



C.M.A No.496 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.496 of 2022
and C.M.P.No.3652 of 2022

The Commissioner of Police,
E.V.R Road,
Chennai.

... Appellant

Versus

1.Shanmugam

2.Divya

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 seeking to set aside the judgement and decree passed by the Motor Accident Claims Tribunal / III Small Causes Court, Chennai in M.C.O.P.No.2181 of 2017 vide order dated 21.11.2019.

For Appellant : Mr.M.R.Gokul Krishnan
Additional Government Pleader

For Respondents : Mr.G.Kartheeban



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JUDGMENT

The appellant herein challenges an award passed by the Motor Accident Claims Tribunal, (III Small Causes Court, Chennai) in M.C.O.P.No.2181 of 2017.

2.In a road accident that took place on 09.12.2016, at around 04.30 a.m., at Bharathi Road, Triplicane, certain Vimala was fatally knocked down by a police patrol vehicle bearing Registration No.TN-01-G-5826. The deceased was 48 years and she was a milk vendor. Indeed, the accident itself took place when Vimala was crossing the road for milk vending.

3.The said Vimala died leaving her surviving a son and a daughter who had approached the Tribunal with their claim. The Tribunal had determined the monthly income of the deceased notionally at Rs.7,000/- and added another 10% towards future prospects and deducted 1/3rd towards her personal expenditure. After applying 11 as the multiplier, it arrived at a total loss of dependency at Rs.6,77,556/-. It had also awarded another Rs.50,000/- to both the children towards loss of love and affection, another Rs.10,000/- towards transport expenditure and



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Rs.30,000/- towards funeral. In all, the Tribunal had awarded

Rs.7,67,556/- payable with interest at 7.5% and directed its apportionment equally between both the children. This award is now being appealed.

4.Mr.M.R.Gokul Krishnan, the learned Additional Government Pleader appearing for the appellant made the following submissions:

(a) The accident had taken place solely due to negligence or lack of vigilance on the part of the victim while crossing the road; and

(b) The notional income as determined by the Tribunal is on the higher side.

5.Heard the Mr.G.Kartheeban, the learned counsel for the respondents. Supporting the award, the learned counsel for the respondents submitted that the Tribunal had made a categorical finding that the driver of the offending vehicle was negligent and there is no material to enter a contra finding. He also submitted that the notional income as determined is reasonable is not on the lower side.



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6.Appreciating the rival submission, this Court does not find that either of the two grounds raised by the appellant is adequate enough to carry conviction, warranting interference with the award passed. The rule of the thumb in all cases where the pedestrian is involved, the Court has to evaluate as to who had the last opportunity to avoid an accident. It is evident from the facts presented before the Tribunal that the driver of the offending vehicle alone could have the last opportunity to avoid the accident. Turning to income, this Court finds that the notional income as fixed by the Tribunal is reasonable.

7.In these circumstances, this Court does not find any merit in this appeal and the same is liable to be dismissed.

8.The learned counsel for the respondent would now submit that the first claimant / the first respondent passed away on 24.08.2023 as a bachelor. This implies that the second respondent being the sole surviving claimant is entitled to the entire compensation amount awarded by the Tribunal.



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9.The Civil Miscellaneous Appeal stands dismissed. No costs.

Consequently, the connected miscellaneous petition is closed.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accident Claims Tribunal,
(III Small Causes Court, Chennai)



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N.SESHASAYEE, J.

Anu

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