



C.M.A(MD)No.438 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.10.2022

Pronounced on : 08.11.2022

CORAM

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

C.M.A(MD)No.438 of 2016

The General Manager
Tamil Nadu State Transport Corporation,
Maruthupathi,
Managiri Road,
Karaikudi,
Sivagangai District.

...Appellant / Respondent

Vs

1.Jeyarani
2.Balamani
3.Raj Mohan
4.Ramadoss
5.Rakkammal

... Respondents / Petitioners

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to allow this appeal, set aside the judgment and decree dated 08.07.2014 passed in M.C.O.P.No.141 of 2012 on the file of the Motor Accidents Claim Tribunal / Principal District Court, Ramanathapuram.



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For Appellant : Mr.P.Prabhakaran
For R1 to R4 : Mr.Ramesh

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.141 of 2012 on the file of the Motor Accident Claims Tribunal / Principal District Court, Ramanathapuram. The appellant herein is the respondent, respondents herein are the petitioners in the claim petition.

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

On 18.04.2012, when the deceased Thangaraj was riding a motorcycle bearing registration number TN 65 X 5716 along the extreme left side of Keelakottai to Ariyakudi-NH 49 road in a slow and cautious manner, a bus bearing registration number TN 64 N 1417 came in a rash and negligent manner dashed against the deceased. He died on the spot. The deceased was working as a driver in the City Bus Service Department at Kuwait and he was earning 221 Kuwait Dhinar, which is equivalent to Rs.36,000/-. The petitioners are his dependents and they claim a sum of Rs.25,00,000/- as compensation.



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

It was the deceased who was riding the motorcycle in a rash and negligent manner and dashed on the side portion of the bus. The respondent driver is not responsible for the accident and the respondent is not liable to pay compensation to the petitioner. The age and income, profession of the deceased, are all denied.

4. Two(2) witnesses were examined and twelve(12) 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. The Tribunal awarded a sum of Rs.20,00,000/- as compensation.

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

The Tribunal is wrong in holding that the driver of the appellant was solely responsible in the accident. The Tribunal failed to note that it was the deceased who was rash and negligent and dashed on the side portion of the bus and that he invited the accident. The Tribunal fixed the monthly income



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as Rs.37,800/- which is very high. Respondents 3 and 4 are the major sons of the deceased and they are not his dependents. The Tribunal ought to have deducted $\frac{1}{3}$ of the income instead of $\frac{1}{4}$. The age of the deceased is 46 years and the Tribunal ought to have adopted multiplier 13. But the Tribunal is wrong in applying multiplier 14. The Tribunal has awarded Rs.25,000/- towards loss of consortium, Rs.10,000/- each of the respondents towards loss of love and affection, Rs.10,000/- towards funeral expenses, Rs.2,000/- towards damage to cloth and articles, Rs.5,000/- towards the damages caused to the motorcycle and Rs.10,000/- towards transport expenses which are all very high. The award itself is excessive.

6.P.W.2 was examined as an eye witness. The First Information Report was marked as Ex.P.1. A copy of the MVI report, rough sketch and charge sheet were marked as Ex.P3 to Ex.P5. From the evidence of P.W.2 and Ex.P1, Ex.P3 and Ex.P4, the Tribunal has decided that the occurrence has taken place only due to the rash and negligent driving of the bus driver and the decision of the Tribunal is reasonable.



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7.On the side of the appellant it is stated that the Tribunal fixed the income in accordance with the salary slip Ex.P8. Ex.P8 was not proved through the concerned authorities. For fixing the income, the notional income of the country where the deceased was working, has to be taken into consideration. The Tribunal is wrong in fixing the income as per the standard of income in a foreign country.

8.On the side of the respondent it is stated that the deceased was working in Kuwait and was earning 221 Dinar which is equivalent to Rs.37,800/- per month. Pay slip was marked as Ex.P8. Copy of the passport was marked as Ex.P6, driving license of the deceased was marked as Ex.P7. The deceased was a driver in Kuwait and was earning 221 Dinar and pray the income to be fixed in that ratio.

9.It is not easy to examine any authority from a foreign country. The Tribunal fixed the monthly income as Rs.37,800/- and has calculated the loss of income as Rs.47,62,800/-. Since, the claimants have already restricted their claim as Rs.20,00,000/-, the Tribunal has awarded a sum of Rs.20,00,000/- as compensation. Considering the salary of a bus driver in India, the salary of the deceased is fixed as Rs.16,000/- per month.



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10. On the side of the appellant it is stated that respondents 3 and 4 are major sons and they are not the dependants of the deceased and that 1/3 deduction has to be deduced for the own expenses of the deceased. On the side of the respondent it is stated that all the claimants are the dependants of the deceased and 1/4 deduction in the income is reasonable. Considering the number of the dependants, it is decided that deduction of 1/4 for the own expenses of the deceased is reasonable.

11. On the side of the appellant, it is stated that for the age of 46 years, multiplier 13 is to be adopted, and that the Tribunal is wrong in fixing multiplier 14.

12. On the side of the claimants it is stated that the age of the deceased is 45 years and multiplier 14 is applicable.

13. As per the passport Ex.P6, the Tribunal has fixed the age of the deceased as 46 years. The date of birth mentioned in the passport is to be taken on consideration and hence it is decided that the age of the



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deceased is 46 years. For the age of 46 years, the multiplier applicable is 13.

14.The monthly salary of the deceased is fixed as Rs.16,000/-. After deducting 1/4th, the deceased might have contributed Rs.12000/- to his family. By applying multiplier 13, loss of income is calculated as Rs. 18,72,000/- (12000 x 13 x 12). 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 claimants are entitled to Rs.70,000/- towards conventional charges. After adding the conventional charges, the claimants are entitled for a compensation of,

Loss of Income	-	Rs.18,72,000/-
Conventional charges	-	Rs. 70,000/-

Total	-	Rs.19,42,000/-

15.Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.20,00,000/- to **Rs.19,42,000/- (Rupees Nineteen Lakhs Fourty Two Thousand only)** which shall carry interest at the rate of 7.5% per annum.



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(ii) The appellant /Insurance company, is directed to deposit the entire compensation of Rs.19,42,000/- (if not 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 proportionate costs to the credit of M.C.O.P.No.141 of 2012 on the file of the Motor Accidents Claims Tribunal / Principal District Judge, Ramanathapuram, 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 appellant respondent /insurance company, the first respondent/ 1st claimant is permitted to withdraw a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) and the second and fifth respondents / second and fifth claimants are permitted to withdraw a sum of Rs.2,00,000/- (Rupees Two Lakhs only) **each**, along with proportionate interest and the third respondent/ third claimant is permitted to withdraw a sum of Rs.3,00,000/- (Rupees Three Lakhs only) and fourth respondent / fourth claimant is permitted to withdraw a sum of Rs.2,42,000/- (Rupees Two Lakhs Forty Two Thousand only) along with proportionate interest.

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To

- 1.The Motor Accidents Claims Tribunal / Principal District Judge,
Ramanathapuram.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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