



CMA(MD) No.723 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 24.08.2022

Delivered On : 21.09.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.723 of 2022

Tamil Nadu State Transport Corporation,

through its Managing Director,

(Kumbakonam Division),

Manakeri Road, Karaikudi Taluk,

Sivagangai District.

.... Appellant / Respondent

Vs.

1.Valliyammal

2.Yogaraj

3.Amsavalli

4.Nagarajan

5.Meenal

... Respondents / Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No. 138 of 2020, dated 27.09.2021, on the file of Motor Accident Claims Tribunal, Fast Track Mahila Court, Sivagangai.

For Appellant : Mr.P.Prabhakaran

For Respondents : Mr.N.Madhava Govindan



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the award, made in M.C.O.P.No.138 of 2020, dated 27.09.2021, on the file of Motor Accident Claims Tribunal, Fast Track Mahila Court, Sivagangai. The appellant herein is the respondent and the respondents herein are the claimants in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No.138 of 2020, is as follows:

On 10.01.2020, at about 12.40 pm., when the deceased-Raman was walking near S.S.Kottai bus stand along the Melur to Thiruppathur road, a bus bearing Registration No.TN-63-N-1676 was driven by its driver in a rash and negligent manner, dashed against the deceased and he sustained injuries. He was immediately taken to Thiruppathur Government Hospital. After taking first aid, he was admitted in Madurai Rajaji Hospital and he died succumbed to the injuries. The deceased was an Ex-army man, receiving a sum of Rs.32,100/- as pension. The petitioners are his dependents and they claimed a sum of Rs.25,00,000/- as compensation.



3. Brief substance of the counter filed by the respondent, in

M.C.O.P.No.138 of 2020, is as follows:

The nature of accident is wrongly stated in the petition. The cause of death, details of the age, occupation, income are to be proved. The claim is excessive.

4. On the side of the claimants, 2 witnesses were examined and 9 documents were marked. On the side of the respondents, 1 witness was examined and no document was marked. After considering both sides, the Tribunal awarded a sum of Rs.15,25,240/- as compensation.

6. Against the order, the appellant /Transport Corporation has filed this appeal on the following grounds:-

The driver of the appellant was not responsible for the accident. The entire negligence ought to have been fixed on the deceased, who try to cross the road, without observing the upcoming bus. It was the deceased, who dashed against front side corner pumper of the bus and he invited the accident. The total compensation awarded by the Tribunal is excessive. The Tribunal is wrong in fixing the monthly income as Rs. 26,872/- and the Tribunal is wrong in deducting 1/4th of the income of the



deceased towards own expenses, the Tribunal ought to have deducted 1/3rd of the income. The Tribunal is wrong in awarding Rs.40,000/- towards loss of consortium, Rs.50,000/- towards loss of love and affection and Rs.40,000/- towards loss of love and affection for the other claimants.

7. On the side of the appellant, it is stated that all the claimants are more than 50 years old. The deceased was 82 years. Except the wife, the others are not the dependents of the deceased. It was the deceased, who was responsible for the accident. He negligently crossed the road, without observing the traffic.

8. On the side of the respondents / claimants, it is stated that it was the bus driver, who was rash and negligent. F.I.R and charge sheet are against the driver of the bus. On the basis of the evidence of P.W.2 and on the basis of Ex.P1 to P6, the Tribunal has fixed the liability on the appellant, which is reasonable.

9. On the side of the appellant, it is stated that there is a difference in the income of the deceased. Each month income is different. The



Tribunal is wrong in fixing the monthly income as Rs.26,872/-. The wife will be getting 50% of the above amount as family pension and hence, only 50% of the pension ought to have been taken into consideration as the loss of income.

10. On the side of the respondents / claimants, it is stated that the last pay drawn by the deceased was Rs.32,100/-. Ex.P8 was marked to prove the income and the income ought to have been increased.

11. The Hon'ble Supreme Court reported in **2018-SCC-online-1924 [Sebastiani Lakra V. National Insurance Company Limited]**, and in **2007-8-SCC-31 [Lel Devi and others V. Himachal Road Transport]**, has decided that there is no necessity to deduct the family pension in calculating the monthly income of the deceased. Hence, the loss of income is fixed as Rs.26,872/- per month.

12. On the side of the appellant, it is stated that except the wife, the others are not the dependents. The male children are working in Andaman and they are residing there and that the female children are married and they are residing with their husband and they are not the



dependents of the deceased and that the Tribunal is wrong in deducting 1/4th of the income. Considering the number of the dependents, the Tribunal ought to have deducted only 1/3rd of the income.

13. It is true that the claimants 2 and 4 are residing in Andaman. It is true that the claimants 3 and 5 are married. But, in our culture, as long as the parents are alive, they used to take care of their children, irrespective of their age. Hence, it is decided that the deduction of 1/4th of the income towards the own expense of the deceased is reasonable.

14. On the side of the appellant, it is stated that the Tribunal has awarded Rs.2,50,000/- towards loss of love and affection. The Tribunal has awarded Rs.40,000/- towards loss of consortium for the first claimant. The Tribunal awarded Rs.3,000/- towards loss of estate. It is stated that there is no necessity to award loss of consortium as well as the loss of love and affection for the first claimant and that there is no necessity to award Rs.50,000/- for each of the claimants 2 to 5 towards loss of love and affection.



15. The accident took place in the year 2020. As per the dictum of the Hon'ble Supreme Court reported in **2018-2-TNMAC-452 (SC)** (*Magma General Insurance Co.Ltd., V. Nanu Ram alias Chuhru Ram and others*), the claimants are entitled to Rs.40,000/- each towards loss of consortium. The Tribunal is wrong in awarding Rs.50,000/- towards loss of love and affection for each of the claimants. In view of the same, it is decided that the claimants 1 to 5 are entitled to Rs.40,000/- each towards loss of love and affection and consortium.

16. As per the judgment of the Hon'ble Supreme Court reported in **2009-2-TNMAC-1-SC (Smt.Sarla Verma and others V.Delhi Transport Corporation)**, for a death of a person aged about 70 multiplier '5' to be adopted. In paragraph No.21 of the above judgment, it is stated as follows:-

“21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40



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years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

17. Hence, it is decided that the claimants are entitled to loss of income by applying multiplier '1'. Hence, the loss of income is calculated as Rs.2,41,848/- (Rs.20,154/- X 1 X 12 = Rs.2,41,848/-). The claimants are entitled to Rs.15,000/- towards loss of estate and Rs.5,000/- towards transport expenses.

18. The total compensation is calculated as follows:-

Loss of income	:	Rs..2,41,848/-
Loss of estate	:	Rs. 15,000/-
Transport expenses	:	Rs. 5,000/-
Loss of love and affection	:	Rs.2,00,000/-
Total compensation	:	 Rs. 4,61,848/-

19. This Appeal is partly allowed. No costs.



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(i) The compensation is reduced from Rs,15,25,240/- to Rs. 4,61,848/-.

(ii) The claimants are entitled to Rs.4,61,848/- .

(iii) The appellant - Transport Corporation, is directed to deposit the entire compensation of Rs.4,61,848/- (Rupees Four Lakhs Sixty One Thousand Eight Hundred and Forty Eight only) (if not already deposited) together with proportionate 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 respondents / claimants are permitted to withdraw their share amount as apportioned by this Court with 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. Excess amount, if any, shall be refunded to the Transport Corporation.

21.09.2022

Index:Yes/No
Internet:Yes/No
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R.THARANI,J.

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To

1.The Motor Accident Claims Tribunal,
Fast Track Mahila Court,
Sivagangai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A(MD)No.723 of 2022

21.09.2022