



C.M.A(MD)No.1103 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 23.06.2022

Pronounced on : 21.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.1103 of 2018

The Managing Director,
Tamil Nadu State Express Transport Corporation
Pallavansalai,
Chennai - 600 002.

... Appellant

Vs

1.V.Mangala Kumari

2.G.Ajay Vincent

3.G.Abisha Vincent

4.Ajisha Vincent(Minor)

(R4 is represented by
her mother and guardian/R1)

5.Siva Sankar

6.TATA AIG General Insurance Company, Ltd.,
Peninsula Corporate Park,
Nicholas Piramal Tower, 9th floor,
Ganpatraokadam Marg, Lower Parel,
Mumbai-400 013.

... Respondents



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PRAYER :-

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This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the award and decree made in M.C.O.P.No.169 of 2012 dated 17.01.2018 on the file of the Motor Accident Claims Tribunal / Sub Court, Padmanathapuram.

For Appellants : Mr.P.Prabhakaran

For R1 to R4 : Mr.T.Teen Joseph

JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.169 of 2012 dated 17.01.2018 on the file of the Motor Accident Claims Tribunal / Sub Court, Padmanathapuram. The appellant herein is the second respondent. The respondents 1 to 4 are the claimants. The fifth respondent is the first respondent in the claim petition. The sixth respondent is the third respondent in the claim petition.

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

On 28.07.2012 in the early morning, the deceased was riding a motor cycle bearing registration number TN 75 B 9796 along the Marthandam to Nagercoil main road with one Selvan as pillion rider. When they were



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nearning CSI church, a bus bearing registration number TN 01 N 7786 was driven by its driver in a rash and negligent manner came along the right side of the road and dashed against the motorcycle. Both the rider and the pillion rider sustained injuries. The rider of the two wheeler George Vincent took first aid in Issac Hospital and then he was taken to Tiruvanandapuram-Ananthapuri Hospital and he succumbed to the injuries on 01.08.2012. The claimants are the dependents of the deceased and they claimed Rs.13 Lakhs as compensation.

3.Brief substance of the counter filed by the second respondent in the claim petition, is as follows:

The manner of accident is denied. The bus driver drove the vehicle in a slow, careful and cautious manner. It was the deceased who drove the vehicle in a rash and negligent manner and dashed against the right front side of the bus. The first respondent/ the driver of the bus is not responsible for the accident. The accident occurred due to the negligence of the deceased himself. The deceased was not having valid driving license to drive the motorcycle. The age, profession and income of the deceased are all denied.



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4. Brief substance of the counter filed by the third respondent is as follows:

The claimant did not claim any compensation from this respondent. The third respondent is an unnecessary party. The accident occurred only due to the rash and negligent driving of the first respondent. Only the first and second respondents are liable to pay compensation. The claim is excessive.

5. Two witnesses were examined and 15 documents were marked on the side of the appellant. No witness was examined and no document was marked on the side of the respondent. The Tribunal has awarded a sum of Rs.20,58,300/- as compensation to be paid by the second respondent.

6. Against the awarded amount, the appellant preferred this appeal on the following grounds:

The Tribunal has erred in holding that the driver of the bus was solely responsible for the accident. It was the two wheeler which came in the wrong side, dashed against the bus. The deceased invited the accident and the deceased was responsible for the accident. The award of Rs.20,58,300/- is excessive. The Tribunal has erred in fixing the monthly income of the deceased as Rs.20,000/- and the Tribunal is wrong in deducting 1/4 of the



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income towards personal expenditure. Adopting multiplier 11 is wrong. The award of Rs.1,60,000/- towards loss of love and affection and loss of consortium are too high. Awarding Rs.80,000/- towards medical expenses, Rs.6,300/- towards ambulance charges, Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, are all too high.

7.On the side of the appellant, it is stated that the age of the deceased at the time of accident is 53 years as fixed by the Tribunal. The rider of the two wheeler was not having valid driving license and contributory negligence to be fixed on the deceased. The deceased was about to retire on 2017 and hence split multiplier ought to have been applied. Full income of the deceased can be taken into account, till he attains the age of 58 and only a half of the income has to be taken into consideration after the date of superannuation.

8.A judgment of this Court reported in **2013 5 MLJ 893** in the case of **R.Leelavathy vs Sheik Dawood and another**, is cited, wherein it is held that *"Tribunal not right in fixing taken home salary of deceased for period during which he would have been in employment - It would be appropriate to take*



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gross salary earned by deceased for the one year left over service - Loss of consortium awarded by Tribunal was too low, same increased - Expenses towards funeral awarded - Compensation awarded by Tribunal enhanced - Civil miscellaneous appeal allowed".

9. On the side of the respondent it is stated that there is no necessity to apply split multiplier. A judgment of the Hon'ble Supreme Court reported in **2022 (1) TNMAC 289(SC)** in the case of **R.Valli vs Tamil Nadu State Transport Corporation Ltd.**, is cited, "*Age of Superannuation being 58 years., Tribunal applied Split Multiplier of 3+8=Rs.5,60,412/- awarded as Loss of independency applying Multiplier of 3 to Monthly Income fixed on basis of monthly salary Rs.7,47,216 awarded applying Multiplier of 8 to 50% of Monthly Income - Application of Multiplier of 3 upto date of Superannuation and thereafter Multiplier of 8 keeping in view dependency of life for 10 years, affirmed by High Court in Appeal - If, proper - Application of Split Multiplier / Two Multipliers i.e., one upto date of Retirement and another after Retirement, held, erroneous and runs counter to decision in Pranay Sethi(SC) affirming principles in Sarla Verma(SC) - Deceased being aged 54 years, proper Multiplier held to be 11 as per principles in Sarla*



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Verma as approved in Pranay Sethi - Multiplier to be applied keeping in view age of deceased".

10.Ex.A1 is the copy of the First Information Report. Ex.A3 and Ex.A4 are the copies of the Motor Vehicle Inspector's report. Ex.A15 is the rough sketch. On the basis of the evidence of P.W.1 and P.W.2 and on the basis of Exs.A1, A3, A4 and A11, the Tribunal has fixed the liability on the appellant. The appellant has not chosen to examine any witness or to mark any document to prove the case of the claimants. The driving license of the deceased was marked as Ex.A13. In view of the above circumstances, the liability fixed on the appellant by the Tribunal is reasonable.

11.The deceased was working as a conductor and he was earning Rs. 23,733/- per month at the time of accident. The salary certificate was marked as Ex.14. The case of the appellant is that, split multiplier ought to have been adopted to fix the loss of income till the date of superannuation and to fix the loss of income after the date of superannuation based on the pension that he was eligible.



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12.On the side of the respondent it is stated that there is no necessity to adopt split multiplier. In the case reported in 2022 (1)TNMAC 289 in the case of R.Valli and others vs Tamil Nadu State Transport Corporation Ltd., the Hon'ble Supreme Court has held that application of split multiplier is erroneous affirming the principles laid down in Sarla Varma case.

13.The trial Court fixed the monthly income as Rs.20,000/- and awarded a sum of Rs.2,16,000/- after deducting Rs.24,000/- towards income tax. After considering the date of retirement and considering the fact that the pension will be 50% of the salary, An average monthly income is fixed at Rs.18,000/-.

Monthly income	- Rs.18,000/-
applying multiplier 11 for 12 months (18,000 x 11 x 12).	- Rs.23,76,000/-
deduction for own expense (1/4th share)	- (23,76,000 / 4 = Rs.5,94,000/-) Rs.23,76,000 - Rs.5,94,000/ = Rs.17,82,000/-
Loss of Income	- Rs.17,82,000/-



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14.The award by the Tribunal under various other heads are reasonable.

The Tribunal has awarded a sum of Rs.80,000/- towards medical expenses, Rs.6,300/- towards ambulance charges, Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, which are all reasonable. For four claimants, the Tribunal has awarded Rs.1,60,000/- towards loss of love and affection and consortium. As per the decision of the Hon'ble Supreme Court in C.A.No.9581 of 2018 dated 18.09.2018, the amount fixed by the tribunal is reasonable. In total, the award amount is fixed at Rs.20,58,300/- (Rupees Twenty Lakhs Fifty Eight Thousand Three Hundred only) and the compensation awarded by the Tribunal is confirmed.

15.The Civil Miscellaneous Appeal is dismissed. No costs.

(i) The Appellant Transport corporation, is directed to deposit the entire compensation of Rs.20,58,300/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.169 of 2012 dated 17.01.2018 on the file of the Motor Accident Claims Tribunal / Sub Court, Padmanathapuram, within a period of eight weeks from the date of receipt of a copy of this order, less any amount already deposited.



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(ii) On such deposit being made by the appellant Transport corporation, the respondents 1 to 3 herein are entitled to Rs.5,14,575/- each with proportionate interest and the respondents 1,2 and 3 are permitted to withdraw their share of award amount ie., Rs.5,14,575/- each, along with proportionate interest and cost.

(iii) The share of the fourth respondent Rs.5,14,575/-(Rupees Five Lakhs Fourteen Thousand Five Hundred Seventy Five only) with proportionate interest, is ordered to be deposited in any one of the nationalized bank until the minor fourth respondent attains majority and the first respondent is permitted to withdraw the interest directly from the bank, once in three months in order to maintain her minor daughter.

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Internet : Yes / No

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To

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



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R.THARANI, J.

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**Pre-Delivery Judgment in
C.M.A(MD)No.1103 of 2018**

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