



C.M.A.Nos.4363 and 4364 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.4363 and 4364 of 2019

1. Muthukaruppi @ Usha
2. Nachiappan
3. Valliappan

... Appellants / Petitioners
in C.M.A.No.4363 of 2019

Muthukaruppi @ Usha

... Appellant / Petitioner
in C.M.A.No.4364 of 2019

Vs.

1. Subburaj
2. The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Virudhunagar Region,
Tirunelveli By-pass Road,
Virudhunagar.
3. Chellakariammmal
4. United India Insurance Company Limited,
Kumaran Road,
Tirupur - 641 601.

... Respondents / Respondents
in both CMAs



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COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 08.12.2017 made in M.C.O.P.Nos.122 and 124 of 2014 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur.

For Appellants
in both CMAs : Mr.K.Varadhakamaraj

For Respondents
in both CMAs : Notice Dispensed With for R1 & R3
Mr.Gowthamaraj for R2
Ms.I.Malar for R4

COMMON JUDGMENT

These civil miscellaneous appeals arise out of a common award passed by the Motor Accident Claims Tribunal, I Additional District Court, Tiruppur in M.C.O.P.Nos.122 and 124 of 2014, dated 08.12.2017.

2. These appeals are filed by the claimants seeking for enhancement of compensation awarded for the death of the deceased viz., Nachiappan.



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3. The brief facts required for disposal of these appeals are on 13.12.2013 at about 10.30 am when the deceased was travelling in a Maruti Swift Car bearing Registration No.TN-37-BC-3138 towards Coimbatore from east to west direction, at Oddanchatram to Dharapuram Main Road, Kallimanthayam, Neelagoundanpatti, near Vivekananda School, a TVS XL Moped bearing Registration No.TN-57-AW-3382 driven by one Vellaisamy suddenly in a rash and negligent manner, crossed the above said road from right to left side. At that time, a TNSTC bus bearing Registration No.TN-67-N-0824 came from west to east direction, driven by the first respondent with rash and negligent manner dashed against the TVS XL Moped and then dashed against the Swift Car driven by the deceased. As a result of the accident, the deceased Nachiappan sustained multiple grievous injuries and died on the spot. The first respondent is the driver and the second respondent is the owner of the bus bearing Registration No.TN-67-N-0824. The third respondent is the owner and the fourth respondent is the insurer of TVS XL Moped bearing Registration No.TN-57-AW-3382.



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4. The wife and the children of the deceased Nachiappan (appellants herein) filed M.C.O.P.Nos.122 and 124 of 2014 claiming compensation for the death of the deceased Nachiappan. The Tribunal after taking into consideration the materials placed before the Court and the evidence on record came to the conclusion that the deceased Nachiappan was aged about 61 years at the time of the accident and that his monthly income was fixed as Rs.10,000/- on the basis of the documents filed in support of the claim petitions. Since no document was produced to show that the deceased and his mother were partners in a firm 'Chettinadu Steel Corporation' and that the income tax returns filed for the previous assessment years shows that the deceased has paid income tax only on 12.12.2012. The deceased being an income tax assessee was discarded and thereby, arriving at an annual income of Rs.1,20,000/- and deducting 1/3rd towards personal expenses, the Tribunal assessed his annual income at Rs.80,000/-. Since the age of the deceased at the time of the accident was 61 years, the multiplier of '7' was arrived at by the Tribunal as per the



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guidelines laid down by the Hon'ble Apex Court in the case of ***Sarla Verma & Ors. – Vs – Delhi Transport Corporation & Ors*** reported in **2009 (6) SCC 121**. Accordingly, the Tribunal awarded a sum of Rs.6,90,000/- in M.C.O.P.No.122 of 2014 and Rs.1,05,000/- as compensation in M.C.O.P.No.124 of 2014 under other heads. Seeking enhancement of compensation, these appeals are filed before this Court by the appellants / claimants.

5. The learned counsel for the second respondent / Transport Corporation contended that the bus driven by its driver, i.e., the first respondent in a slow speed with due care and caution, however the two wheeler suddenly crossed the road from left to right side with negligent manner. At that time, the Maruti Swift car driven by the deceased coming from the opposite direction in a over speed and negligent manner in the wrong side of the road and dashed against the two wheeler and the front side of the bus, as a result, the deceased in the Maruti Swift car sustained severe injury and died on the spot. Therefore, the driver of the bus was not



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at all responsible for the accident and hence, the second respondent is not liable to pay any compensation to the claimants.

6. The learned counsel for the fourth respondent / Insurance Company defended the claim petition on the ground that the age, income, avocation and health condition of the deceased are questionable. He also submitted that the monthly income as projected by the first appellant is not supported by any documents. The fourth respondent also disputed the liability on their part as there was gross negligence on the part of the driver of the bus and therefore, the Insurance Company is not liable to pay compensation to the claimants. Therefore, the learned counsel for the fourth respondent / Insurance Company submits that the award needs to be interfered with.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.



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8. It is seen from the records that the fourth respondent / Insurance Company has filed appeals in C.M.A.Nos.2597, 2599 and 2600 of 2018 against the very same award on the ground that the Insurance Company was not at all responsible to pay the compensation as the accident took place due to the negligence of the deceased Nachiappan and the driver of the bus, where the learned Judge of this Court by order dated 22.11.2018 has dismissed the appeals by confirming the award passed by the Tribunal directing the second respondent / Transport Corporation and the fourth respondent / Insurance Company are liable to pay the compensation.

9. It is not in dispute that there was negligence on the part of both the bus driver and the deceased who was driving the car. The point for consideration in these appeals is whether the claimants are entitled for enhancement of compensation. The Tribunal after taking into consideration the materials placed before it came to a conclusion that the age of the deceased at the time of the accident was 61 years as per the guidelines laid down in *Sarla Verma's case* cited *supra*, the multiplier to be applied for a



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person who is injured / deceased in a motor accident is '7'. Moreover, there has been a documentary evidence to show that the deceased was 61 years at the time of the accident and therefore, the multiplier adopted by the Tribunal as '7' need not be interfered with.

10. Coming to the point of monthly income of the deceased though it is claimed by the first petitioner that the deceased was earning Rs.40,000/- per month as partner along with his mother in Chettinadu Steel Corporation and has filed income tax returns for the four assessment years preceding to the date of the accident. However the first petitioner has not filed any balance sheet of the said Chettinadu Steel Corporation as to how he arrived gross total income. Therefore, the deceased has earning monthly income of Rs.40,000/- per month as partner in the partnership firm is not substantiated by any material evidence. Moreover, no salary slip has been filed and no one was examined as the Manager of the said partnership firm to prove the income of the deceased. Therefore, this Court feels that the monthly income arrived at by the Tribunal is also correct and conclusive.



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Even with respect to the other heads of compensation, the Tribunal has rightly awarded the compensation as per the judgment of the Hon'ble Apex Court.

11. Finding no merits to interfere with the impugned award, these Civil Miscellaneous Appeals are dismissed. No costs.

03.10.2023

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

1. The Motor Accidents Claims Tribunal,
I Additional District Court,
Tiruppur.

2. The Section Officer,
V.R. Section,
High Court,
Chennai.



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