



C.M.A.(MD)No.826 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.11.2022

Delivered On : 23.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.826 of 2019

and

Cros.Obj(MD)No.31 of 2022

C.M.A.(MD)No.826 of 2019

Tamil Nadu State Transport Corporation Limited,
through its General Manager,
Office at Ranithottam,
Nagercoil.

.. Appellant/ Respondent

Vs.

1.Rajeswari

(Minor R1 is declared as major and guardianship
of her mother /R2 is discharged, vide order,
dated 01.08.2022, in CMP(MD)Nos.6510
&6514 of 2022)

2.Vishalakshi

3.Minor.Sivabalan

(Minor R3 rep. through his mother and next
guardian R2 herein)

.. Respondents/Claimants



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree, made in M.C.O.P.No.164 of 2016, dated 13.11.2018, on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Tirunelveli.

For Appellant : Mr.P.Prabhakaran
For Respondents : Mr.T.Selvakumaran

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1.Rajeswari

2.Vishalakshi

3.Minor.Sivabalan

(Minor rep. through his mother and next
guardian R2herein -Vishalakshi)

.. Petitioners / Claimants

Vs.

Tamil Nadu State Transport Corporation Limited,
through its General Manager,
Office at Ranithottam,
Nagercoil.

.. Respondent/Respondent

Prayer: This Cross objection is filed under Order 41 Rule 22 of C.P.C., against the award, passed in M.C.O.P.No.164 of 2016, dated 13.11.2018, on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Tirunelveli.



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For Petitioners

: Mr.T.Selvakumaran

For Respondent

: Mr.P.Prabhakaran

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Transport corporation against the award passed in M.C.O.P.No.164 of 2016, dated 13.11.2018, on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Tirunelveli. The appellant herein is the respondent-Transport Corporation and the respondents herein are the claimants in the original M.C.O.P. Petition.

2. Cross Objection has been filed by the claimant to enhance the award amount in M.C.O.P.No.164 of 2016, dated 13.11.2018, on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Tirunelveli. The petitioners herein are the claimants and the respondent herein are the respondent in the original M.C.O.P. Petition.

3. A brief substance of the claim petition, in M.C.O.P.No.164 of 2016 , is as follows:



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On 01.02.2013, when the deceased-Paramasivam was riding an auto bearing Registration No.TN-74-R-3308 along the Kanyakumari -Nagercoil main road, near Ethangadu ice plant, a Government bus bearing Registration No.TN-74-N-1678 came from the opposite direction in a rash and negligent manner, dashed against the auto. The deceased died on the spot. The deceased was working as an auto driver and was earning Rs.15,000/- per month. The petitioners are his dependants and they claimed a sum of Rs.21,00,000/- as compensation.

4. A brief substance of the counter filed by the respondent, in M.C.O.P.No. 164 of 2016, is as follows:-

The manner of accident as narrated in the petition is wrong. The age, income and profession of the deceased are to be proved. The bus driver drove the vehicle in a slow and cautious manner, keeping the left side of the road. It was the auto driver, who came from the opposite direction, crossed the center line, came in the wrong side of the road and dashed against the bus. The Insurance company of the auto is a necessary party to the case. The driver of the vehicle was not having valid driving licence at the time of accident. The claim under various heads is excessive.



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5. 2 witnesses were examined and 3 documents were marked on the side of the petitioners. No witness was examined and no document was marked on the side of the respondents. The Tribunal after considering both sides, awarded a sum of Rs. 10,15,000/- as compensation.

6. Against the award, the appellant-Transport Corporation has preferred this Appeal, on the following grounds:-

The Tribunal failed to fix the entire negligence on the deceased, who came in a rash and negligent manner and dashed against the bus and he invited the accident. The Tribunal failed to consider that the driver of the bus was not responsible for the accident. The Tribunal is wrong in fixing the entire liability on the bus driver. The Tribunal fixed the monthly income of the deceased as Rs.6,000/-, which is very high. The Tribunal has added 25% towards future prospects, which is excessive. The Tribunal fixed the age of the deceased as 43 years, which is wrong. Deducting 1/4th income instead of 1/3rd of the income is wrong. The Tribunal awarded Rs.9,45,000/- towards loss of income, Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, which are all high.



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7. A brief substance of the cross objection filed by the claimant is as follows:-

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The date of accident is 01.02.2013. The Tribunal ought to have fixed the monthly income as Rs.12,000/-. The Tribunal ought to have awarded Rs.1,20,000/- towards loss of consortium, instead of Rs.40,000/-

8. On the side of the Transport Corporation, it is stated that the accident is a head on collision and at least 50% of the contributory negligence ought to have fixed against the auto driver. It is stated that the F.I.R is against the deceased, but, the Tribunal fixed the entire negligence on the bus driver, which is wrong. The claimant failed to file the copy of the rough sketch, observation mahazer and M.V.I report. Only based on the evidence of P.W.2, the Tribunal fixed the liability on the driver of the bus.

9. On the side of the claimants, it is stated that Ex.P1-F.I.R was registered against the deceased, but, F.I.R is not a conclusive proof. P.W.2 was examined as an eye witness, he has clearly deposed that it was the bus driver, who was rash and negligent. No witness was examined on the side of the respondent and no document was marked on the side of the Corporation, to disprove the case of the claimants. A Judgment of the Hon'ble Supreme Court reported in **2021-2-TNMAC-449(SC)** (*National Insurance Co. Ltd., V. Chamundeswari and others*) is cited, wherein, the



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Supreme Court has made an observation that "In absence of any rebuttal evidence by examining van driver, the High Court rightly concluded that the accident occurred only due to the negligence of the Van driver. In view of such evidence, no reason to give weightage to the contents of the F.I.R."

10. The Tribunal need not decide the responsibility on the basis of the criminal Court records. The Corporation failed to disprove the case of the claimants. The Corporation failed to examine any witness and failed to mark any document and hence, it is decided that the bus driver is responsible for the accident.

11. On the side of the appellant, it is stated that the Tribunal is wrong in fixing the monthly income as Rs.6,000/-, without any proof of income. On the side of the claimants, it is stated that the income fixed by the Tribunal is very low, the Tribunal ought to have fixed the income at least as Rs.12,000/- per month. A judgment of this Court, reported in 2015-2-TNMAC-171 (Mallika V. A.Babu) is cited, wherein, it is stated as follows:-

"The monthly income of Rs.7,000/- fixed by the Tribunal, in absence of proof of income is not proper and the High Court fixed Rs. 12,000/- p.m., following the Apex Court"

Considering the date of the accident, the notional income is fixed as Rs.7,500/- per month.



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12. On the side of the Transport Corporation, it is stated that the Tribunal has deducted only 1/4th of the income towards the own expenses of the deceased, which is wrong. The Tribunal ought to have deducted 1/3rd of the income towards the own expenses. Considering the number of claimants (3 numbers), it is decided that the Tribunal is wrong in deducting the 1/4th of the income towards the own expenses. Hence, it is decided that 1/3rd of the income ought to have been deducted towards the own expenses of the deceased. After deducting 1/3rd (Rs.2,500), the deceased might have contributed Rs.5,000/- (Rs.7,500/- - Rs.2,500/-) to his family members. After adding 25% towards future prospects, the monthly income is calculated as Rs.6,250/-. Considering the age of the deceased (43 years), multiplier'14' is applicable and the loss of income is calculated as Rs.10,50,000/- (Rs.6,250/- X 12 X 14).

13. On the side of the Transport Corporation, it is stated that the Tribunal has awarded Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium, which are all excessive. On the side of the claimants, it is stated that loss of consortium should be increased to Rs.1,20,000/-. Considering the date of accident and considering the dictum of the Hon'ble Supreme Court in **Pranay Sethi's case**, it is decided that the claimants are



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entitled to Rs.70,000/- towards conventional charges.

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14. The total compensation is calculated as follows:-

Loss of income	:	Rs. 10,50,000/-
Conventional charges	:	Rs. 70,000/-
Total compensation	:	Rs. 11,20,000/-

15. The first and third claimants, who are the children of the deceased, are entitled to a share of Rs.3,00,000/- each with proportionate interest and the second claimant, who is the wife of the deceased, is entitled to a share of Rs.5,20,000/- with proportionate interest and costs.

16. In the result, the **Appeal is dismissed and the cross objection is partly allowed.** No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.10,15,000/- to Rs.11,20,000/-.

(ii) The Transport Corporation, is directed to deposit the entire compensation of Rs.11,20,000/- (less amount if any already deposited) together with



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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 major claimants are directed to withdraw their share with proportionate interest and costs as apportioned by this Court. The Tribunal is directed to deposit the compensation amount of the minor claimant-Minor.Sivabalan in any one of the Nationalised Banks, in a Fixed Deposit scheme, till he attains majority. The mother and guardian of the minor claimant-Vishalakshi, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The Claimants are not entitled for interest for the default period, if there is any default.

23.12.2022

Index : Yes/No

Internet : Yes/No

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To
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- 1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tirunelveli.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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