



C.M.A(MD)No.332 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.11.2022

Pronounced on : 30.11.2022

CORAM

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

C.M.A(MD)No.332 of 2018

Tamil Nadu State Transport Corporation,
Through its Managing Director,
Office at Railway Station Road, Near Bridge,
Kumbakonam. ...Appellant/ Respondent

Vs

1.Devagi
2.Radha
3.Rajesh
4.Sathish
5.Ramya ... 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. 157/2014 dated 02.11.2016 on the file of the Motor Accident Claims Tribunal/ Principal Sub Court, Kumbakonam.

For Appellant : Mr.P.Prabhakaran

For R1 to R6 : Mr.M.Karunanithi



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JUDGMENT

This Civil Miscellaneous Appeal is filed against the order M.C.O.P.No. 157/2014 dated 02.11.2016 on the file of the Motor Accident Claims Tribunal/ Principal Sub Court, Kumbakonam. 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 15.07.2013, The first petitioner and her husband, Rajendran were travelling in a bus bearing registration number TN 49 N 1544. When the deceased Rajendran was trying to get down from the bus, the driver of the bus moved the vehicle in a rash and negligent manner. The deceased fell down from the bus and he sustained injuries. He was taken to the Government Hospital, Kumbakonam. After taking first aid, he was taken to Thanjavur Medical College Hospital and he died there. The deceased was aged about 45 years and he was doing agricultural and brick chamber work and he was earning Rs.12,000/- per month. The petitioners are his dependants and they claimed a sum of Rs.12,00,000/- as compensation.



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2. Brief substance of the counter filed by the respondent in the claim petition is as follows:

It was the deceased who got down from the bus before the bus was put to a halt by the driver. The deceased was in an intoxicated mood and he tried to get down from the bus before the bus came to a halt and he invited the accident. The age, income, profession are all denied. The deceased is also liable for contributory negligence.

3. One witness was examined and fifteen(15) 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. 8,51,000/- as compensation to be paid by the respondent corporation.

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

The Tribunal is wrong in fixing the liability on the driver of the bus. It was the deceased who jumped out of the moving bus and he caused the accident. The deceased was solely responsible for the accident. Without any specific proof of income, the Tribunal has fixed the monthly income as Rs.



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6000/- which is excessive. The Tribunal adopted multiplier 14 which is wrong. The Tribunal awarded Rs.20,000/- towards loss of consortium, Rs. 10,000/- each for the respondents 2 to 6 towards loss of love and affection, Rs.25,000/- towards funeral expenses which are all excessive. The total compensation awarded by the Tribunal is excessive.

5.On the side of the appellant it is stated that the deceased was in a intoxicated mood and jumped from the footboard. The accident has happened near the bus stop. There was no chance for the driver to be rash and negligent.

6.On the side of the respondent it is stated that in the post mortem report, there was no statement as to the availability of alcohol in the blood of the deceased. The appellant has failed to prove that the deceased was in an intoxicated mood at the time of accident.

7.R.W.1 is the driver of the bus. He has deposed that the deceased was in an intoxicated mood and he invited the accident and that the First Information Report was closed.



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8.It is seen that the First Information Report was registered against the driver of the bus. Hence, the evidence of RW.1 cannot be given weightage.

In the post mortem report, there was no mentioning as to the consumption of liquor. In the above circumstances, the Tribunal has fixed the liability on the bus driver, which is reasonable.

9.On the side of the appellant, it is stated that without any proof of income, the Tribunal has fixed the monthly income as Rs.6000/-. The accident has happened in the year 2012. Considering the notional income at that period, it is decided that the income fixed by the Tribunal is reasonable. The age of the deceased was mentioned as 45 years. Hence multiplier 14 is applicable. After deducting 1/4 of the income, for his own expenses, the deceased might have contributed Rs.4,500/- per month to his family members. After applying multiplier 14, the loss of income is fixed as Rs.7,56,000/-.

10.The Tribunal has awarded Rs.20,000/- towards loss of consortium, Rs.10,000/- each for five other claimants towards loss of love and affection. The Tribunal awarded Rs.25,000/- towards funeral expenses which are all excessive.



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11.As per the dictum of the Hon'ble Supreme Court in **National Insurance Co. vs Pranay sethi and others** reported in **2017 (2) TNMAC 601 (SC)**, the claimants are entitled for a sum of Rs.70,000/- towards conventional charges. Hence, the award is modified as follows:

Loss of income	-	Rs.7,56,000/-
Conventional charges	-	Rs. 70,000/-

Total	-	Rs.8,26,000/-

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

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.8,51,000/- to Rs.8,26,000/- (Rupees Eight Lakhs Twenty Six 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.8,26,000/- (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 in M.C.O.P.No. 157/2014 dated 02.11.2016 on the file of the Motor Accident Claims



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Tribunal/ Principal Sub Court, Kumbakonam, 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/ first claimant is permitted to withdraw her share of Rs.3,26,000/- (Rupees Three Lakhs Twenty Six Thousand only) with proportionate interest and the respondent Nos.2 to 5 are permitted to withdraw a share of Rs.1,00,000/- (Rupees One Lakh only) **each** with proportionate interest.

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

30.11.2022

Index: Yes / No
Internet : Yes / No

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