

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.268 of 2023

and

C.M.P.(MD)No.3205 of 2023

The Managing Director,
Tamil Nadu State Transport Corporation,
Periyamilaguparai, Collector Office Road,
Trichy-620 001.

...Appellant/Respondent

Vs.

1.Selvi
2.Minor Dhanusha Sri
3.Minor Sabarinadhan
4.Valliyammai
5.Mookan

...Respondents/Claimants

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the impugned award passed in M.C.O.P.No. 210 of 2017 dated 24.07.2020 on the file of the MACT (Tribunal Judge), Kuzhithalai.

For Appellant : Mr.P.M.Vishuvarthanan

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the quantum awarded by the Motor Accident Claims Tribunal, Kuzhithalai in M.C.O.P.No.210

of 2017, dated 24.07.2020. The challenge has been made mainly on the quantum and the negligence fixed by the Tribunal.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i)On 096.06.2017, when the deceased was riding his motorcycle bearing Registration No.TN-48-AD-7020 from Trichy to Pettavaithalai keeping the extreme left side of the road, the bus bearing Registration No.TN-45-N-3764 came in an opposite direction in a rash and negligent manner dashed against the motorcycle, as a result, the deceased succumbed to injuries. A case was also registered against the driver of the bus/offending vehicle.

(ii) The first petitioner is the wife of the deceased. The second and third petitioners are the children of the deceased. The fourth and fifth petitioners are the parents of the deceased. The deceased was aged about 38 years at the time of

accident and he was earning a sum of Rs.1,00,000/- per month. Hence, the claim petition was filed by the claimants.

(iii)The respondent corporation has filed a counter affidavit stating that only the deceased was rash and negligent in driving the vehicle. While he tried to overtake the bus, he lost the balance, as a result, he sustained injuries. Besides, the income of the deceased was also denied by the respondent.

4. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 and Ex.P8 were marked. On the side of the respondent R.W.1 was examined and no documentary evidence had been marked.

5.The tribunal on appreciation of entire evidence available on record found that the driver of the bus was negligent in driving the bus and dashed against the two-wheeler of the deceased. The tribunal had taken note of the registration of FIR against the driver of the bus to disbelieve the evidence of R.W.1 that there was negligence on the part of the deceased. Though the income of Rs. 1,00,000/- was pleaded, no evidence to substantiate the same was produced by the claimants. Considering all these aspects, the Tribunal had awarded the

compensation of Rs.17,00,000/-. Challenging the same, the present appeal has been filed by the transport corporation.

6.I have heard the arguments adduced and perused the materials placed on record.

7.On perusal of the award passed by the Tribunal and the evidence adduced on either side, this Court is of the view that there is no infirmity in fixing the negligence on the part of the driver of the bus. Though it was contended by the claimants that the deceased was earning a sum of Rs.1,00,000/- per month, no evidence had been produced to substantiate the same. Hence, the fixation of notional income of Rs.9,000/- by taking note of the fact that the deceased was a skilled labour and the future prospects at 25% as per the dictum laid down by the Hon'ble Supreme Court in *National Insurance Company vs. Pranay Sethi & others* [2017 (2) TN MAC 609 (SC)] by the Tribunal does not warrant any interference by this Court.

8.In view of the above, this Court holds that the compensation awarded by the Tribunal is just and reasonable. Accordingly, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is hereby confirmed.

9.The appellant is directed to deposit the compensation as awarded by the Tribunal with accrued interests and costs from the date of petition till the date of realization to the credit of M.C.O.P.No.210 of 2017, on the file of the Motor Accident Claims Tribunal, Kulithalai within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the first major claimants are permitted to withdraw the award amount as apportioned by the Tribunal by making necessary application before the Tribunal. The Tribunal shall deposit the shares of the minor claimants in a Fixed Deposit in any one of the Nationalized Banks, till the minor claimants attain majority. The guardian of the minor claimants is permitted to withdraw the interest accrued thereon once in three months directly from the bank. No costs. Consequently, connected miscellaneous petition is closed.

20.03.2023

NCC : Yes/No
Index : Yes/No
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N.SATHISH KUMAR, J.

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To

1.The Motor Accident Claims Tribunal/
Kulithalai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

C.M.A.(MD)No.268 of 2023

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