



C.M.A.(MD)No.694 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 11.10.2022

Delivered On : 22.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.694 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
Coimbatore Division,
No.37, Mettupalayam Road,
Coimbatore District.

.. Appellant /Respondent

Vs.

1.Alagammal
2.Thenmozhi
3.Angammal
4.Muthuvelu

.. Respondents / Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.198 of 2013, dated 29.04.2015, on the file of the Motor Accident Claims Tribunal / Principal District Court, Pudukkottai.

For Appellant

: Mr.D.Sivaraman

For Respondents

: Mrs.A.Banumathy



C.M.A.(MD)No.694 of 2017

JUDGMENT

WEB COPY This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.198 of 2013, dated 29.04.2015, on the file of the Motor Accident Claims Tribunal / Principal District Court, Pudukkottai. The appellant herein is the respondent and the respondents herein are the claimants in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in M.C.O.P.No.198 of 2013, is as follows:

On 28.11.2012, when the deceased - Chinnamani @ Jeyakumar was travelling in a Government bus bearing Registration No.TN-38-N-2470, with his relative - Chandilyan, after the conductor of the bus permitted the passengers to get down at Pollachi, when the deceased tried to get down from the bus, all of a sudden the driver moved the vehicle, and the deceased fell down and sustained injuries. After taking first aid in Government Hospital, Pollachi, he was taken for treatment to the Medical College Hospital, Coimbatore and he succumbed to injuries on 29.11.2012. The deceased was aged about 26 years and he was doing agricultural work and worked as a hotel server and he was earning Rs.6,000/- per month. The petitioners are his dependents and they claimed a sum of Rs.10,00,000/- as compensation.



C.M.A.(MD)No.694 of 2017

3. A brief substance of the counter filed by the respondent, in M.C.O.P.No.

198 of 2013, is as follows:

The petition is bad for non joinder of necessary parties. The driver and the conductor of the bus are necessary parties. The driver of the bus drove the vehicle in a slow and cautious manner. It was the deceased, who tried to get down from the bus, without the knowledge of the conductor and the driver and he invited the accident. The driver of the bus is not responsible for the accident. Though initially the F.I.R was registered against the driver of the bus, the F.I.R was subsequently closed as 'mistake of fact'. The age, profession and income are all denied. The claim is excessive.

4. 2 witnesses were examined and 5 documents were marked, on the side of the claimants. 2 witnesses were examined and 1 document was marked, on the side of the respondent. After considering both sides, the Tribunal awarded a sum of Rs.8,78,852/- as compensation to be paid by the respondent.

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

The Tribunal failed to note that the accident has happened only due to the negligence of the deceased, who get down from the moving bus, without informing



C.M.A.(MD)No.694 of 2017

the driver or the conductor. The Tribunal failed to appreciate the evidence of R.W.1-driver of the bus in the proper prospective. The Tribunal failed to appreciate Ex.R1, wherein, the F.I.R was closed as 'mistake of fact'. The Tribunal is wrong in fixing the income at Rs.3,750/- per month. The Tribunal is wrong in deducting the 1/4th of the income for his personal expenses and 50% ought to have been deducted for personal expenses. The mother of the deceased was more than 50 years, hence, multiplier '11' alone ought to have been adopted. The Tribunal awarded Rs. 2,00,000/- towards loss of love and affection, Rs.75,000/- towards loss of estate, which are all highly excessive. The total award amount is excessive.

6. On the side of the respondents, it is stated that the amount fixed by the Tribunal is very low and the monthly income ought to have been increased.

7. No cross objection was filed on the side of the claimants. It is seen that R.W.1 alone is not sufficient enough to fix the negligence on the part of the deceased. R.W.1 is the driver of the bus and hence, his evidence cannot be taken into consideration. No independent witness was examined on the side of the respondent. Considering the evidence of P.W.2-eye witness, it is decided that the accident has happened only due to the negligence of the driver of the bus.



C.M.A.(MD)No.694 of 2017

8. The Tribunal has fixed the income of the deceased as Rs.3,750/- per month, which is very reasonable. Considering the number of the dependents, deduction of 1/4th is also reasonable. It is well settled that the age of the deceased has to be taken into account for fixing the multiplier, hence, the grounds stated in the appeal are not sustainable.

9. In the above circumstances, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal.

10. Hence, this Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is hereby confirmed.

(ii) The appellant - Transport Corporation, is directed to deposit the entire compensation of Rs8,78,852/- (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 with costs, within a period of eight weeks from the date of receipt of a copy of this order.



C.M.A.(MD)No.694 of 2017

(iii) On such deposit being made by the appellant /Transport Corporation, the Tribunal may permit the claimants 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. The claimants are not entitled for interest for the default period, if there is any.

22.11.2022

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.



C.M.A.(MD)No.694 of 2017

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- 1.The Principal District Judge,
Motor Accident Claims Tribunal
Pudukkottai.

- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.694 of 2017

R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.694 of 2017

22.11.2022