



C.M.A.(MD)No.496 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.11.2022

Pronounced on : 02.12.2022

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.496 of 2021

and

C.M.P.(MD)Nos.4356 of 2021 & 9999 of 2022

The Managing Director,
Tamil Nadu State Express Transport Corporation,
Pallavan Salai,
Chennai-600 001.

...Appellant/Respondent

Vs.

1. Lakshmi
2. Dhanagopal
3. Maheswari
4. Jothi

...Respondents/Claimants

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the impugned award passed in M.C.O.P.No.220 of 2018, on the file of the Motor Accident Claims Tribunal (Sub Court), Kuzhithalai dated 05.03.2020.



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For Appellant : Mr.P.M.Vishnuvarthanan
For Respondents : Mr.N.Sudhagar Nagaraj

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.220 of 2018 dated 05.03.2020 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Kuzhithalai.

2. The appellant/State Transport Corporation, who was made liable to pay compensation of Rs.15,62,500/- with interest at 7.5% per annum and costs to the respondents/claimants for the death of one Palaniyandi @ Chinnaiya, who died consequent to an accident occurred on 04.04.2010, challenged the liability mulcted on it and the quantum of compensation awarded at, by the Tribunal.

3. Admittedly, the first respondent/first claimant is the wife, the second respondent/second claimant is the son and the respondents 3 and 4/claimants 3 and 4 are the daughters of the deceased Palaniyandi @ Chinnaiya.

4. The case of the respondents/claimants is that on 04.04.2010 at about 11.30 p.m., on Trichy – Maduari NH Main Road and at the place near Kalluppatti Raja Valganizing Shop, while the deceased Palaniyandi @



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Chinnaiya was walking from South to North on the extreme left side of the mud road, the Government bus, bearing Registration No.TN-01-N-6937, which came in the same direction in a rash and negligent manner and dashed behind the pedestrian Palaniyandi @ Chinnaiya and as a result of which, the said Palaniyandi @ Chinnaiya had sustained multiple grievous injuries all over his body and died on the spot itself and that the accident was occurred only due to the rash and negligent driving of the bus driver and hence, a case was registered against the bus driver in Crime No.45 of 2010 for the offence under Section 304(A) of IPC on the file of Thuvrankurichi Police Station.

5. It is the further case of the respondents/claimants that the deceased was hale and healthy and was aged 40 years at the time of accident and that the deceased was doing Wood Cutter work in M/s.Amman Timber Depo at Manapparai and was earning Rs.20,000/- per month.

6. The defence of the appellant/State Transport Corporation is that on 04.04.2010, the bus bearing Registration No.TN-01-N-6937 started its trip from Marthandam to Chennai at about 23.00 hours, when the bus was proceeding in Madurai to Trichy National Highway Road, while nearing Kalluppatti Village, one pedestrian suddenly crossed the road from left to right negligently without



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observing traffic rules, that the bus driver, after noticing the pedestrian, had applied sudden brake and stopped the bus to avert the accident, that even before the bus was stopped, the pedestrian ran fast and came in contact with the bus and dashed himself in the appellant's bus, that the accident was occurred only due to the negligence and carelessness on the part of of the pedestrian and that the bus driver was not at fault.

7. During trial, the respondents/claimants have examined the first respondent/first claimant as P.W.1 and one Perumal alleged to be the occurrence witness as P.W.2 and exhibited 5 documents as Ex.P.1 to Ex.P.5. The appellant/State Transport Corporation has examined its conductor as R.W.1 and adduced no documentary evidence.

8. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award dated 05.03.2020 holding that the bus driver was responsible for the accident, directed the appellant/State Transport Corporation to pay compensation of Rs.15,62,500/- with interest at 7.5% per annum and costs. Aggrieved by the said award, the appellant/State Transport Corporation has come forward with the present appeal.



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9. The points that arise for consideration are :

(i) Whether the Tribunal erred in rendering a finding that the rash and negligent driving of the bus driver was responsible for the accident, despite showing that the deceased had violated the traffic rules and suddenly tried to cross road without noticing the bus and voluntarily invited the accident?

(ii) Whether the Tribunal erred in fixing the monthly income at Rs.7,500/- in the absence of any evidence to prove the avocation and income of the deceased?

(iii) Whether the quantum of compensation awarded at by the Tribunal is just and proper and is in accordance with law?

Point Nos.(i), (ii) and (iii) :

10. The respondents/claimants have examined P.W.2 to prove the manner of the accident and P.W.2 would reiterate the version of the contentions raised in the claim petition regarding the manner of the accident. In cross-examination, he would say that the accident was occurred in Trichy – Madurai Highway, that the accident was occurred at 11.00 clock, that he was in Raja Puncher Shop at the time of accident, that he used to chat in that place during night time and that he has not deposed about the accident in any other Court.



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11. As already pointed out, the State Transport Corporation has chosen to examine its conductor Vijaya Kumar as R.W.1 and he would reiterate the contentions raised in their counter statement. In cross-examination, R.W.1 would say that the accident was occurred at a distance from 2 feet from the edge of the road and that since some other vehicle was proceeding, the bus driver was not able to turn the vehicle towards right side.

12. Admittedly, FIR was registered against the bus driver and the jurisdictional police, after completing the investigation, has laid the charge sheet under Ex.P.5 against the bus driver.

13. Though P.W.2, occurrence witness was cross-examined, nothing was elicited by the appellant/State Transport Corporation side in their favour and the evidence of P.W.2 regarding the manner of the accident remained unshaken. Though the appellant/State Transport Corporation has examined its conductor, they have not chosen to examine the bus driver and they have not offered any reason or explanation for non-examining him.

14. Considering the evidence of P.W.2 and R.W.1 and other materials available, the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the bus driver, cannot be found fault with.



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15. Now turning to the compensation, as already pointed out, according to the respondents/claimants, the deceased was working as a Wood Cutter and was earning Rs.20,000/- per month, but the respondents/claimants have not produced any iota of evidence to substantiate the same. The Tribunal, by relying on Ex.P.4-postmortem certificate, has rightly fixed the age of the deceased at 40 years. Considering the age of the deceased and nature of the work and the date of accident, fixation of monthly income at Rs.7,500/- cannot said to be excessive. The Tribunal, considering the number of dependants, has rightly deducted 25% of the income towards personnel and living expenses of the deceased. The Tribunal, as per the decision of the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 (2) TN MAC 609**, has added 40% of the income towards future prospects. As per the legal dictum laid down by the Hon'ble Supreme Court in **Sarla Verma's** case, the Tribunal has rightly adopted the Multiplier of 15 and arrived at Rs.14,17,500/- towards compensation for the loss of income. The Tribunal has awarded Rs.50,000/- to the first respondent/first claimant for loss of spousal consortium and Rs.20,000/- each for all the respondents/claimants for loss of love and affection.



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16. Our Hon'ble Supreme Court in ***National Insurance Company Ltd., vs. Pranay Sethi and others*** reported in ***2017 ACJ 2700*** has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, Hon'ble Supreme Court in ***Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others*** reported in ***(2018) 18 SCC 130***, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. Honourable Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, Hon'ble Apex Court in ***The New India Assurance Company Ltd. Vs. Smt.Somwati and others***, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in ***Pranay Sethi's*** case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

17. Considering the fact that the respondents/claimants being the wife, son and daughters of the deceased, they are entitled to get Rs.40,000/- each



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towards loss of spousal consortium and loss of parental consortium. Moreover, the respondents/claimants are entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- towards loss of estate under the conventional heads.

18. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Surekha and others vs. Santosh and others (C.A.No.476 of 2020 dated 21.01.2020)*** wherein, the Hon'ble Apex Court has held as follows:-

“2. This appeal takes exception to the judgment and order dated 04.01.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No.2564 of 2016, whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs.49,85,376/- (Forty-Nine Lakh Eighty-Five Thousand Three Hundred Seventy-Six Only), however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.

3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants.”



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19. Considering the above, the respondents/claimants are entitled to get Rs.16,07,500/- and the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss of income	14,17,500	14,17,500	Confirmed
2.	Spousal consortium (first respondent)	50,000	40,000	Reduced
3.	Loss of love and affection (respondents)	80,000	Nil	Nil
4.	Funeral expenses	10,000	15,000	Enhanced
5.	Transportation	5,000	Nil	Nil
6.	Parental consortium (respondents 2 to 4)	Nil	1,20,000 (Rs.40,000/- x 3)	Granted
7.	Loss of estate	Nil	15,000	Granted
	Total	15,62,500	16,07,500	Enhanced by Rs.45,000/-

20. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.15,62,500/- is hereby enhanced to **Rs.16,07,500/- (Rupees Sixteen Lakhs Seven Thousand and Five Hundred**



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only) together with interest at 7.5% per annum and costs and out of the said compensation amount, the first respondent/first claimant is entitled to get **Rs.10,50,000/- (Rupees Ten Lakhs and Fifty Thousand only)**, the respondents 2 and 3/claimants 2 and 3 are entitled to get **Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only)** each and the fourth respondent/fourth claimant is entitled to get **Rs.2,57,500/- (Rupees Two Lakhs Fifty Seven Thousand and Five Hundred only)**. The appellant/Transport Corporation is directed to deposit the modified award amount with accrued interests and costs to the credit of M.C.O.P.No.220 of 2018 on the file of Motor Accident Claims Tribunal / Subordinate Court, Kuzhithalai, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondents/claimants are permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

02.12.2022

Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

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To

1. The Motor Accident Claims Tribunal / Subordinate Court,
Kuzhithalai.

Pre-Delivery Order made in
C.M.A.(MD)No.496 of 2021
and
C.M.P.(MD)Nos.4356 of 2021 & 9999 of 2022

02.12.2022