



C.M.A(MD)No.1962 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.11.2022

Pronounced on : 07.12.2022

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

C.M.A(MD)No.1962 of 2013

M/s.Tamil Nadu State Transport
Corporation Limited,
Periyamilaguparai,
Trichy – 620 001.

...Appellant /Respondent

Vs

1.N.Samboornam

2.Shanmughanathan

3.Akilandeswari

.. Respondents 1 to 3 /
Petitioners 1 to 3

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 09.03.2012, passed in MCOP No.696 of 2007 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Tiruchirapalli.



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For Appellant : Mr.D.Sivaraman

For Respondents : Mr.N.Sudhagar Nagaraj

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in MCOP No.696 of 2007 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Tiruchirapalli. The appellant herein is the respondent, respondents herein are the petitioners 1 to 3 in the claim petition.

2.Brief substance of the claim petition is as follows:

On 30.10.2006, when the deceased Nagarajan was walking along the left side of the mud road near Nochiyam Village along the Trichy- Salem main road, a bus bearing registration number TN 45 N 1318, came in a rash and negligent manner and dashed against the petitioner from behind. He succumbed to the injuries. The deceased was working as a mechanic in the Tamil Nadu Water and Drainage Board, Musiri and was earning Rs.8,650/- per month. The petitioners are his dependants and they claim a sum of Rs.12,00,000/- as compensation.



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3. Brief substance of the counter filed by the respondent in the claim petition, is as follows:

The date and time of accident are all denied. The age, profession and income of the deceased are denied. The manner of accident is to be proved. It was the deceased who tried to cross the road, without observing the traffic has invited the accident.

4. Three witnesses were examined and seven documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent. One Court document was marked as Ex.C1. The Tribunal has awarded a sum of Rs.15,79,520/- as compensation.

5. Against the award, the appellant /respondent filed this appeal on the following grounds:

The Tribunal failed to note that the accident has occurred, only due to the negligence of the deceased and not due to the negligence of the driver of the bus. The delay in filing the First Information Report was not explained by the claimants. The Tribunal is wrong in fixing the income of the deceased as Rs.24,000/- per month without any oral or documentary evidence to that effect. As per Ex.C1- the salary slip of the deceased, the monthly income of



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the deceased is only Rs.8,650/-. The Tribunal is wrong in fixing Rs.12,000/- as post retirement income. The Tribunal is wrong in granting Rs.45,000/- towards loss of love and affection, Rs.15,000/- towards loss of consortium, Rs.69,520/- towards medical expenses. The award is excessive.

6.On the side of the appellant, it is stated that the Tribunal failed to consider that the negligence is only on the part of the deceased who crossed the road.

7.A perusal of the records reveals that Ex.P1- First Information Report was lodged against the bus driver. No witness was examined on the side of the respondent. No document was filed on the side of the respondent to disprove the case of the claimants. In the above circumstances, it is decided that the accident has happened only due to the rash and negligent driving of the bus driver and that the appellant is liable to pay compensation.

8.On the side of the appellant it is stated that split multiplier ought to have been adopted, and that the age of the deceased is 54 years and the loss of income ought to have been calculated as full pay for four years and half pay



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for the remaining period. Now the law is well settled. The pay on the date of death has to be taken into account. There is no necessity to follow split multiplier method. Hence it is decided that The contention of the appellant is not sustainable.

9. On the side of the appellant it is stated that the Tribunal has fixed the monthly income as Rs.24,000/- on the basis of an assumption that there was a possibility for the salary to increase to Rs.24,000/- in Sixth Pay Commission, which is wrong. The deceased worked as a mechanic in the TWAD Board, earning a salary of Rs.8,650/- per month. Hence the last pay is taken as his income.

10. There are three dependants. After deducting 1/3 for his own expenses, the deceased might have contributed Rs.5,766/- ($8650 - 2883[1/3 \text{ of } 8650]$) to his family members. The age of the deceased at the time of accident is 54 years and hence multiplier 11 is applicable. By adding 10% towards future prospects Rs.6342/- ($5766 + 576 [10/100 \times 5766]$), and by applying multiplier 11, the loss of income is calculated as $6342 \times 11 \times 12 = \text{Rs. } 8,37,144/-$.



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11.The Tribunal has awarded Rs.45,000/- towards loss of love and affection, Rs.15,000/- towards loss of consortium, Rs.5,000/- towards transport expenses, Rs.5,000/- towards funeral expenses, Rs.69,520/- for medical expenses which are all reasonable.

The compensation is calculated as follows:

Loss of income	- Rs. 8,37,144/-
Loss of love and affection	- Rs. 45,000/-
Loss of consortium	- Rs. 15,000/-
Transport expenses	- Rs. 5,000/-
Funeral expenses	- Rs. 5,000/-
Medical expenses	- Rs. 69,520/-

Total	-Rs. 9,76,664/-

12.Accordingly, this Civil Miscellaneous Appeal is partly allowed.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.15,79,520/- to **Rs.9,76,664/- (Rupees Nine Lakhs Seventy Six Thousand Six Hundred and Sixty Four only)** which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant / transport corporation is directed to deposit the entire compensation of Rs.9,76,664/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of



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deposit and proportionate costs to the credit of MCOP No.696 of 2007 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Tiruchirapalli, 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 appellant / transport corporation, the respondents herein/ claimants are permitted to withdraw the entire award amount of Rs.9,76,664/- with proportionate interest and cost.

07.12.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal,
II Additional Sub Court, Tiruchirapalli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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