



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.02.2021

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

C.M.A. (MD)No.294 of 2016

1.Manimegalai
2.Muthamilselvan
3.Angayarkanni
4.Sumathi
5.Rajkumar

: Appellants/Petitioners

-Vs-

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Pudukkottai.

: Respondent/Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the award made in MCOP No.408 of 2011, dated 22.05.2015 on the file of the Motor Accident Claims Tribunal (Additional District Judge & Special Judge for EC Act Cases), Pudukkottai.

For Appellants : Mr.R.P.Ramachanthiran
For Respondent : Mr.D.Sivaraman

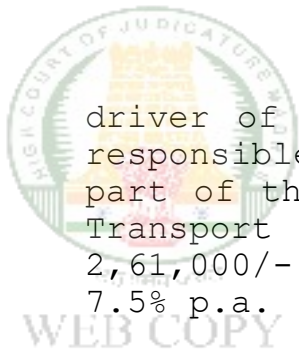
JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Additional District Judge & Special Judge for EC Act Cases), Pudukkottai, dated 22.05.2015 made in MCOP No.408 of 2011.

2.The short facts of the case is that on 14.06.2011 the deceased Akilamuthu along with goods travelling in TATA ACE Van No.TN-55-Z-3158 on Aranthangi-Pudukkottai road and when the Van proceeding near MNSK College, at that time, the Transport Corporation Bus TN-63-N-372 came from opposite direction in a rash and negligent manner and dashed against the TATA ACE Van, resulting which the driver of the TATA ACE Van and deceased Akilamuthu were sustained injuries and the deceased Akilamuthu died on the spot. The legal heirs of the deceased Akilamuthu filed a claim petition seeking compensation of Rs.15,00,000/- on the ground that the offending vehicle caused the accident.

3.Before the tribunal, on the side of the claimants, 2 witnesses were examined and marked 6 documents. On the side of the Insurance Company, 1 witness was examined and no document was marked.

4.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the



driver of the TATA ACE Van and the Transport Corporation Bus were responsible for the accident and fixed the negligence 40% on the part of the driver of the TATA ACE Van and 60% on the part of the Transport Corporation Bus driver and awarded compensation of Rs. 2,61,000/- to the claimants together with interest at the rate of 7.5% p.a.

5. Heard both sides and perused the materials available on record.

6. It is contended by the learned counsel for the appellants that the tribunal has erred in fixing the negligence at 40% on the part of the driver of the TATA ACE vehicle, in which the deceased travelled and that the tribunal has not applied correct multiplier and the monthly income fixed by the tribunal is on the lower side, so the quantum is to be enhanced to some extent.

7. In the instant case, it is not in dispute that the deceased was a retired Headmaster and after retirement, he was doing fish wholesale business. Even though, on the side of the claimants, it is stated that the deceased was earning Rs.20,000/-, the Tribunal, based on the evidence and reliable document, has fixed the monthly income of the deceased at Rs.5,000/-. By applying multiplier '9' and after deducting 1/4th towards his personal and living expenses, the Tribunal has awarded Rs.4,05,000/- towards loss of income. Further, the Tribunal awarded Rs.10,000/- towards loss of consortium to the 1st claimant; Rs.2,500/- each to the claimants 2 to 5 towards loss of love and affection; Rs.5,000/- for transportation charges and Rs.5,000/- funeral expenses. In total, the Tribunal has awarded **Rs.4,35,000/-** together with interest @ 7.5% p.a. As the Tribunal has fixed 40% negligence on the part of the driver of the TATA ACE Van, after deducting 40% negligence, the Tribunal has awarded Rs.2,61,000/- towards compensation to the claimants.

8. On coming to the facts of the case, it is not in dispute that the deceased was doing fish wholesale business after his retirement from the post of Headmaster. Even though, no document has been produced to prove the income of the deceased, the Tribunal has fixed the monthly income of the deceased at Rs.5,000/-. However, even though, no reliable document has been produced to prove the income of the deceased, considering the facts and circumstance of this case, this Court fixed income of the deceased at Rs.7,000/- per month. It is not in dispute that the deceased died at the age of 60 years, as seen from the award of the tribunal. As per the decision of the Constitution Bench in **National Insurance Company Limited Vs. Pranay Sethi and others (2017(13) SCALE 12**, the claimants are not entitled to any future prospects for the death of the deceased, since the deceased is a retired Headmaster. By fixing the income of the deceased at Rs.7,000/- per month and after deducting 1/4th towards his personal and living expenses, the monthly income of the



deceased is calculated as Rs.5,250/- (Rs.7,000/- - Rs.1,750/-). By applying proper multiplier 9, this Court awards **Rs.5,67,000/- (Rs.5,250/- x 12 x 9)** towards loss of dependency.

9.As per the decision of the the Hon'ble Supreme court in the case of **Pranay Sethi**, the 1st claimant, being the wife of the deceased is entitled to Rs.40,000/- towards loss of consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled to **Rs.6,37,000/-** along with interest @ 7.5% p.a.

10.With regard to negligence, this Court finds that the tribunal has rightly fixed the negligence at 40% on the part of the rider of the four wheeler and 60% on the part of the driver of the Transport Corporation Bus. Hence, it is held that the claimants are entitled to Rs.3,82,200/- together with interest at the rate of 7.5% pa.

11.In the result, the Civil Miscellaneous Appeal is partly allowed, by enhancing the compensation from Rs.2,61,000/- to 3,82,200/- and this amount of compensation shall be deposited by the respondent Transport Corporation, less the amount already deposited along with interest @ 7.5% per annum, from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made by the Transport Corporation, the claimants are entitled to withdraw their respective share as per the apportionment of the tribunal without filing any formal petition before the tribunal. The appellants/claimants shall pay the additional court fees, if any. No costs.

Sd/-

Assistant Registrar (CS-II)

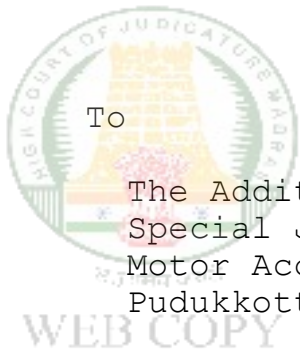
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Sub Assistant Registrar(CS)

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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

The Additional District Judge and
Special Judge for EC Act Cases,
Motor Accident Claims Tribunal,
Pudukkottai.

Copy to:-

The Section Officer,
The Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-6078[F] dated 19/02/2021)

+1 CC to M/s.R.P.RAMACHANDRAN, Advocate (SR-6019[F]
dated 18/02/2021)

C.M.A. (MD) No.294 of 2016
18.02.2021

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GC/PM(18.11.2021) 4P 6C