



C.M.A.(MD)No.1170 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 12.10.2022

Delivered On : 07.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1170 of 2017

The Managing Director

Tamil Nadu State Transport Corporation,

Pudukkottai,

Pudukkottai District.

.. Appellant / 1st Respondent

Vs.

1.Subbulakshmi

2.Manikandan

3.Devi

4.Minor.Saravanan

(Minor is represented through his mother
and natural guardian R1-Subbulakshmi)

.. Respondents 1 to 4/ Petitioners

5.The Managing Director

Tamil Nadu State Transport Corporation,

Madurai.

.. 5th Respondent / 2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award made in M.C.O.P.No.253 of 2013, dated 05.08.2015, on the file of the Motor Accident Claims Tribunal / Sub Court, Valliyoor.



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For Appellant : Mr.D.Sivaraman
For Respondent Nos. 1 to 4 : Mr.S.Palanivelayutham
For Respondent No.5 : Mr.P.Prabhakaran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No.253 of 2013, dated 05.08.2015, on the file of the Motor Accident Claims Tribunal / Sub Court, Valliyoor. The appellant herein is the first respondent and the respondents 1 to 4 herein are the claimants and the fifth respondent herein are the second respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition, in M.C.O.P.No.253 of 2013, is as follows:

On 06.05.2013, at about 11.00 am, when the deceased - Kartheesan was driving a bus bearing Registration No.TN-58-N-2089 along the Madurai-Rameswaram NH road, near Vedhalai bus stop, another bus bearing Registration No.TN-55-N-769 came from the opposite direction in a rash and negligent manner, dashed against the bus driven by the deceased and he sustained injuries and he died on the spot. At the time of accident, the deceased was earning Rs.21,452/- per month. The petitioners are his dependents and they claimed a sum of Rs.40,00,000/- as compensation.



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WEB COPY 3. Brief substance of the counter filed by the first respondent in M.C.O.P.No.253 of 2013, is as follows:

The place of accident, time of accident, date of accident are all denied. The age, profession and income of the deceased are all denied. On 06.05.2013, the driver of the bus bearing Registration No.TN-55-N-0769 drove the vehicle in a slow and cautious manner, near Vedhalai, at that time, a herd of cattles blocked the road and the first respondent's driver halted the bus on the extreme left side of the road. It was the deceased, who drove the bus bearing Registration No.TN-58-N-2089, came in a rash and negligent manner and to avoid hitting the cattles, turned the vehicle and hit the first respondent's bus stationed at the left side of the road. This respondent is not liable to pay compensation.

4. On the side of the claimants, 3 witnesses were examined and 10 documents were marked. On the side of the respondents, 1 witness was examined and no document was marked. After considering both sides, the Tribunal awarded a sum of Rs.35,32,344/- as compensation to be paid by the first respondent.

5. Against the award, the first respondent / appellant has filed this appeal on the following grounds:-



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The Tribunal failed to appreciate the evidence of R.W.1 in the proper prospective. The Tribunal failed to consider that F.I.R alone is not sufficient enough to prove the negligence of the driver. The Tribunal failed to consider that the claimants failed to prove that the occurrence has taken place only due to the negligence of the driver of the appellant's bus. The Tribunal is wrong in adopting multiplier '13' instead of '11' . Income Tax was not deducted. The award towards loss of love and affection and loss of consortium are highly excessive. The award amount is excessive.

6. On the side of the appellant, it is stated that 2 vehicles involved in the accident. There was a head on collision and 50% contributory negligence ought to have been fixed. On the side of the respondents, it is stated that the deceased died on the spot and that P.W.1 and P.W.2 have deposed that the accident had taken place only due to the rash and negligent driving of the appellant's bus driver.

7. From Ex.P1, it is clear that a criminal case was lodged only against the appellant's bus driver. On the basis of the evidence of P.W.2 and on the basis of Ex.P1 - copy of F.I.R and Ex.P3-MV report, it is decided that the accident has happened only due to the rash and negligence of the appellant's driver. Both the vehicles involved in the occurrence belonged to TNSTC and there is no use in fixing



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contributory negligence on both the vehicles. In the above circumstances, it is decided that the accident has happened only due to the rash and negligence driving of the appellant's bus driver.

8. The Tribunal has fixed the age of the deceased as 47 years. Date of birth of the deceased was 18.05.1966 and the accident took place on 06.05.2013 and the age of the deceased (47 years) fixed by the Tribunal is reasonable. On the basis of the evidence of P.W.3 and on the basis of Ex.P8 to Ex.P10, the Tribunal has fixed the income as Rs.21,452/-, which is reasonable.

9. Considering the number of the dependants, the Tribunal has deducted 1/4th of the income, towards the own expenses of the deceased, which is reasonable. The Tribunal has added 30% towards future prospects and as the age of the deceased was 47 years, the Tribunal has applied multiplier '13'. As per the dictum of the Hon'ble Supreme Court in Sarla Verma's case, adding future prospects and applying multiplier '13' are reasonable. The Tribunal awarded loss of income as Rs.32,62,844/-, which is reasonable.

10. The Tribunal awarded Rs.50,000/- loss of love and affection to each of the claimants (totally Rs.2,00,000/-) and Rs.50,000/- towards loss of consortium.



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As per the dictum of the Hon'ble Supreme Court reported in **2018 ACJ 2782 (SC)**

(**Magma General Insurance Co. Ltd. Vs. Nanu Ram and others**), the claimants are entitled to Rs.40,000/- each towards loss of love and affection (Totally Rs.1,60,000/-). The Tribunal awarded Rs.10,000/- towards funeral expenses, Rs. 5,000/- towards transportation, Rs.2,000/- towards damage to articles, Rs.2,500/- towards loss of estate, which are all reasonable. Hence, it is decided that the claimants are entitled to Rs.34,42,344/- as compensation.

11. The total compensation is calculated as follows:-

Loss of income	:	Rs. 32,62,844/-
Loss of love and affection	:	Rs. 1,60,000/-
Funeral expenses	:	Rs. 10,000/-
Transportation	:	Rs. 5,000/-
Damage to articles	:	Rs. 2,000/-
Loss of estate	:	Rs. 2,500/-
Total compensation	:	 Rs.34,42,344/-

12. This Appeal is partly allowed. The compensation awarded by the Tribunal is reduced from Rs.35,32,344/- to Rs.34,42,344/-. No costs.



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(i) The appellant herein / Transport Corporation is directed to deposit the compensation of Rs.34,42,344/- with accrued interest at the rate of 7.5% from the date of petition till the date of deposit and costs within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. Excess amount, if any, shall be refunded to the appellant.

(ii) On such deposit being made, the Tribunal may permit the respondents 1 to 3 / major claimants are permitted to withdraw their shares as apportioned by the Tribunal with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them.

(iii) The Tribunal is directed to deposit the share of the minor claimant / fourth respondent herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till he attains majority. The first respondent, who is the mother and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The claimants are not entitled for interest for the default period, if there is any.

07.11.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



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R. THARANI, J.

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To

- 1.The Sub Judge,
Motor Accident Claims Tribunal
Valliyoor.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.1170 of 2017

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