



C.M.A(MD)No.153 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 23.06.2022

Pronounced on : 15.07.2022

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

C.M.A(MD)No.153 of 2019

The Managing Director,
TNSTC Madurai Limited,
Ellis Nagar Branch,
Madurai, Tamil Nadu.

... Appellant

Vs

1.O.Mathana Prakash
2.Minor M.Kanishka

(R2 is represented by her father/R1,
as natural guardian)

3.A.Venkateswaram

... Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the award and decree made in M.C.O.P.No.365 of 2014 dated 13.02.2017 on the file of the Motor Accident Claims Tribunal / Special District Court, Madurai.



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For Appellants : Mr.P.Prabhakaran

For R1 and R2 : Mr.S.Premkumar

JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.365 of 2014 dated 13.02.2017 on the file of the Motor Accident Claims Tribunal / Special District Court, Madurai. The appellant herein is the second respondent in the claim petition. The first and second respondents are the claimants. The third respondent is the first respondent in the claim petition.

2.Brief substance of the petition filed by the claimant is as follows:

On 02.02.2014, when the deceased was travelling in a two wheeler bearing registration number TN 59 AH 6724, as a pillion rider along with a one year old child, along the Tirumangalam to Madurai road, a Government bus driven by its driver in a rash and negligent manner, came from the opposite direction, over taking an auto, thereby came to the right side of the road, dashed against the two wheeler and the deceased died at that spot. The deceased was doing embroidery work and was earning Rs.8,000/- at the time



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of accident. The claimants are the dependents of the deceased and they claimed Rs.10 Lakhs as compensation.

3.Brief substance of the counter filed by the second respondent is as follows:

The accident happened only due to the negligence of the rider of the two wheeler. The bus driver is not responsible for the accident. The age, profession and income of the deceased are all denied. Two witnesses were examined and eleven documents were marked on the side of the petitioner. One witness was examined on the side of the respondent. No document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.9,89,000/- as compensation.

4.Against the award, the appellant preferred this appeal on the following grounds:

The Tribunal has erred in deciding that the driver of the appellant was solely responsible for the accident. The entire negligence is on the rider of the two wheeler. It was the first respondent who drove the two wheeler in a rash and negligent manner along with the deceased as a pillion rider carrying



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a child and he lost his balance and hence the deceased person fell on the road and sustained injuries. The award amount is excessive. The claim was Rs. 10 Lakhs. There is no proof for the monthly income of the deceased. The Tribunal awarded Rs.8,64,000/- towards loss of income and awarded Rs.50,000/- towards loss of love and affair, Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, which are all excessive.

5.On the side of the appellant, it is stated that the claimants are the husband and the daughter of the deceased. The husband drove the two wheeler. The deceased was the pillion rider. Due to a pit in the road, the first respondent lost the balance of the vehicle and hence the pillion rider fell down. The monthly income fixed by the Tribunal is excessive.

6.On the side of the respondents it is stated that when the bus tried to over taken an auto, the bus came to the right side of the road and hit against the two wheeler. Only notional income was fixed by the Tribunal. The deceased was aged about 24 years and the multiplier applied by the Tribunal is reasonable. The 1 1/2 years old child was left motherless and pray the award to be confirmed.



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7.The accident took place in the year 2014. A copy of the First Information Report was marked as Ex.P1. Copies of the Motor Vehicle Inspection reports were marked as Ex.P4 and P5. Rough sketch was marked as Ex.P6. Copy of the charge sheet was marked as Ex.P7. On the basis of the evidence of P.W.1 and 2 and based on Ex.P1 to Ex.P4, the trial Court has fixed the liability on the bus driver. A perusal of the records reveals that the decision of the Tribunal is reasonable.

8.The deceased was technically qualified. A copy of the technical certificate was marked as Ex.P10. The Tribunal has awarded a notional income of Rs.6000/- per month. For a technically qualified person, fixing a monthly income as Rs.6,000/- is very reasonable. The age of the deceased at the time of accident was 24. The age was fixed on the basis of Ex.P9, Voter ID. In the above circumstances, multiplier 18 applied by the Tribunal is reasonable.

9.For loss of love and affection and loss of consortium, the Tribunal has awarded Rs.50,000/- each. As per the recent decision of the the Hon'ble Supreme Court reported in **2018(4) RCR Civil 837**, in a case of **Magma**



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General Insurance Co. Ltd., Vs Nanu Ram Alias Chuhru Ram, it is

decided that both the claimants are entitled for Rs.40,000/- each towards loss of love and affection and loss of consortium. For funeral expenses, the claimants are entitled for Rs.15,000/-. In total, the claimants are entitled to Rs.9,69,000/-. (Rupees Nine Lakhs and Sixty Nine Thousand only).

	Amount awarded by the Tribunal	Modified Award Amount in this CMA
Loss of Income	Rs.8,64,000/-	Rs.8,64,000/-
Loss of Love and Affection (2nd respondent)	Rs. 50,000/-	Rs. 40,000/-
Loss of Consortium (1st respondent)	Rs. 50,000/-	Rs. 40,000/-
For Funeral and transport expenses	Rs. 25,000/-	Rs. 15,000/-
Total	Rs.9,89,000/-	Rs. 9,59,000/-

10. The Civil Miscellaneous Appeal is allowed in part. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.9,89,000/- to Rs.9,59,000/- (Rupees Nine Lakhs Fifty Nine Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The Appellant Insurance company, is directed to deposit the entire compensation of Rs.9,59,000/- together with interest at the rate of 7.5% per



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annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.365 of 2014 dated 13.02.2017 on the file of the Motor Accident Claims Tribunal / Special District Court, Madurai, within a period of eight weeks from the date of receipt of a copy of this order (less any amount already deposited).

(iii) On such deposit being made by the appellant Insurance Company Limited, the first respondent is entitled to Rs.5,59,000/- and he is permitted to withdraw the entire award amount of Rs.5,59,000/-, along with proportionate interest and cost.

(iv) The share of the second respondent (ie)Rs.4,00,000/-(Rupees Four Lakhs only) with proportionate interest, is ordered to be deposited in any one of the nationalized bank until she attains majority and the first respondent is permitted to withdraw the interest directly from the bank, once in three months in order to maintain his minor daughter. Consequently, connected miscellaneous petition stands closed.

15 .07.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal / Special District Court, Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

**Pre-Delivery Judgment made in
C.M.A(MD)No.153 of 2019**

15.07.2022