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C.M.A(MD)No.661 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.10.2022

Pronounced on : 03.11.2022

CORAM

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

C.M.A(MD)No.661 of 2018

and

C.M.P.(MD)No.7661 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Tirunelveli. ...Appellant /2nd respondent

Vs

1.Kuzalmani

2.Solaiyappan

3.Sivanraj

4.Esakkiammal

5.Praksh

6.Ponvelkani

7.Arunkumar

... Respondents 1 to 7/ petitioners 1 to 7

8.Gurusamy

9.S.S.P.Murugan

... Respondents 8 and 9 / Respondents 1 and 3

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the award and decree dated 23.08.2017 made in MACTOP No.19 of 2017 on the file of the Motor Accident Claims



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For Appellant : Mr.P.Prabhakaran

For R1, R3 to R7 : Mr.R.J.Karthick

For R8 : No appearance

For R9 : Mr.Raj Mohan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order made in MACTOP No.19 of 2017 on the file of the Additional District Court, Tenkasi. Appellant herein is the second respondent. Respondents 1 to 7 are the claimants. Respondents 8 and 9 are the respondents 1 and 3 in the claim petition.

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

On 25.12.2012, at about 11 a.m., when the deceased Arunachalam was riding a Yamaha Motorcycle bearing registration number TN 72 U 1982 with a pillion rider along the Alangulam to Nettur main road near the Vettum Perumal Thottam, a bus bearing registration number TN 72 N 0939 was driven by its driver in a rash and negligent manner, dashed against the



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motorcycle from behind. Both the rider and the pillion rider sustained injuries. They were immediately taken to Tirunelveli Medical College Hospital and the deceased succumbed to the injuries and died in the hospital on the same day. The motorcycle was damaged. The deceased was 25 years old, working in the Indian Army and was earning a sum of Rs.25,000/- per month. The petitioners are his dependants and they claim a sum of Rs.50,00,000/- as compensation.

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

The manner of the accident as narrated in the petition is wrong. When the driver of the bus started the trip from Alangulam, he drove the vehicle in a slow and cautious manner. It was the rider of the two wheeler, without any indication or signal, suddenly entered the road which resulted in the accident. It was the motorcyclist who was rash and negligent and he invited the accident. The claim is excessive.

4.Four(4) witnesses were examined and eleven(11) documents were marked on the side of the petitioner. No witness was examined and no



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document was marked on the side of the respondents. The Tribunal awarded a sum of Rs.39,36,560/- as compensation with an interest of 9% per annum, to be paid by the second respondent.

5. Aggrieved by the award, the second respondent approached this Court by way of this appeal on the following grounds:

The Tribunal failed to consider that the entire negligence is on the rider of the two wheeler who suddenly crossed the road without any indication and wrongly fixed the entire responsibility on the driver of the appellant transport corporation. The Tribunal fixed the monthly income as Rs.22,878/- which is too high. The Tribunal has awarded Rs.25,000/- towards loss of estate, Rs. 25,000/- each towards loss of love and affection, Rs.25,000 towards funeral and transport expenses which are too high. The Tribunal is wrong in awarding 9% interest.

6. On the side of the appellant it is stated that it was the deceased who crossed the road in front of the bus and invited the accident and the negligence ought not to have been fixed on the bus driver.



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7. On the side of the respondent it is stated that it was the bus driver who was rash and negligent and the bus hit the motorcycle from behind. There was no oral or documentary evidence on the side of the respondents. P.W.4 was examined as an eye witness. Ex.P1 is the copy of the First Information Report. Ex.P7 is the copy of the rough sketch, Ex.P8 is the copy of the observation mahazar, Ex.P9 is the copy of the MVI Report for the motorcycle. Ex.P11 is the copy of the MVI report for the bus.

8. Considering the evidence of P.W.4 and from Ex.P1, Ex.P.7 and Ex.P9 and Ex.P11 and on considering the fact that the bus hit the motorcycle from behind, it is decided that the bus driver is responsible for the accident.

9. On the side of the appellant, it is stated that the income fixed by the Tribunal is excessive. The deceased being a bachelor, 50% from his salary has to be deducted for his own expenses the respondents 3 to 7 are not the dependants of the deceased and that they are the dependants of the second respondent. When the father is alive, respondents 3 to 7 cannot be considered as the dependants of the deceased.



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10. On the side of the respondents, it is stated that sisters and the brothers who are younger to the deceased are his dependants. Since there are 7 claimants, only 1/3 of the income ought to have been deducted. A judgment of this Court reported in **2010(1) TNMAC 673** in the case of **The Managing Director, TNSTC Vs M.Paneerselvam and others**, is cited, wherein it is stated as follows:

"14. In the case on hand, when the Legal Representatives of the deceased have come forward with the plea that they have lost a reasonable probability of pecuniary advantage, in the absence of any objection or contrary evidence, let in by the appellant-Transport Corporation that the claimants are not dependents of the deceased, this Court is not inclined to accept the objection raised for the first time before this Court."

11. It is seen that the deceased was working in the army, the identity card of the deceased was marked as Ex.P5. Pay slip for the month of July -2011, was marked as Ex.P6, wherein the monthly salary was mentioned as Rs.22,878/-. The age of the deceased was 24 years. He is having a permanent job. Hence 50% is added towards future prospectus and the monthly income is calculated as Rs.34,317/-. Considering the fact that the deceased is a



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bachelor and considering the fact that the respondents 3 to 7 are the dependants of the second respondent and not the dependants of the deceased, 50% ought to be deducted towards, personal expenses of the bachelor deceased. After deducting 50% towards his own expenses, the deceased might have contributed Rs.17158.50/- for his family, which was rounded off to Rs.17,160/-. Considering the age of the deceased, multiplier 18 is applicable. The income is calculated as Rs.37,06,560/-.

12.The Tribunal has awarded Rs.30,000/- towards loss of estate, Rs.25,000/- towards each of the claimants towards loss of love and affection and Rs.25,000/- towards funeral expenses. The accident has taken place on 2012. Considering the dictum of the Hon'ble Supreme Court of India in **National Insurance Co. vs Pranay sethi and others** reported in **2017 (2) TNMAC 601**, it is decided that the claimants are entitled to Rs.70,000/- towards conventional charges. Hence the quantum of compensation is calculated as below:-

Loss of Income	- Rs.37,06,560/-
Conventional charges	- Rs. 70,000/-



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Total - Rs. 37,76,560/-

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It is seen that the tribunal has awarded the compensation with 9% interest, which is not reasonable. Hence, it is decided that the interest is to be reduced to 7.5%.

13. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.39,36,560/- to **Rs.37,76,560/- (Rupees Thirty Seven Lakhs Seventy Six Thousand Five Hundred and Sixty only)**;

(ii) the appellant, is directed to deposit the said amount (if not already deposited) together with interest at the rate of 7.5% per annum and proportionate costs to the credit of MACTOP No.19 of 2017 on the file of the Motor Accident Claims Tribunal / Additional District Court, Tenkasi, 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, the respondents 1 to 7 / claimants 1 to 7 are permitted to withdraw equal share in the compensation



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amount of Rs.Rs.37,76,560/- (Rupees Thirty Seven Lakhs Seventy Six Thousand Five Hundred and Sixty only), along with proportionate interest at the rate of 7.5% per annum. Consequently, connected miscellaneous petition is closed. No costs.

03.11.2022

Index: Yes / No
Internet : Yes / No

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To

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



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