



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2022

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.480 of 2018

and

C.M.P(MD)No.5691 of 2018

The Managing Director,
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Bye Pass Road,
Vannarpettai
Tirunelveli.

:Appellant/respondent

.vs.

1.Anitha
2.Minor Edwin Anish
3.Minor Edwin Aakash

(The minor respondents 2 and 3 are represented
by their mother and guardian first respondent Anitha)

4.Vargeese Mary

:Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against award and decree made in M.C.O.P.No.20 of 2016 dated 09.08.2017 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Tirunelveli.

For Appellant

:Mr.P. Prabhakaran

For Respondents

:Mr.K.Muthurakkan

1 to 3

For Respondent-4

:No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award and decree made in M.C.O.P.No.20 of 2016, dated 09.08.2017 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Tirunelveli.

2.The Transport Corporation is the appellant, who has filed the present appeal on the point of negligence as well as the quantum.



The factum of accident and the manner of accident are not in dispute and hence, the same is hereby confirmed.

3. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3 and perused the materials placed before this Court.

4. The respondents 1 to 3 are the claimants before the Tribunal filed M.C.O.P.No.20 of 2016 before the Chief Judicial Magistrate, Tirunelveli, claiming compensation for the death of the husband of the first claimant/petitioner in a road traffic accident. At the time of accident, the age of the deceased was 45 years and he was doing agriculture by owning a tractor and also doing fishing Job.

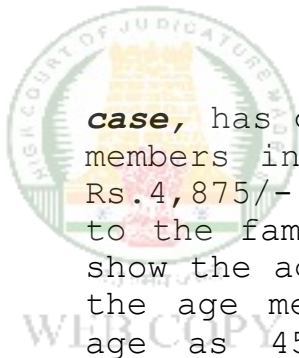
5. The appellant Transport Corporation filed a counter statement wherein a specific plea was raised that the rider of the two wheeler bearing Registration No.TN-AV-7921, in which, the deceased was travelling as a pillion rider, came in the opposite direction and dashed against the bus and thereby, the accident occurred. Hence, the appellant sought for contributory negligence at 50%-50%. The Tribunal has rejected the plea of the Transport Corporation and fixed the entire negligence on the Transport Corporation bus driver and awarded compensation of Rs.27,02,000/-. Aggrieved by the same, the Transport Corporation is before this Court.

6. After perusing the evidence of P.W.1-wife and P.W.2-occurrence witness and also taking note of the documentary evidence of Ex.P.1, I find that the rider of the motor-cycle bearing Registration No.TN-AV-7921 with the deceased pillion rider appeared to have been coming from the opposite direction, without observing the traffic rules come across the middle line of the road and when one fork crossing the road, in order to avoid the two wheeler dashing against the sudden crossing of the fork, he lost his balance and dashed against the appellant bus.

7. In view of the evidence of P.W.2 and coupled with Ex.P.1, I find that there is a contributory negligence on the part of the rider of the two wheeler at 20% and 80 % is fixed upon the Transport Corporation and accordingly, the findings of the Tribunal shall stand modified and the Transport Corporation fastened with the liability at 85% only.

8. On the point of quantum of compensation, based upon Ex.P.3-Statement of Bank account, Ex.P.4-Fishing Rights Certificate and Ex.P.5- Identity Card issued by the Fishing Department, Ex.P.6-being the Registration Certificate of the Tractor, the Tribunal has rightly come to the conclusion that the deceased would have earned at least Rs.15,000/- per month. Accordingly, the notional income of the deceased fixed at Rs.15,000/- by the Tribunal, appears to be just and proper. However, with regard to the award of future

<https://hcservicescourts.gov.in/hcservices/> Tribunal, following the judgment of **Pranay Sethi's**

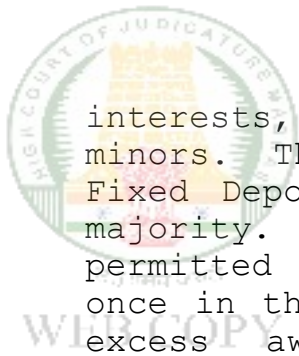


case, has given 30% (15,000/- x 30/100= 4,500/-) . Since there was 4 members in the deceased family, 1/4th deduction has to be made as Rs.4,875/- (19,500/- x 1/4) and therefore, he could have contributed to the family at Rs.14,625/-p.m. In the absence of any evidence to show the age of the deceased, the Tribunal has rightly taken note of the age mentioned in Ex.P.2-Post-mortum Certificate and fixed the age as 45 and following the judgment of **Sarla Verma's case**, multiplier '14' was adopted. Accordingly, the loss of income of the deceased at Rs.24,57,000/- (Rs.14,625/- x12 x 14 = 24,57,000/-) is just and proper. Following the decision of the **Pranay Sethi's case**, the first claimant/petitioner is the wife of the deceased is entitled to Rs.40,000/- towards loss of consortium and the claimants 2 and 3 are entitled to Rs.40,000/- each towards loss of love and affection. The Tribunal awarded a sum of Rs.10,000/- each towards transportation and Funeral expenses is on the lower side and hence, this Court has enhanced the same at Rs.15,000/- each towards transportation and funeral expenses. The Tribunal failed to award any amount towards loss of estate and this Court has granted a sum of Rs.15,000/- under the said head. Accordingly, the compensation arrived by this Court is summarised as under:

S. No.	Description	Amount awarded by		Awarded by this Court
		Tribunal	This Court	
1.	Loss of Income	Rs.24,57,000/-	Rs.24,57,000/-	Confirmed
2.	Loss of consortium to the first petitioner	Rs.1,00,000/-	Rs.40,000/-	Modified
3.	Loss of love and affection to the petitioners 2 and 3	Rs.1,25,000/-	Rs.80,000/-	Modified
4.	For Transportation	Rs.10,000/-	Rs.15,000/-	Enhanced
5.	For loss of estate	..	Rs.15,000/-	granted
6.	Funeral Expenses	Rs.10,000/-	Rs.15,000/-	Enhanced
Total Compensation		Rs.27,02,000/-	Rs.26,22,000/- (80% of the modified award)	Reduced

9. Accordingly, the total compensation awarded by the Tribunal in M.C.O.P.No.20 of 2016 is modified and the compensation is reduced from Rs.27,02,000/- to Rs.26,22,000/-. The Transport Corporation is directed to deposit 80% of the modified award amount of Rs.20,97,600/-, less the award amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, along with interest at the rate of 7.5% p.a., from the date of claim petition till the date of realization. The first

<https://hcservices.in/hcservices/> respondent is permitted to withdraw her share with accrued



interests, as apportioned by the Tribunal. The claimants 2 and 3 are minors. The share of the minors shall be kept in a interest bearing Fixed Deposit in any of the nationalized bank, till they attain majority. The first respondent, who is the guardian of minors, is permitted to withdraw the interest from the deposit of the minors once in three months and utilize the same for their welfare. The excess award amount, if any, shall be refunded to the appellant/Transport Corporation.

10.This Civil Miscellaneous Appeal is allowed in part to the extent as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

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To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tirunelveli.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-14479[F]
dated 25/03/2022)

JUDGMENT MADE IN
C.M.A(MD)No.480 of 2018
and
C.M.P(MD)No.5691 of 2018
25.03.2022

KMK(CO)
GC(18.04.2022) 4P 5C