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C.M.A(MD)No.487 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.08.2022

Pronounced on : 19.10.2022

CORAM

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

C.M.A(MD)No.487 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Door No.2, Vannarpettai,
Tirunelveli.

... Appellant/Respondent

Vs

1.Soosai Ammal (Died)

2.Panneer Selvam

3.Lourdhu

4.Arockiaya Mary

5.Kowsalya

6.Lourdhu

...Respondents/Petitioners

[R-2 to R-5 who are already on record are legal representatives of the 1st respondent vide Court order, dated 25.07.2022]

[R-1 to R-5 who are already on record are legal representatives of R-6, vide Court order, dated 30.06.2022]

PRAYER :-This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to allow this appeal, set aside the Judgment and decree dated 27.03.2017 passed in M.C.O.P.No.1010 of 2015 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli.



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For Appellant : Mr.Prabhakaran
For R-3 to R-5 : R.M.Arun Swaminathan
For R-1 & R-6 : Died

JUDGMENT

This appeal is filed by the petitioner to set aside the Judgment and decree, dated 27.03.2017 in M.C.O.P.No.1010 of 2015 passed by the learned Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli.

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

On 19.05.2016, at about 02.45 p.m., while the deceased Micheal Savarimuthu was riding the motor vehicle bearing Registration No.TN-76-C-9561 keeping the left side of the road, a bus bearing Registration No.TN-72-N-1697 was driven by its driver in a rash and negligent manner came from opposite direction, dashed against the two wheeler. In the said accident, the deceased sustained injuries and he was taken to the Government Hospital, Cheranmahadevi. Due to the accidental injuries, he succumbed to death, on the same day, at 04.25 p.m. At the time of accident, the deceased was doing business in Palm tree products. The claimants are his dependents and they claimed Rs.20 lakhs, as compensation.



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3. Brief substance of the counter filed by the 2nd respondent is as follows:

The claimants are the legal representatives of the deceased. The age and income of the deceased ought to be proved. The manner of accident was wrongly narrated in the claim petition. The bus driver drove the bus in slow and cautious manner. The deceased drove his two wheeler in rash and negligent manner. At the time of accident, the rider of the two wheeler was not having driving licence and the two wheeler was not insured. Since the owner and insurer of the two wheeler were not added as necessary parties in the claim petition, the same is liable to be dismissed.

4. One (1) witness was examined and nine (9) documents were marked on the side of the claimant. One (1) witness was examined and no document was marked on the side of the 2nd respondent. After full-fledged trial, the Tribunal has awarded a sum of Rs.15 lakhs, as compensation.

5. Against the said award of compensation passed by the tribunal, the appellant/Managing Director of Tamil Nadu State Transport Corporation has preferred this Appeal on the following two grounds:



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(i) The rider of the two wheeler was only responsible for the alleged accident.

(ii) The tribunal has failed to fix the responsibility on the part of the deceased.

(iii) The rider of the two wheeler drove his two wheeler in the middle line of the road and hit the front right side corner of the bus.

(iv) The tribunal has wrongly fixed the monthly income of the deceased as Rs.6,500/-and added 30% income towards future prospectus.

(v) The tribunal has failed to consider that the claimant Nos.2 to 6 are major and they are not depending on the income of the deceased.

(vi) The tribunal ought to have deducted 1/3 of the income towards the personal expenses of the deceased.

(vii) The multiplier adopted in the claim petition is high.

(viii) The tribunal has wrongly awarded a sum of Rs. 50,000/-each, to the respondent Nos.2 to 4 and 6 and Rs.1



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Lakh, each, to the respondent No.1, towards loss of love and affection.

(ix) The tribunal has wrongly awarded a sum of Rs. 25,000/-, towards funeral expenses is high.

(x) The award of Rs.25,000/-towards funeral expenses and Rs.10,000/-towards transport expenses and Rs.1,350/- towards loss of articles are excessive.

(xi) The tribunal has awarded 9% interest per annum, for the award amount, from the date of claim petition to till the date of realization is very excessive.

6. On the side of the appellants, it is stated that it was the rider of the two wheeler who was rash and negligent and he is responsible for the accident. The tribunal has wrongly fixed the entire negligence on the part of the bus driver and failed to fix contributory negligence on the part of the deceased. The place of occurrence was the bus stand. So, there is no chance for the bus driver to drive his vehicle in rash and negligent manner.



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7. On the side of the claimants, it is stated that the First Information Report was registered against the bus driver who was examined as R.W.1. The evidence of R.W.1 is not reliable.

8. Ex.P.1 is the copy of the First Information Report. From Ex.P.1 and from the evidence of P.W.1, this Court comes to the conclusion that the accident has occurred only due to the rash and negligent driving of the bus driver.

9. On the side of the appellant, it is stated that the tribunal has fixed monthly income of the deceased, as Rs.6,500/-per month, which is excessive. Per Contra, on the side of the respondent, it is stated that the income fixed by the tribunal is very low.

10. Considering the cost of living and also considering the notional income, the tribunal has rightly fixed the monthly income of the deceased, as Rs.6,500/-.



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11. At the time of accident, the deceased was aged about 48 years. On the side of the appellant, it is stated that the tribunal has wrongly added 30% towards future prospectus and 25% has to be added for future prospectus. Considering the age of the deceased, this Court has fixed 25% towards future prospectus. After adding 25% the income is fixed as Rs.8125/-per month.

12. On the side of the claimants, it is stated that even, at the time of accident the claimant Nos.1 to 5 are all major and that the deduction of $\frac{1}{4}$ towards personal expenses of the deceased is not justifiable. In India, children are always supported by the parent, hence, the contention raised by the appellant is not reasonable. After deducting $\frac{1}{4}$ towards personal expenses of the deceased, the monthly income comes Rs.6,054.75/-. The same is rounded off to Rs.6,055/-. For the age of the deceased (48 years) multiplier 15 is applicable. Hence, loss of income is calculated as $\text{Rs.}6,055 \times 12 \times 15 = \text{Rs.}10,89,900/-$.

13. On the side of the appellant, it is stated that the tribunal has awarded a sum of Rs.50,000/-, each to the Respondent Nos. 2 to 5 and Rs.1 Lakh, each, for the respondent Nos.1 & 6 which is excessive.



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14. The tribunal has awarded a sum of Rs.75,000/-, towards loss of consortium and Rs.10,000/-for transport expenses and Rs.1350/-towards loss of articles and Rs.25,000/-towards funeral expenses.

15. As per dictum of the Hon'ble Supreme Court in ***Pranay Sethi*** case, the claimants are entitled to receive a sum of Rs.70,000/-towards conventional charges.

Hence, the compensation is calculated as follows:-

Loss of income .. Rs.10,89,900/-

Conventional Charges .. Rs. 70,000/-

Total .. Rs.11,59,900 rounded of to Rs.11,60,000/-

16. Hence, it is decided that the claimants are entitled to get a sum of Rs.11,60,000/-, as compensation.

17. On the side of the appellant, it is stated that the tribunal has fixed 9% interest for compensation amount which is excessive.



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18. Considering the submissions made by the learned counsel appearing for the appellant, the interest for compensation amount is reduced into 7.5%.

19. The claimant Nos.2 to 5 are legal representatives of the respondent Nos.1 & 6 and hence, they are entitled to 1/4 share each in the compensation amount awarded by this Court.

20. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The orders passed by the Tribunal are modified and the award amount is reduced from Rs.15,00,000/- to Rs.11,60,000/-.

(ii) The appellant/State Transport Corporation is directed to deposit a sum of Rs.11,60,000/- (less the amount if already deposited), as compensation 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 M.C.O.P. No.1010 of 2015, on the file of the Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli, within a period of eight weeks, from the date of receipt of a copy of this order.

(iii) On such deposit being made, the claimant Nos.2 to 5 are entitled to get compensation of Rs.2,90,000/-each, and they are at liberty to withdraw



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their share after following the due process of law, less any amount already received by him. The claimants are not entitled for interest for the default period, if there is any.

19.10.2022

Index: Yes / No

Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal/Special Sub Court,
Tirunelveli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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R.THARANI, J.

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**Judgment made in
C.M.A(MD)No.487 of 2018**

19.10.2022