



C.M.A(MD)No.974 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.11.2022

Pronounced on : 16.12.2022

CORAM

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

C.M.A(MD)No.974 of 2016

The Managing Director,
State Express Transport Corporation,
Chennai.

...Appellant/ Respondent

Vs

1.Najimunnisha

2.Mohamed Mubarak

3.Minor. Rahmathunisha

4.Minor Abithambal

(R3 and R4 are represented by
R1-the mother)

... Respondents / Petitioners

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and decree made in M.C.O.P.No. 264/2012 dated 16.10.2014 on the file of the Motor Accident Claims Tribunal/ Additional District Court, Pudukkottai.



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For Appellant : Mr.P.Prabhakaran
For R1 and R2 : No Appearance
For R3 and R4 : Mr.I.Pinaygash
Legal Aid counsel

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.264 of 2012 on the file of the Motor Accident Claims Tribunal, Additional District Court, Pudukkottai. The appellant herein is the respondent. Respondents herein are the claimants in the original claim petition.

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

On 21.06.2007, at about 5.15 am, when the deceased Mohamed Sharif was driving a mini door auto, loaded with broiler chicken, a bus bearing registration number TN 01 N 6994, driven by its driver came in a rash and negligent manner, dashed against the mini door auto. The deceased sustained injuries and he died on the spot. The deceased was aged about 55 years and he was earning Rs.15,000/- per month. The petitioners are his defendants 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 second respondent in the claim petition is as follows:

It was the deceased who stopped the vehicle in the centre of the road without any signal and he invited the accident. The age, income and profession of the deceased are all denied. The claim is excessive.

4. One witness was examined and four documents were marked on the side of the petitioner. One witness was examined and no document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.5,03,000/- as compensation.

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

It was the deceased who suddenly stopped the vehicle in the centre of the road, without giving proper signal and that the bus was proceeding behind the mini door auto dashed the vehicle of the deceased. Though the driver applied sudden brake, the accident has happened, since the auto was on the extreme right side,. The bus driver is not responsible for the accident. The Tribunal fixed the monthly income as Rs.4,500/- which is excessive. The Tribunal awarded Rs.50,000/- towards mental agony, Rs.50,000/- towards



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loss of love and affection, Rs.2000/- towards transport expenses, Rs.5000/- towards funeral expenses which are all excessive.

6.On the side of the appellant it is stated that the claimants failed to examine any eye witness and that P.W.1 was the wife of the deceased, she is not an eye witness and that the cause of the accident was not proved by the claimants.

7.On the side of the claimants, it is stated that a criminal case was lodged against the bus driver and the bus driver was subjected to departmental enquiry. A copy of the FIR was marked as Ex.P1. R.W.1 has admitted that there was a criminal case against him and that he was facing departmental enquiry.

8.The claimants have not chosen to examine any eye witness and at the same time, except R.W.1, no other independent witness was examined on the side of the appellant. No document was marked on the side of the appellant to prove that the accident has happened due to the negligence of the deceased. In the counter affidavit, it was admitted that the bus hit the mini door auto



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from behind. Hence, it is decided that the bus driver is responsible for the accident.

9.On the side of the appellant it is stated that without any documentary evidence, the Tribunal has fixed the monthly income of the deceased as Rs.4500/- which is excessive. On the side of the claimant it is stated that the deceased was earning Rs.15,000/- per month and that the monthly income has to be enhanced and that atleast Rs.7,500/- per month is to be taken as the monthly income. The accident was taken place in the year 2009. There is no proof of income. In the above circumstances, the Tribunal fixed the monthly income as Rs.4,500/-, which is reasonable.

10.On the side of the appellant, it is stated that for the age of the deceased, multiplier 9 is applicable and the Tribunal is wrong in applying multiplier as 11. P.W.1 has deposed that the age of the deceased at the time of accident was 55 years. In the post mortem report, the age of the deceased was mentioned as 57 years. No other document was filed to prove the age. The Tribunal fixed the age of 57 years. For the age of the deceased, applying multiplier 9 is reasonable.



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11.The monthly income of the deceased is fixed at Rs.4,500/-. After deducting 1/3 for his own expenses, the deceased might have contributed Rs. 3000/- (4500- 4500/3) for the family members. After applying multiplier 9, the income is calculated as Rs.3,24,000/-(3000 x 9 x 12).

12.On the side of the claimant it is stated that the claimant has claimed Rs.25,00,000/- as compensation, but the Tribunal has awarded only Rs.5,03,000/- and the same has to be enhanced. It is further stated that Rs.40,000/- is to be awarded for each of the claimants towards loss of consortium and the amount fixed by the Tribunal towards transport expenses is to be enhanced and compensation for loss of estate is to be awarded.

13.It is further stated that there is no necessity to file a Cross Appeal for enhancement of compensation. Even without filing a cross appeal, the Court can enhance the compensation. The following judgments of this Court are cited.

- i) C.M.A.No.498 of 2013 dated 18.11.2021,
- ii) C.M.A.No.81 of 2014 dated 11.03.2019,
- iii) 2019 (1) TN MAC 366 (DB),
- iv)HDFC ERGO General Insurance Co. Ltd., vs Mathivannan and others



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14. On the side of the appellant, it is stated that there is no possibility for enhancement of compensation. Since the award granted by the Tribunal itself is excessive.

15. The Tribunal has awarded Rs.2000/- towards transport expenses, Rs.5,000/- towards funeral expenses, Rs.50,000/- towards loss of estate, Rs.4,000/- towards loss of amenities, and Rs.50,000/- towards loss of love and affection and Rs.50,000/- towards mental agony which are all reasonable.

Loss of income	-	Rs.3,24,000/-
Loss of love and affection	-	Rs. 50,000/-
Loss of estate	-	Rs. 50,000/-
Mental agony	-	Rs. 50,000/-
Loss of amenities	-	Rs. 4,000/-
Transport expenses	-	Rs. 2,000/-
Funeral expenses	-	Rs. 5,000/-
Total	-	Rs.4,85,000/-

Hence it is decided that the claimants are entitled to Rs.4,85,000/- as compensation. For the reasons above stated, it is decided that there is nothing sufficient enough to interfere with the orders of the Tribunal.



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

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.5,03,000/- to Rs.4,85,000/- (Rupees Four Lakhs and Eighty Five Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant / Transport Corporation is directed to deposit the entire compensation of Rs.4,85,000/- (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.264/2012 on the file of the Motor Accident Claims Tribunal/ Additional District Court, Pudukkottai, within a period of eight weeks from the date of receipt of a copy of this order and permitted to collect the same from the owner of the vehicle.

(iii) On such deposit being made by the appellant / Transport Corporation, the first respondent herein/ claimant is permitted to withdraw her share of Rs.1,85,000/- (Rupees One Lakh and Eighty Five Thousand only) with proportionate interest and The second respondent is permitted to withdraw a share of Rs.1,00,000/- (Rupees One Lakh only) with proportionate interest.



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(iv) Respondents 3 and 4/ minors are entitled to Rs.1,00,000/- (Rupees One Lakh only)**each**, which is ordered to be deposited in any one of the nationalized bank until they attain majority and the first respondent is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

16.12.2022

Index: Yes / No
Internet : Yes / No

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To

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



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