



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.10.2021

Delivered on : 14.12.2021

CORAM:

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

WEB COPY

C.M.A(MD) No.1203 of 2018

and

C.M.P. (MD) No.12468 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam (Trichy Division),

... Appellant/
Respondents

Vs.

1.Dhanalakshmi
2.Selvi
3.Sumathi
4.Devi
5.R.Manivel

... Respondents/
Petitioners

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No.296 of 2016, dated 22.01.2018, on the file of the Motor Accident Claims Tribunal - Principal District Court, Karur.

For Appellant : Mr.P.Prabhakaran

For Respondents : No appearance

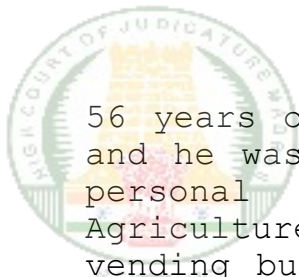
JUDGMENT

This Civil Miscellaneous Appeal is filed against the order, made in M.C.O.P.No.296 of 2016, dated 22.01.2018, on the file of the Motor Accident Claims Tribunal - Principal District Court, Karur.

2.The appellant herein is the respondent and the respondents herein are the claimants in the original claim petition.

3.Brief substance of the petition in M.C.O.P.No.296 of 2016 is as follows:-

On 22.03.2016, at about 02.00 pm., when the deceased / Rengasamy was riding his motor cycle bearing Registration No.TN-47-AB-6613 along the extreme left side of the road and when he turned towards north, a bus, that belonged to the respondent, bearing Registration No.TN-45-N-3079 driven by its driver in a rash and negligent manner, came from the opposite direction, dashed against the motor cycle and the deceased died on the spot. The deceased was



56 years old and at the time of accident, he was hale and healthy and he was an Agriculturist, having 12 acres of land. Out of his personal labour, he was earning Rs.10,000/- per month from Agriculture. The deceased owned 20 cows and he was doing milk vending business and he earned Rs.10,000/- through the business. The petitioners are his dependents and they claimed a sum of Rs.15,00,000/- as compensation.

4. Brief substance of the counter filed by the respondent, in M.C.O.P.No.296 of 2016, is as follows:-

The driver of the bus drove the bus in a careful and cautious manner. The deceased, who was riding a motor cycle from the opposite direction, overtook two lorries in a rash and negligent manner and came in the wrong lane. On seeing the motor cycle, the driver of the bus applied the brake and stopped the bus, keeping the left edge of the road, inspite of that the motor cyclist rammed into the bus and invited the accident. The bus driver gave a complaint, but, the police refused to register a case. The motor cyclist was not having a valid driving licence. The age, occupation and income of the deceased are to be proved. The claim is excessive.

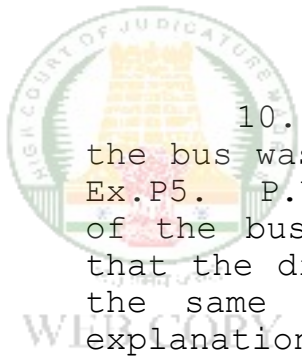
5. On the side of the petitioners, two witnesses were examined and Seventeen documents were marked. On the side of the respondent, one witnesses was examined and no document was marked.

6. After considering both sides, the Tribunal has awarded a sum of Rs.9,71,900/- as compensation. Against the same, the respondent / appellant has preferred this Appeal.

7. On the side of the appellant, it is stated that the Tribunal has erred in holding that the driver of the appellant was only responsible for the accident. It was the deceased, who came from the opposite direction in a rash and negligent keeping the wrong side of the road, dashed against the front right side of the bus. The award is excessive.

8. On the side of the appellant, it is stated that the claimants 2 to 4 are married persons and they were not the dependents of the deceased and that the deduction towards personal expenses is only 1/3rd. The award of compensation for loss of future income, for loss of love and affection, loss of estate, funeral expenses and loss of consortium are all high. In the absence of documents, the income ought to have been fixed only at Rs.6,500/-.

9. Name of the respondents was printed and called upon, though sufficient opportunity was given none appeared for the respondents. Hence, no oral argument on the side of the respondents is recorded and the order is passed on merits.



10. Copy of the F.I.R was marked as Ex.P1. M.V.I. Report of the bus was marked as Ex.P3. Copy of the rough sketch was marked as Ex.P5. P.W.2 was examined as an eye witness. R.W.1 is the driver of the bus. The appellant has not produced any document to show that the driver of the bus lodged a complaint before the police and the same was refused to be registered by them. There is no explanation on the side of the appellant as to why the said complaint was not sent through Post and as to why the driver of the appellant has not initiated action under Section 156(3) of Cr.P.C or under Section 200 of Cr.P.C.

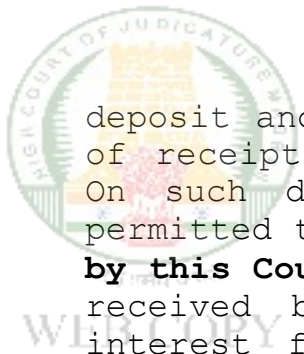
11. Considering the evidence of P.W.2 and considering Ex.P1-F.I.R, the Tribunal has fixed the liability on the bus driver, which is reasonable. The death of the deceased is proved by Ex.P2-Post mortem certificate. The respondents are the dependents of the deceased and Ex.P6 is the Legal Heirship Certificate.

12.The deceased was a land lord. Copy of the patta was marked as Ex.P7. It is stated that by doing agricultural work the deceased was earning Rs.10,000/- per month and by doing milk vending business, the deceased was earning Rs.10,000/- per month. There is no evidence as to the milk vending business. The agricultural income cannot be fixed merely on the basis of patta. Whether the land was cultivated or not cannot be decided by the marking of the patta.

13. In the above circumstances, the Tribunal has fixed the monthly income at Rs.9,000/-, which is reasonable. The deceased was a self employed person, aged about 56 years and the Tribunal has added 10% towards future prospects, which is not correct. Awarding future prospects for a person more than 56 years is not reasonable. Though the claimants 2 to 4 are married, they are also entitled for compensation. Hence, the deduction of 1/4th of the income (Rs.2250/-) is also reasonable. The multiplier to be applied is '9'. In total, income is calculated at Rs.7,29,000/- (Rs.6750/- X 12 X 9 =Rs.7,29,000/-). As per the dictum of the Hon'ble Supreme Court, in **Pranay Sethi's** case Rs.70,000/- is awarded towards conventional charges. The respondents / claimants are entitled to Rs.7,99,000/-/- . **The first claimant, being the wife of the deceased, is entitled to Rs.5,99,000/- with cost and the claimants 2 to 5 are entitled to Rs.50,000/- each as compensation.**

14.This Civil Miscellaneous Appeal is partly allowed and the award, made in M.C.O.P.No.296 of 2016, dated 22.01.2018, on the file of the Motor Accident Claims Tribunal - Principal District Court, Karur, is reduced from Rs.9,71,900/-/- to **Rs.7,99,000/-**.

15.The appellant / Transport Corporation is directed to deposit the compensation of Rs.7,99,000/- 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, if not already deposited. On such deposit, the major claimants / respondents herein are permitted to withdraw their respective shares **as per the ratio fixed by this Court** with proportionate interest after deducting any amount received by them earlier. The Claimants are not entitled for interest for the default period, if there is any default. **The appellant / Transport Corporation is entitled to withdraw excess amount deposited, if there is any.** No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

Ls

To

1.The Motor Accident Claims Tribunal -
Principal District Court,
Karur.

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

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-38781[F] dated
15/12/2021)

Pre-delivery Judgment made in
C.M.A(MD)No.1203 of 2018
14.12.2021

RK(07/02/2022) 4P 5C