



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.10.2021

Delivered on : 01.12.2021

CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.M.A(MD) No.207 of 2014

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1.Chinnammal
2.Thirumoorthy
3.Mallikarjunan

... Appellants/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division) Limited,
Periyamilaguparai, Trichy -1.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehilces Act, 1988, against the decree and judgment made in M.C.O.P.No.608 of 2011, dated 02.01.2014, by the Motor Accidents Claims Tribunal (Principal District Judge), Karur.

For Appellants : Mr.M.Karthikeya Venkatachalapathy
For Respondent : Mr.P.Prabhakaran

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 02.01.2014, made in M.C.O.P.No.608 of 2011, on the file of the Motor Accidents Claims Tribunal - Principal District Judge, Karur.

2.The appellants herein are the claimants and the respondent herein is the respondent in the main claim petition.

3.Brief substance of the petition in M.C.O.P.No.608 of 2011 is as follows:-

On 04.06.2011, at about 06.45 pm., one Parthasarathy was riding his Bajaj M.80 motorcycle bearing Registration No.TN-47-0903 along the Karur-Manaparai road at Venkatapuram Rettaimodakku near Kandasamy Thottam, from East to West keeping the left side of the road. At that time, the respondent's bus came from the opposite direction in a rash and negligent manner and collided with the motorcycle and the bus ran over him and the said Parthasarathy sustained injuries on his head, hips, legs and all over the body. He was taken to the Government Hospital, Karur, on the way. The deceased worked as a Fitter and



Electrician and he earned Rs.5,000/- per month and he was doing agricultural work and milk vending business and he was earning a sum of Rs.10,000/-. Totally the deceased was earning Rs.15,000/-. The driver of the respondent alone is respondent for the accident. The petitioners claimed a sum of Rs.20,00,000/- as compensation.

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4. Brief substance of the counter filed by the respondent in M.C.O.P.No.608 of 2011 is as follows:-

In the accident area, there is a 'S' shaped bend, there is mud road connecting the main road, the Driver, who was proceeding towards Manaparai, after blowing the horn had driven the bus in a slow and cautious manner. But the deceased, without noticing the bus coming on the road, rammed against the bus on its left side and fell down. So, the deceased was responsible for the accident. The age, avocation and income of the deceased are all denied. The claim itself is excessive.

5. On the side of the petitioners, two witnesses were examined and eight documents were marked. On the side of the respondent, one witness was examined and one document was marked.

6. The Tribunal after considering both sides, awarded a sum of Rs.5,30,000/- as compensation and after deducting 50% towards contributory negligence, awarded a sum of Rs.2,65,000/- as compensation for the first petitioner. Against the same, the appellants / claimants filed this Appeal for enhancement of compensation.

7. On the side of the appellants, it is stated that the claimants 2 and 3 are the dependents of the deceased. The Tribunal failed to consider the evidence of P.W.2, and that the Tribunal is wrong in concluding that P.W.2 was not an eyewitness. There is no fault on the side of the deceased. The Tribunal has wrongly fixed 50% contributory negligence on the part of the deceased. The second and third appellants are also dependents of the deceased. The award has to be enhanced.

8. On the side of the appellant, it is further stated that the claim is Rs.20,00,000/-, but, the Tribunal has awarded only Rs.5,30,000/- which is very low. Even in that amount, 50% was deducted towards contributory negligence. The Tribunal has wrongly come to the conclusion that P.W.2, who was at a distance of 50 feet must have heard the sound and then only he saw the occurrence, whereas, P.W.2 was walking along the road and he witnessed the occurrence.

9. On the side of the appellant, it is further stated that the deceased was an Electrician and was doing Agricultural work and Milk vending business and he was earning more than Rs.15,000/-

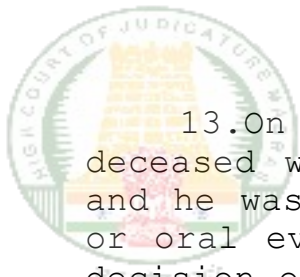


per month. But, the Tribunal has fixed the notional income only at Rs.5,000/- per month, which is very low. As per the decision of the Honourable Supreme Court in **Syed Sadiq, etc., Vs. Divisional Manager, United India Insurance Company Limited**, reported in **2014 (1) TN MAC 459 (SC)**, Rs.6,500/- per month was fixed as income for a vegetable vendor, who met with an accident in the year 2008. The deceased was an Electrician having I.T.I. Certificate, even in the F.I.R., it was mentioned that he was used to be called as Electrician Parthasarathy and hence, at least Rs.10,000/- per month has to be fixed as notional income.

10. On the side of the respondent, it is stated that the appellants 2 and 3 are sister and brother of the deceased, who are not the dependents. There was a head on collision and both the vehicles are equally responsible for the accident. There is no proof for the income or the avocation of the deceased. The Tribunal has fixed the monthly income as Rs.5,000/-, which is reasonable. It is further stated that the fixation of compensation under various heads are reasonable.

11. On the side of the appellant, it is stated that the bus driver is responsible for the accident. Ex.P2 is the rough sketch, which reveals that the accident took place on the Northern side of the road. Ex.P4 is the M.V.I. Report, which reveals that the accident was not due to any mechanical defect. Ex.P5, is the charge sheet, which reveals that the driver of the respondent was charge sheeted for the offence under Section 304(A) of I.P.C. On the side of the respondent, it is stated that the driver of the bus was acquitted by the trial Court, in C.C.No.111 of 2011, on the file of the Judicial Magistrate No.II, Karur. Certified copy of the judgment was marked as Ex.R1. The Tribunal has observed that after sending off the deceased, P.W.2 was returning back home, at that time, the accident has occurred and that there was no possibility of P.W.2 to be an eyewitness.

12.It is seen that P.W.2 has lodged the complaint and the F.I.R is against the bus driver. Ex.P1 /F.I.R and Ex.P5/charge sheet are against the bus driver. The case was taken on file as C.C.No.111 of 2011 on the file of the Judicial Magistrate No.II, Karur. P.W.2, who was walking along the road, at the time of accident is having the possibility of witnessing the occurrence. Therefore, the evidence of P.W.2 cannot be brushed aside. From the observation mahazer, it is seen that the deceased might have crossed the road without observing the traffic. In view of the same, it is fixed that both the bus driver and the deceased were responsible for the accident. Hence, deducting 50% towards contributory negligence is reasonable.



13. On the side of the appellants, it is stated that the deceased worked as an Electrician, Agriculturist and Milk Vendor and he was earning Rs.15,000/- per month. There was no document or oral evidence to substantiate the monthly income. As per the decision of the Hon'ble Supreme Court in **Syed Sadiq case**, a sum of Rs.6,500/- is fixed as the notional income of the deceased. It is seen that the Tribunal has failed to consider the future prospects and the deceased was 28 years at the time of accident and as such adding 40% towards future prospects is necessary. So, after adding 40% for future prospects, the income is fixed as Rs.9,100/- (Rs.6,500/- + 40 % = Rs.9,100/-) per month. The deceased was unmarried at the time of accident and hence, after deducting 50% towards the personal expenses, the income is Rs. 4,550/- per month. The multiplier '17' is to be applied. The loss of income is Rs.9,28,200/- (Rs.4,550/- X 12 X 17 = Rs.9,28,200/-). As per **Pranay Sethi's Case**, a sum of Rs.70,000/- is awarded towards conventional charges. The total award amount is fixed at Rs.9,98,200/- and the amount is rounded off to Rs.10,00,000/-. After deducing 50% towards contributory negligence, the appellants are entitled to a sum of Rs.5,00,000/- as compensation.

14. Hence, this Civil Miscellaneous Appeal is partly allowed and the award, dated 02.01.2014, made in M.C.O.P.No.608 of 2011, on the file of the Motor Accident Claims Tribunal - Principal District Judge, Karur, is enhanced from **Rs.2,65,000/- to Rs.5,00,000/-**.

15. The respondent / Transport Corporation is directed to deposit the entire compensation of **Rs.5,00,000/-** along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount if already deposited. **The petitioners 2 and 3 are major brothers. They are not dependants of the deceased. Hence, the first appellant alone is entitled to receive the award amount.** On such deposit being made, the first appellant / first claimant is permitted to withdraw the entire award amount, after deducting any amount received by her earlier. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)



To

1.The Motor Accidents Claims Tribunal -
Principal District Judge, Karur.

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

+1 CC to M/s.K.BALASUBRAMANI, Advocate (SR-36788[F] dated
01/12/2021)

+1 CC to M/s.M.KARTHIKEYA VENKATACHALAPATHY, Advocate (SR-37096
[F] dated 02/12/2021)

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-36906[F] dated
01/12/2021)

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