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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

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THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.A. No.2096 of 2021
and C.M.A. No.35 of 2022
and C.M.P.No.245 of 2022

[CMA.No.2096 of 2021]

1.S.Thilagavathi
2.A.Thenmozhi
3.S.Deviga
4.V.Priyanga

...Appellants/Petitioners

Vs

The Managing Director
Taminadu State Transport Corporation (Kumbakonam) Ltd.,
Railway Station New Road,
Kumbakonam - 612001.

...Respondent/ Respondent.

[CMA No.35 of 2022]

The Managing Director
Taminadu State Transport Corporation
(Kumbakonam) Ltd., Kumbakonam.

...Respondent/Appellant

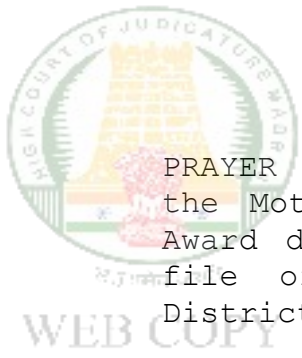
Vs.

1.S.Thilagavathi
2.A.Thenmozhi
3.S.Deviga
4.V.Priyanga

...Petitioners/Respondents

PRAYER in CMA No.2096 of 2021: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal and enhance the compensation in M.C.O.P.No.2051 of 2019 dated 26.04.2021 on the file of the Motor Accident Claims Tribunal/ I Additional District and Sessions Judge, Cuddalore and thus render justice.

For Appellants : Mrs.Ramya V.Rao
For Respondent : Mr.D.Venkatachalam



PRAYER in CMA No.35 of 2022: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Annexure and Award dated 26.04.2021 made in M.C.O.P.No.2051 of 2019 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Cuddalore.

For Appellants : Mr.D.Venkatachalam
For Respondents : Mrs.Ramya V.Rao [R1 to R4]

COMMON JUDGEMENT

The claimants as well as the respondent/transport corporation are before this Court by way of these two appeals. C.M.A.No.2096 of 2021 is filed by the claimants seeking the enhancement and C.M.A.No.35 of 2022 filed by the Transport Corporation seeking a reduction of the compensation. The facts in brief which has resulted in the filing of the above appeals are as follows:

2. The claimants are the mother and sisters of the deceased, Deivamani, who was working as an electrician, he is said to have passed the ITI. He had died in a road accident on 05.08.2019. The accident had occurred on account of the fact that the deceased Deivamani who was proceeding on a motor cycle with one Ramalingam riding pillion was hit by a M.T.C. bus which was driven rashly and negligently as a result of which both the persons travelling on the bike had been thrown out and had sustained fatal injuries.

3. The case of the claimants is that the deceased and his friend were proceeding from north to south on their motor bike, the respondent's bus came from the opposite direction at a great speed and in rash and negligent manner by reason of which it hit the vehicle of the deceased and caused fatal injuries to them.

4. The respondent/Transport Corporation had filed a counter inter alia denying the sequence of the accident as narrated by the claimants and contended that the accident had occurred only on account of the negligence of the deceased Deivamani. It is the contention of the respondent/Transport Corporation that the deceased Deivamani had suddenly darted on to the main road from a cross road and this had resulted in the accident. The respondent's bus had nothing to do with the accident, as the driver was driving the vehicle in a very slow and steady manner. They had also questioned the compensation claimed and had denied that the deceased Deivamani was engaged in Electrical Contract work.



5. The Tribunal below after examining the evidence on record had arrived at a compensation of Rs.16,82,872/-. Aggrieved by this low compensation the claimants have filed an appeal and aggrieved by the fact that the negligence had been solely mulcted on them and also challenging the quantum of award the Transport Corporation has appealed before this Court.

6. Mr.D.Venkatachalam appearing on behalf of the Transport Corporation would submit that the accident had occurred only on account of the fact that the deceased Deivamani, who was the rider of the bike had suddenly entered the main road without giving an early warning. The fact that the bike had hit the centre of the bus would amply prove that the deceased had driven his bike in a rash and negligent manner without observing road rules and as a result had hit against the bus. He would further submit that as regards the quantum there is no proof to show that the deceased was working as an electrician and the claimants being the mother and elder sisters, the deduction of 1/3rd was totally erroneous. He would submit that 50% had to be deducted for personal expenses.

7. The learned counsel appearing for the appellants/claimants would submit that the accident is of the year 2019. This Court in the Judgement reported in Andal V.s. Abhinav kannal - 2019 (1) TN MAC 54 (DB), taking into account the above judgement, a monthly income of Rs.12,500/- could be safely taken, as the claimant is admittedly a skill worker, 40% has to be added towards future prospects. This would work out to a sum of Rs.17,500/-. The learned counsel for the appellant would contend that the amount towards personal expenses has to be deducted at 50% taking into account the judgement of Sarla Verma and others Versus Delhi Transport Corporation and another - 2019 (2) TN MAC 1 (SC). In this judgement the learned Judges had discussed the deduction that had to be taken in the case of fatal accidents. The learned Judges had observed that where the family of the bachelor is large and dependent on the income of the deceased and the family consists of a widow mother and large number of younger, non-earning sisters or brothers then the deduction should be at 1/3rd. Whereas in the instant case, the sisters are elder therefore the principle of Sarla Varma's Case would not apply to them.

8. The learned counsel for the appellants/claimants would submit that the notional income has to definitely be raised and the deduction of 1/2 of the amounts towards personal expenses has to be taken. Therefore taking into account the above



arguments and also taking note of the judgements of Sarla Verma and others Versus Delhi Transport Corporation and another - 2019 (2) TN MAC 1 (SC), and also the judgements of Andal V.s. Abhinav kannal - 2019 (1) TN MAC 54 (DB) the notional income is fixed at Rs.12,500/- to which future prospects of 40% has to be added which would work out to a sum of Rs.17,500/-. Hence, pecuniary loss would work out as follows:

$$\text{Rs.17,500} \times 12 \times 18 = \text{Rs.37,80,000/-}$$
 divided by 2 = Rs.18,90,000/-, in all other respects the award of the Tribunal below is quite reasonable.

9. As regards the issue of negligence, the transport corporation has admitted the accident and has also admitted the bus to be involved in the said accident. What baffles the Court is that though the accident had taken place in the mid night at 12.05.am, the driver of the bus has not deemed it fit to report the accident to the police authorities and has also not taken steps to move the deceased and his friend to the hospital, negligence is writ large, therefore, this Court is constrained to reject the arguments of the learned counsel for the Transport Corporation.

10. In the result the appeal filed by the Transport Corporation is partly allowed by modifying the $\frac{1}{3}^{\text{rd}}$ towards personal expenses as $\frac{1}{2}$, the appeal filed by the Transport Corporation is allowed to this extent.

11. As regards the appeal filed by the claimants it is also partly allowed and the notional income is enhanced to a sum of Rs.12,500/- and after keeping aside 50% towards personal expenses of the claimant, a sum of Rs. 19,60,000/- is now ordered which is enhanced by a sum of Rs.2,77,128/-.

12. Therefore, the above Civil Miscellaneous Appeals are partly allowed and the compensation of Rs.16,82,872/- awarded by the Tribunal is hereby enhanced by a sum of Rs.19,60,000/- together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other respects the award of the Tribunal is confirmed. The Transport Corporation is directed to deposit the said amount (Rs.19,60,000/-) to the credit of M.C.O.P.No.2051 of 2019 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Cuddalore together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt



of a copy of this Judgement. On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, along with interest and costs, after adjusting the amount if any already withdrawn. The proportion of allocation of shares adopted by the Tribunal shall stand confirmed. The claimants shall pay the court fee for the enhanced amount, if payable. The Trial Court shall not disburse the amount till such time as the certified copy showing proof of payment of the entire Court fee has been produced by the claimant. No costs. Consequently, the connected Miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal/
I Additional District and Sessions Judge,
Cuddalore.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+2 CC to M/s.Ramya V. Rao, Advocate sr 17873.
+1 CC to Mr.D.Venkatachalam, Advocate sr 17863.

C.M.A. No.2096 of 2021
and C.M.A. No.35 of 2022
and C.M.P.No.245 of 2022

SJ(CO)
SP(06/05/2022)