



C.M.A.(MD)No.1579 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 08.02.2023

Delivered On : 01.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1579 of 2013

1. Komathai

2. Anthonyammal

... Appellants /claimants

Vs.

The Managing Director,

Tamil Nadu State Transport Corporation

(Madurai)Ltd.,

Bye-pass Road, Madurai-10.

... Respondent / Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order passed by the Principal District Court, Virudhunagar District at Srivilliputtur, in M.C.O.P.No.109 of 2011, dated 23.01.2013.

For Appellants

: Mr. M.Jothi Basu

For Respondent

: No appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed by the Principal District Court, Virudhunagar District at Srivilliputtur, in M.C.O.P.No.109 of 2011, dated 23.01.2013. The appellants herein are the claimants and the respondent herein are the respondent in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.109 of 2011, is as follows:-

On 22.11.2009, at about, 0615 p.m., when the first petitioner and her husband-Kutti @ Paramasivam were boarding a bus bearing Registration No.TN-67-N-0256, near Rajapalayam New bus stand, with two other persons, before the deceased boarding the bus, the driver of the bus moved the vehicle in a negligent manner and the deceased sustained injuries. He was admitted in Rajapalayam Government Hospital, then, he was admitted in Madurai Rajaji Hospital and he succumbed to the injuries. The deceased was earning Rs.6,000/- per month. He was aged about 24 years. The petitioners are his dependants and they claimed a sum of Rs.10,00,000/- as compensation.



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3. A Brief substance of the counter filed by the respondent, in M.C.O.P.No.109 of 2011, is as follows:

The manner of accident as narrated in the petition is wrong. The driver of the bus take a drip from the bus stand. When the bus was getting out from the bus stand in a slow manner, the deceased in a drunken mood, get down from running the bus and he sustained injuries. The death was not due to the rash or negligent act of the bus driver. The age, income and profession are all denied. A false case was registered against the driver of the bus. The respondent is not liable to pay compensation.

4. One witness was examined and 9 documents were marked, on the side of the claimants. One witness was examined and 2 documents were marked, on the side of the respondent. After considering both sides, the Tribunal awarded a sum of Rs.5,16,000/- as compensation.

5. Against the order, the claimants / appellants have filed this appeal on the following grounds:-

The amount awarded by the Tribunal is very low. The Tribunal failed to consider that the age of the deceased at the time of accident is only 24 years. He was



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earning Rs.6,000/- per month. But, the Tribunal fixed the monthly income as

Rs.4,500/-, which is very low. The Tribunal adopted multiplier '17' instead of '18'.

The Tribunal failed to award Rs.50,000/- for each of claimants towards loss of love and affection. The Tribunal ought to have awarded a sum of Rs.25,000/- towards funeral expenses and Rs.50,000/- towards loss of consortium for the first claimant.

6. On the side of the appellants, it is stated that the driver of the bus was examined on the side of the respondent. The respondent failed to prove that it was the deceased, who fell down in a drunken mood. The respondent already deposited the award amount, the appellants already withdrawn 50% of the award amount. There is no appeal filed by the transport corporation and hence, there is no question of liability.

7. P.W.1 was examined as the claimant and as the eye witness. Copy of F.I.R was marked as Ex.P1. Rough Sketch was marked as Ex.P2. Observation Mahazer was marked as Ex.P3. M.V.I.report was marked as Ex.P4. Copy of charge sheet was marked as Ex.P5. The driver of the vehicle was examined as R.W.1. A petition to quash the F.I.R was marked as Ex.R1. A.I.R copy was marked as Ex.R2. In the counter of the respondent, before the Tribunal, it is stated that in Ex.R2, there was a specific mentioning as to the drunken condition of the deceased.



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8. Considering the evidence of P.W.1 and Ex.P1 to P5, the Tribunal has fixed the liability on the bus driver. It is seen that Ex.R2 was not marked through a Doctor. Ex.R2 was marked only through the bus driver. No appeal against the liability was filed by the respondent. Hence, it is decided that the liability fixed by the Tribunal is reasonable.

9. On the side of the appellants, it is stated that the deceased was getting a salary of Rs.6,000/-, but, the Tribunal fixed the monthly income as Rs.3,500/-, which is very low. No oral or documentary evidence was produced on the side of the appellants, to prove the income. The accident has taken place in the year 2009. Considering the date of accident and considering the averments in the claim petition, the notional income of the deceased is fixed as Rs.4,500/- per month. After deducting 1/3rd towards the own expenses of the deceased, the deceased might have contributed Rs.3,000/- per month, to his family members.

10. On the side of the appellants, it is stated that the multiplier adopted by the Tribunal is wrong. The age of the deceased was 24 years and multiplier '18' is applicable. Considering the age of the deceased, it is decided that multiplier '18' is applicable. After applying multiplier '18', the loss of income is calculated as Rs.6,48,000/- (Rs.3,000/- X 12X18).



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11. The Tribunal awarded Rs.15,000/- towards loss of consortium, Rs. 5,000/- towards funeral expenses, Rs.5,000/- towards transport expenses, Rs.15,000/- towards loss of love and affection. As per the dictum of the **Pranay Sethi's** Case, the claimants are entitled to Rs.70,000/- as conventional charges.

12. The total compensation is calculated as follows:-

Loss of income	:	Rs.6,48,000/-
Conventional charges	:	Rs. 70,000/-
Total compensation	:	Rs.7,18,000/-

13. This Appeal is partly allowed. The compensation is enhanced from Rs.5,16,000/- to Rs.7,18,000/-.

(i)The first claimant – wife of the deceased is entitled to a share of Rs.4,00,000/-, with proportionate interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, and the second claimant – mother of the deceased is entitled to a share of Rs.3,18,000/- as compensation, with proportionate interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.



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(ii) The respondent herein - Transport Corporation, is directed to deposit the entire compensation of Rs.7,18,000/- (less the amount if any 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.

(iii) On such deposit being made by the Transport Corporation, the appellants / claimants are permitted to withdraw the award amount as apportioned by this Court, 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 default. No costs.

01.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No

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R. THARANI, J.

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To

1.The Principal District Judge,
Virudhunagar District at Srivilliputtur.

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

Pre-delivery Judgment made in
C.M.A.(MD)No.1579 of 2013

01.03.2023