



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2985 of 2014

and

M.P.No.1 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
3/137, Salamedu, Vazhuthareddy,
Villupuram Tamilnadu.

.. Appellant/Respondent

Vs.

1.Jothi

2.Minor. Jonathan

3.Minor. Rachel

.. Respondents\Petitioners

(Minor respondents 2 & 3 are represented by their
next friend/Mother Jothi, 1st respondent herein)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.04.2011 made in M.C.O.P.No.330 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Puducherry.

For Appellant : Mr.K.J.Sivakumar

For Respondents : No appearance

J U D G M E N T

(The matter is heard through "Video Conferencing".)

This Civil Miscellaneous Appeal has been filed challenging the quantum of compensation granted by the Tribunal in the award dated 20.04.2011 made in M.C.O.P.No.330 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Puducherry.



2.The appellant is the respondent in M.C.O.P.No.330 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Puducherry. The respondents filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Vincent Thomas, who died in the accident that took place on 18.12.2006.

4.According to respondents, on 18.12.2006 at about 08.15 P.M., while the deceased Vincent Thomas was riding the TVS Suzuki motorcycle bearing Registration No.PY 01 V 0019 slowly from West to East on the Puducherry - Villupuram Main Road opposite to Amudhasurabi Bar, Arumparthapuram, Puducherry, the driver of the bus bearing Registration No.TN 32 N 2264 belonging to appellant-Transport Corporation drove the same in a rash and negligent manner from the opposite direction and dashed against the motorcycle driven by the said Vincent Thomas and caused the accident. In the accident, the said Vincent Thomas fell down and sustained grievous injuries, fracture of left leg, head injury and multiple injuries all over the body. Immediately after the accident, the said Vincent Thomas was taken to Government General Hospital, Puducherry. In spite of treatment, the said Vincent Thomas succumbed to injuries. Therefore, the respondents filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of the said Vincent Thomas against the appellant-Transport Corporation.

5.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to appellant-Transport Corporation and directed the appellant to pay a sum of Rs.10,99,000/- as compensation to the respondents.

6.Questioning the quantum of compensation awarded by the Tribunal in the award dated 20.04.2011 made in M.C.O.P.No.330 of 2007, the appellant-Transport Corporation has come out with the present appeal.

7.The learned counsel appearing for the appellant-Transport Corporation contended that the respondents failed to prove the avocation and income of the deceased by letting in evidence. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.7,500/- per month fixed by the Tribunal as monthly income of the deceased is excessive. The Tribunal ought to have fixed a sum of Rs.3,000/- as monthly income of the deceased and awarded compensation towards loss of dependency. The respondents failed to prove the age of the deceased by letting in documentary evidence. In the



absence of any documentary evidence to prove the age of the deceased, the Tribunal fixed the age of the deceased based on Postmortem certificate and erroneously applied multiplier '16'. The Tribunal ought to have applied multiplier '15' by fixing the age of the deceased between 41 to 45 years. The amounts awarded by the Tribunal towards loss of consortium to 1st respondent, loss of love and affection to respondents 2 & 3 and funeral expenses are excessive and prayed for setting aside the award of the Tribunal.

8. Though the respondents entered appearance through counsel, today when the matter is taken up for hearing, there is no representation for them.

9. Heard the learned counsel appearing for the appellant-Transport Corporation and perused the entire materials on record.

10. It is the claim of the respondents in the claim petition that at the time of accident the deceased was aged 35 years, working as Sales Manager at Romega Foam Company, Pathukannu and was earning a sum of Rs.15,000/- per month. To prove the avocation and income, the respondents examined one Gunasegaran, Accountant of Romega Foam Company, Pathukannu as P.W.3 and marked salary certificate of the deceased as Ex.A10. But, the respondents have not produced any accounts book or acquaintance roll maintained in the Company to prove the income of the deceased. The Tribunal considering the same, in the absence of any evidence with regard to income, fixed the notional income of the deceased at Rs.7,500/- per month. As per Ex.A3/postmortem certificate, the deceased was aged 40 years at the time of accident. The correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TN MAC 1 SC [Sarla Verma & Others vs. Delhi Transport Corporation & another] is '15', but the Tribunal erroneously applied multiplier '16'. The deceased was aged 40 years at the time of accident and the respondents are entitled to 40% enhancement towards future prospects as per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd. v. Pranay Sethi and others]. But the Tribunal failed to grant any enhancement towards future prospects and also has not awarded any amount towards loss of estate. Further, the amount awarded by the Tribunal towards loss of consortium to 1st respondent and funeral expenses are also meagre. In view of the failure on the part of the Tribunal for not granting 40% enhancement towards future prospects, the excessive amount fixed by the Tribunal as monthly income of the deceased, multiplier '16' applied instead of '15' and a sum of Rs.1,00,000/- awarded by the Tribunal towards loss of love and affection to respondents 2 & 3 are not interfered with.



10. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.10,99,000/- awarded by the Tribunal as compensation to the respondents, along with interest and costs is confirmed. The appellant-Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.330 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Puducherry. On such deposit, the 1st respondent is permitted to withdraw her respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor respondents 2 & 3 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 & 3 attain majority. On such deposit, the 1st respondent being the Mother of the minor respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 & 3. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

Krk

To

1.The learned Principal District Judge,
Motor Accidents Claims Tribunal,
Puducherry.

2.The Section Officer,
VR Section, High Court,
Madras.

+lcc to Mr.K.J.Sivakumar, Advocate SR.No.1730

C.M.A.No.2985 of 2014

NK(CO)
GN(09/03/2022)