years at the time of accident.

7.On the side of the appellant, it is stated that the deceased was having only eight years of service. There may not be chance for the deceased to receive full salary after retirement and that the deceased can receive only half of the salary, after his retirement.



8.A perusal of the records reveals that the age of the deceased fixed by the Tribunal is wrong. The Tribunal has fixed the age of the deceased as 50 years, on the basis of the post mortem certificate and applied multiplier '13'. A perusal of school records, Ex.P7 reveals that the date of birth is 30.03.1965. On the date of accident, the deceased has completed 44 years.

9.In the above circumstances, the multiplier method adopted by the Tribunal is to be enhanced to '14'. The salary of the deceased was not disputed by the respondent. The salary of the deceased is Rs.10,000/- per month. The future prospects was not considered by the Tribunal. Considering the age of the deceased, 30% future prospects is to be added. The monthly income is calculated as Rs.13,000/-. After deducting 1/3rd for his own expenses, the monthly income is Rs.8,667/-. After applying multiplier '14', the income is calculated as Rs.14,56,056/- (Rupees Fourteen Lakhs Fifty Six Thousand and Fifty Six only). As per **Praney Sethi** case, the appellants are entitled to Rs.70,000/- (Rupees Seventy Thousand only) as conventional charges. In total, a sum of Rs.15,26,056/- (Rupees Fifteen Lakhs Twenty Six Thousand and Fifty Six only) is awarded as compensation.

10.In the result, this Civil Miscellaneous Appeal is **partly allowed**. The appellants are entitled to a sum of Rs.15,26,056/- (Rupees Fifteen Lakhs Twenty Six Thousand and Fifty Six only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

11.The respondent is directed to deposit the above said amount if not deposited earlier, within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the major claimants are permitted to withdraw their share in award amount as per the ratio apportionment fixed by the Tribunal with interest and costs, after deducting any amount received by them earlier. The Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalized Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the mother and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of the minors. The appellants are directed to pay extra Court fee, if any needed. No Costs.

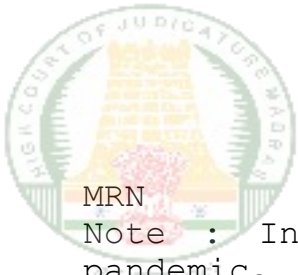
Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)



MRN

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,
Sub Judge,
Devakottai.
- 2.The General Manager,
Tamil Nadu State Transport Corporation,
Maruthupathi, Karaikudi,
Sivagangai District.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-32658[F] dated 26/10/2021)

C.M.A.(MD)No.1127 of 2014
25.10.2021

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