



C.M.A(MD)No.795 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.07.2022

Pronounced on : 21.07.2022

CORAM

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

C.M.A(MD)No.795 of 2019

and

C.M.P(MD)No.10334 of 2019

M/s.Tamil Nadu State Transport Corporation Limited,
Represented by its Managing Director,
Office at Bye pass road,
Madurai.

... Appellant

Vs

1.Malliga

2.Kalaiselvi

3.Kalaivani

4.Punitha

5.Manikandan

6.K.S.Kandasamy

7.Viramakali

... Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to allow this appeal, setaside the award and decree made in M.C.O.P.No.70 of 2014 dated 07.07.2018 on the file of the Motor Accident Claims Tribunal / Special District Court, Madurai.



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For Appellants : Mr.P.Prabhakaran

For Respondents : No appearance

JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.70 of 2014 dated 07.07.2018 on the file of the Motor Accident Claims Tribunal / Special District Court, Madurai. The appellant herein is the respondent. The respondents herein are the claimants in the claim petition.

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

On 11.08.2013, at about 9.20 a.m., the deceased Muniyandi travelled as a pillion rider in a two wheeler bearing registration number TN 58 M 8532 which was driven by its driver in a slow and cautious manner along the left side of the Santhaipettai - Tirupparankundram Road, near Thavittusanthai bus stop. At that time, a bus bearing registration number TN 58 N 1279 was driven by its driver in a rash and negligent manner dashed against the two wheeler. The deceased sustained injury. He was taken to the Apollo hospital and was admitted as an inpatient from 11.08.2013 and he died on 25.08.2013. The deceased was working as a Superintendent in Ex-Servicemen Corporation



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Limited and was earning Rs.25,000/- per month. Claimants are his dependants and they pray a sum of Rs.25,00,000/- as compensation.

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

The bus was driven in a slow and cautious manner observing all the road Rules. The rider of the two wheeler tried to overtake the bus in a rash and negligent manner and dashed against the earth wire of an electricity post. On that effect, he dashed against the back side portion of the bus and he invited the accident. The rider of the two wheeler was not wearing helmet. The owner of the two wheeler and the insurance company are necessary parties. The age, income and profession of the deceased are to be proved.

4.Four (4) witnesses were examined and seven (7) documents were marked on the side of the petitioner. One (1) witness was examined and no document was marked on the side of the respondent. Five(5) documents were marked as witness documents. The Tribunal awarded a sum of Rs.20,37,328/- as compensation. After deducting 25% towards contributory negligence, the Tribunal has awarded Rs.15,27,996/- as compensation for the claimants.



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5. Against the order, the appellant has preferred this appeal on the following grounds:

The Tribunal failed to fix the entire negligence on the rider of the two wheeler and on the pillion rider who travelled without wearing helmet. The rider of the two wheeler was not having license and it was the rider of the two wheeler who tried to over take the bus and hit against the rear portion of the bus. The award amount is exorbitant. Fixing the monthly income of the deceased at Rs.16,200/- is excessive. The Tribunal awarded 15% future prospects which is unnecessary. The deduction should be 1/3. The Tribunal is wrong in deducting 1/5th of the income. Adopting multiplier 11 is wrong. Accordingly Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses, Rs.15,000/- towards transport expenses are all excessive.

6. On the side of the appellant, it is stated that the accident took place on 11.08.2013 and that the deceased Muniyandi was aged about 51 years. The Tribunal has fixed contributory negligence at 25% which is very low. The Tribunal calculated the monthly income under two various heads which is unnecessary. It is stated that the deceased was working as a Superintendent in the Ex-Servicemen Corporation Limited and was earning Rs.10,000/- as



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income and he was earning Rs.10,000/- as Ex-Serviceman pension. P.W.3 has deposed that the deceased was earning Rs.12,080/- as pension. Ex.P.5 is the pension certificate. Ex.A7 is the document to prove that the deceased was working in Army. The deceased was earning Rs.9,218/- as salary. The salary certificate was marked as Ex.P6. The first claimant who is the wife of the deceased was getting Rs.5,140/- as family pension. By calculating the balance and by including the salary received by the deceased from the Ex-servicemen Corporation, the Tribunal fixed the loss of income as Rs.16,200/- which is reasonable.

7.As per the decision of the Supreme Court of India in **National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601**, the Tribunal has added Rs.2,430/- towards future prospects and fixed the monthly income as Rs.18,630/- which is reasonable. The number of dependants are 7. Hence, the deduction of 1/5 salary towards his own expense is reasonable. The age of the deceased at the time of accident is 52 years. Multiplier 11 is applicable.



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8.In the above circumstances, the loss of income as calculated by the Tribunal is reasonable. Since the deceased was not wearing helmet, the Tribunal has fixed 25% contributory negligence which is reasonable. The deceased was only a pillion rider. From the evidence of P.W.2 and from the Ex.P.1, the Tribunal has fixed the liability on the bus driver which is reasonable. As per the above discussions, it is decided that the award of the Tribunal is reasonable and there is no reason sufficient enough to interfere with the order.

9.The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(i) The orders passed by the Tribunal is upheld.

(ii) The appellant / Transport Corporation is directed to deposit the compensation awarded by the Tribunal i.e., Rs.15,27,996/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost to the credit of MCOP.No.70 of 2014 on the file of the Motor Accident Claims Tribunal / Special District Court, Madurai, within a period of eight weeks from the date



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of receipt of a copy of this order.

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(iii) On such deposit being made, the respondents / major claimants are at liberty to withdraw their respective share as apportioned by the Tribunal, after following the due process of law, less any amount already received by them. The claimants are not entitled for interest for the default period, if there is any.

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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.

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**Pre - Delivery Judgment made in
C.M.A(MD)No.795 of 2019**

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