



C.M.A(MD)No.498 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.12.2022

Pronounced on : 27.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

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M/s.Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
represented by its Manager Director,
Having Office at Periyamilaguparai,
Tiruchirappalli – 620 002.

... Appellant / Respondent

Vs.

1.K.Malarvizhi

2.K.Punniyamuthy

3.Menaka

4.Udhaya

5.Minor Poovitha

... Respondents / claimants

(Minor represented by her mother and next friend first
respondent K.Malarvizhi)

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award made in M.C.O.P.No.133 of 2015, dated 06.04.2017 on the file of the Motor Accidents Claims Tribunal/Principal District Judge, Tiruchirappalli.



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For Appellant : Mr.D.Sivaraman

For Respondents : Mr.N.Sudhagar Nagaraj

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order made in M.C.O.P.No.133 of 2015, dated 06.04.2017 on the file of the Motor Accidents Claims Tribunal/Principal District Judge, Tiruchirapalli. The appellant is the respondent, respondents herein are the claimants in the original claim petition.

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

On 25.03.2013 at about 1.15 p.m., when the deceased Krishnamoorthy drove a motorcycle bearing Registration No.TN-45-A-9382 in a slow and cautious manner keeping left side of the east-west road, a bus bearing Registration No.TN-45-N-3528 came along with same direction and dashed against the motorcycle. The deceased fell down and the bus run over the deceased. He was taken to K.A.P.V.Medical College Hospital, Tiruchirappalli and he was declared as died. The deceased was a retired Sub Inspector of Police. After his retirement he was working as a Security Officer at Moogampikai Engineering College, Keeranur. He was earning Rs.12,000/-



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per month from his Security Officer Job and getting Rs.12,000/- per month as pension. The petitioners are his dependants and they claimed a sum of Rs.21,00,000/- as compensation.

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

The manner of accident as mentioned in the petition is denied. The driver of the respondent's bus drove the vehicle in a slow and cautious manner keeping left side of the road. It was the rider of the moped, who overtake the bus of the left side. To avoid the accident, the driver of the bus moved the vehicle towards right. In spite of the effort taken by the respondent's driver, the moped rider lost his balance and handle bar of the moped grazed against the left side body of the bus. The rider fell down on the rear wheel of the bus. The accident has happened purely on the rash and negligent driver of the deceased. The age, income of the deceased are denied. The amount claimed by the Petitioners as compensation, is excessive. So the petition is to be dismissed.

4. Five witnesses (5) were examined and six (6) documents were marked on the side of the petitioners. One witness (1) was examined and no document



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was marked on the side of the respondent. Five documents (5) were marked as witness documents. The Tribunal has awarded Rs.12,46,000/- as compensation, to be paid by the respondent.

5. Against the order, the appellant has preferred this appeal on the following grounds:

The Tribunal failed to note that the accident had occurred only due to the negligence of the deceased himself, who tried to overtake the bus from the left side of the road and he invited the accident. The registration of FIR is not sufficient to fix the negligence. The Tribunal ought to have decided the issue of negligence on the basis of the available evidence. PW2 was not an eye witnesses. The Tribunal ought to have rejected the evidence of PW2. The Tribunal failed to appreciate the RW1 in the proper perspective. The Tribunal is wrong in fixing the income as Rs.21,000/- per month. The family pension was not considered by the Tribunal. The award is excessive.

6. On the side of the appellant, it is stated that the negligence is on the side of the deceased and not on the side of the appellant's driver. The First Information Report is not a document to fix the negligence and the Tribunal has failed to consider the evidence in the proper perspective.



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7. On the side of the respondents, it is stated that except the official witnesses, the appellant has not chosen to examine any witness, whereas the claimant examined PW2, who was an eye witness. PW4 was examined as an eye witness. He has deposed that it was a bus driver, who was rash and negligence. Hence, it is decided that the liability fixed by the Tribunal is reasonable.

8. On the side of the appellant, it is stated that the income fixed by the Tribunal is excessive.

9. On the side of the claimants, it is stated that the deceased was a retired Sub Inspector of Police and getting pension. Moreover, after retirement he was working in a private college as a Security Officer. Ex.P4 is a Xerox copy of pension payment order and Ex.P5 is a Xerox copy of Bank Pass book of the first Petitioner and Ex.P6 is a Xerox copy of the driving license of deceased Krishnamoorthy. Ex.X1 and Ex.X2 are the copies of pension payment order of the deceased. Ex.X3 is a copy of letter given by the Mookambigai College of Engineering in respect of salary of deceased, Ex.X4



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is a copy of Attendance Register for deceased working as Vigilance Officer and Ex.X5 is a copy of pay bill register.

10. On the side of the claimants, it is stated that the family pension need not been deducted from the original pension received by the deceased. A judgment of the *High Court of Delhi* in the case of *Delhi Transport Corporation vs. Meen Chatuvedi & Others* reported in *2005 (2) TN MAC 59* (FB) is cited, wherein, it is held as follows:

"13.Our attention was invited to different judgments to point out that the amount of gratuity could not have been deducted from the amount of compensation **Jahirabi and Others v. V.S.Siddalingappa and Others, 2001 ACJ 1340** (Karnataka High Court). Punjab and Haryana High Court in the case of **Savitri Devi and Others v. Pala Ram and Others, 2000 ACJ 935** has taken the view that the pension/family pension payable to the widow could not be taken into consideration for reducing the dependency of the claimants. Similar is the view expressed by Karnataka High Court in **Rajeswari and Others v. Divisional Controller, Bangalore Transport, 2000 ACJ 732**. The High Court of Madhya Pradesh in **Fulmati Bai and Others v. Pacham Singh and Others, 1999 ACJ 1283** has taken the similar view.



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In **Revben and Others v. Kantibhai Narottambhai Gohil and Another**, 1995 ACJ 548 the Court pointed out the settled position of law and principle in view of the decisions of Gujarat High Court in **Prataprai Arjandas Dhameja v. Bhupatsing Gagji**, 1982 ACJ 316 and **Arunaben v. Mehmoodbhai Imamali Kaji**, 1983 ACJ 409. The Court pointed out that on the basic principles, no deducting can be made inasmuch as the benefits which would accrue to the dependents of the deceased are benefits which would even otherwise have accrued to the claimants on the death of the deceased irrespective of how he had died.

14. In view of the aforesaid principles laid down by the Apex Court, the question is no more res integra and the Tribunal exercising jurisdiction under the Motor Vehicles Act is required to consider the payment of damages/compensation to the person concerned on the basis of income and the loss that others would suffer irrespective of benefits, such as, insurance, provident fund, pension, etc".

11. P.W.3 to P.W.5 were examined on the side of the claimants. Ex.X1 and Ex.X2 revealed that the first petitioner getting Rs.8,265/- per month. From Ex.X3 to Ex.X5, it is clear that the deceased earning some amount as a



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Security Officer in a private institution. In the above circumstances, the income of the deceased is fixed as Rs.18,000/- per month. Considering the number of dependants 1/3rd (Rs.6,000/-) of the income to be deducted towards his personal expenses. Since, the age of the deceased at the time of accident is 63 years, multiplier '7' is applicable. Hence, the loss of income is calculated as Rs.10,08,000/- (Rs.12,000/- X 12 X 7).

12. On the side of the respondents, a judgment of the ***Hon'ble Supreme Court*** in the case of ***Raj Kaur & others vs. Pankaj Kumar & others*** reported in ***2012 (2) TN MAC 404 (Del.)*** is cited, wherein, it is held as follows:-

"9.The Claims Tribunal awarded a sum of Rs. 1,00,000/- towards Loss of Love and Affection. Loss of Love and Affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma v. Bachitar Singh, 2011 (2) TN MAC 56 (SC) : 2011 (11) SCC 425; and in Baby Radhika Gupta v. Oriental Insurance Company Limited, 2009 (2) TN MAC 609(SC) : 2009 (17) SCC 627, granted only Rs. 25,000/- (in total to all the Claimants) under the head of Loss of Love and Affection. Thus, I would reduce the compensation under this head to Rs.25,000/- only".



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13. The Tribunal has awarded Rs.10,000/- for each of the claimants towards loss of love and affection, Rs.10,000/- towards funeral expenses.

Considering the dictum of the Hon'ble Supreme Court in **Pranay Sethi case**, it is decided that the claimants are entitled to Rs.70,000/- towards conventional charges.

14. The total compensation is calculated as follows:-

Loss of income	:	Rs.10,08,000/-
Conventional charges	:	Rs. 70,000/-
		
Total compensation	:	Rs.10,78,000/-
		

15. This appeal is partly **allowed**. No costs.

(i) The compensation is reduced from Rs.12,46,000/- to Rs.10,78,000/-

(ii) the first claimant- wife of the deceased is entitled to a share of Rs.6,78,000/- with proportionate interest and costs, the claimants 2 to 5 are entitled to Rs.1,00,000/- each with proportionate interest

(iii) The appellant herein - Transport Corporation, is directed to deposit the entire compensation of Rs.10,78,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and



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with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) Excess amount, if any, shall be refunded to the appellant – Transport Corporation.

(iii) On such deposit being made, the respondents 1 to 4 herein / major claimants are permitted to withdraw their share amount with proportionate interest and costs, as apportioned by this Court, on filing proper petition before the Tribunal, less any amount, if already withdrawn by them.

(iv) The Tribunal is directed to deposit the share of the minor claimant / fifth respondent herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till she attains majority. The first respondent, who is the mother and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The claimants are not entitled for interest for the default period, if there is any.

27.04.2023

NCC : Yes/ No
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To

1.The Motor Accidents Claims Tribunal/
Principal District Judge,
Tiruchirapalli.

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 made in
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