



C.M.A.(MD)No.753 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 01.11.2022

Delivered On : 24.11.2022

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.753 of 2009

1.T.Ganesan

2.G.Revathi

.. Appellants /claimants

Vs.

The Tamil Nadu State Express Transport

Corporation Ltd.,

Rep. byt its Managing Director,

Chennai.

.. Respondent / Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.A.C.T.O.P.No. 952 of 2002, on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Thanjavur, dated 22.07.2003.

For Appellants

: Mr.D.Veerasekaran

For Respondent

: Mr.M.Prakash



C.M.A.(MD)No.753 of 2009

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been filed to enhance the award amount, made in M.A.C.T.O.P.No. 952 of 2002, on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Thanjavur, dated 22.07.2003. The appellants herein are the claimants and the respondent herein are the respondent in the original M.A.C.T.O.P. Petition.

2. A brief substance of the petition, in M.A.C.T.O.P.No. 952 of 2002, is as follows:-

On 15.09.2002, at about 3.00 pm., when the deceased -Rajamani was travelling in a motorcycle, bearing Registration No.TN-22-R-3234, keeping the extreme left side of the road, a Government Bus bearing Registration No.TN-07-N-9263 came in a rash and negligent manner from behind the motorcycle and hit the motorcycle. The deceased sustained injuries and he died succumbed to the injuries. The age of the deceased was 22 years, he was a degree holder and he was a partner in a Finance company and was earning Rs.4,000/- per month. The petitioners are his dependants and they claimed a sum of Rs.10,00,000/- as compensation.



C.M.A.(MD)No.753 of 2009

3. A Brief substance of the counter filed by the respondent, in M.A.C.T.O.P.No. 952 of 2002, is as follows:

The manner of accident is falsely narrated in the petition. The bus driver drove the vehicle in a slow and cautious manner. It was the deceased, who tried to overtake the bus and at that time another vehicle came from the opposite direction, to avoid hitting against the opposite vehicle, the deceased turned the vehicle and hit against the bus. The deceased was rash and negligent and he invited the accident. The bus driver was not responsible for the accident. Road work was going on in the place of accident, they were digging a pit measuring 1 ½ - 2 ½ feet in depth along the road and that there was no possibility for the bus to be rash or negligent. The age, income of the deceased are to be proved. The claim is excessive.

4. 2 witnesses were examined and 7 documents were marked, on the side of the claimants. 1 witness was examined and no document was marked, on the side of the respondent. After considering both sides, the Tribunal awarded a sum of Rs.50,000/- as compensation.

5. Against the order, the claimants / appellants have filed this appeal on the following grounds:-



C.M.A.(MD)No.753 of 2009

The Tribunal failed to consider the documents in the proper perspective.

The age of the deceased was only 22 years and he was the only earning member in the family. The deceased was running a finance company and was earning Rs.4,000/- per month. The Tribunal failed to consider that the negligence was on the part of the driver of the bus. The Tribunal failed to consider Ex.P1 to Ex.P7.

6. On the side of the appellant, it is stated that in the F.I.R and rough sketch, it is mentioned that the accident has happened only due to the rash and negligent driving of the bus driver. In the Post mortem report, it was mentioned that there is a tyre mark on the body of the deceased. Post mortem report was marked as Ex.P2 and that the respondent has not chosen to examine any witness and that F.I.R is not a conclusive proof and that just because the deceased was not wearing helmet, the Tribunal has awarded only Rs.50,000/- for no fault liability, which is wrong.

7. On the side of the respondent, it is stated that it was the motorcyclist that overtook the bus, even in the claim petition, it was admitted that the motorcyclist was riding before the bus and that the motor vehicle inspection report of the two wheeler was not marked.



C.M.A.(MD)No.753 of 2009

8. On the basis of the F.I.R-Ex.P1, the Tribunal has come to the conclusion that the accident has taken place while the deceased tried to overtake the bus. F.I.R was marked as Ex.P1. From the evidence of Ex.P1, it is clear that the complaint was lodged by the bus driver. The bus driver was examined as R.W.1. The evidence of R.W.1 and the complaint lodged by R.W.1, cannot be given more weightage. There is possibility for R.W.1 to give false information to safe guard his own interest. In the post mortem report-Ex.P2, it is clearly stated that there was tyre mark on the body of the deceased. Admittedly, the bus hit the motorcycle from behind. There was no scratches on the right side portion of the bus. The theory that the deceased tried to overtake the bus is not sustainable, as there is no scratches on the right side portion of the bus. Hence, it is decided that the accident has happened only due to the rash and negligent driving of the bus driver.

9. On the side of the appellants, it is stated that the deceased was 22 years old and he was a partner in a finance company and that the deceased was earning Rs.4,000/- per month, at the time of accident. P.W.2 has deposed that he is one of the partner in the said finance company. Ex.P7 was the partnership deed.



C.M.A.(MD)No.753 of 2009

10. Considering the educational qualification of the deceased and considering the fact that the deceased was a partner in a finance company, it is decided that the deceased might have earned a sum of Rs.4,000/- per month. After deducting 50% towards his own expenses, the deceased might have contributed Rs. 2,000/- for his family. The age of the deceased was 22 years and multiplier '18' is applicable. Hence, it is decided that the claimants are entitled to Rs.4,32,000/- (Rs. 2,000/- X 12 X 18 = Rs.4,32,000/-) towards loss of income.

11. No other amount was claimed by the claimants in the petition. Hence, it is decided that the appellants - claimants are entitled to Rs.4,32,000/- as compensation.

12. A verification of the records reveals that the Tribunal fixed the rate of interest at 9% pa., which is excessive and the rate of interest is hereby reduced to 7.5% p.a..

13. This Appeal is partly allowed. The compensation is enhanced from Rs.50,000/- to Rs.4,32,000/-.



C.M.A.(MD)No.753 of 2009

(i) The claimants / appellants are entitled to Rs.4,32,000/- as compensation.

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(ii) The respondent herein - Transport Corporation, is directed to deposit the entire compensation of Rs.4,32,000/- (less the amount if any already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the Transport Corporation, the appellants / claimants are permitted to withdraw the award amount equally (ie.Rs.2,16,000/- each) along with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The Claimants are not entitled for interest for the default period, if there is any default.
No costs.

24.11.2022

Index : Yes/No

Internet : Yes/No

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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.



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C.M.A.(MD)No.753 of 2009

R. THARANI, J.

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To

- 1.The Principal District Judge
Motor Accident Claims Tribunal,
Thanjavur.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.753 of 2009

24.11.2022