



C.M.A.(MD)No.543 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.543 of 2023
and
C.M.P.(MD)No.7080 of 2023

Tamil Nadu State Transport Corporation,
Thuvarankurichi Depot,
Trichy Division,
Through its General Manager

...Appellant/Respondent

Vs.

1.K.Jeyarani
2.Minor.K.Kaleeswaran
3.Panneerselvam
4.Govindammal

...Respondents/Petitioners

*[Minor is represented through his mother
and natural guardian first respondent herein]*

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Additional District and Sessions Court, Srivilliputhur in M.C.O.P.No.100 of 2016 dated 30.11.2021.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.K.Hemakarthiskeyan



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JUDGMENT

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The present Civil Miscellaneous Appeal is filed challenging the quantum of award passed by the Tribunal in M.C.O.P.No.100 of 2016, dated 30.11.2021.

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) The deceased was aged about 38 years and he was a driver by profession. On 11.09.2015, he was driving his lorry bearing Registration No.TN-28-AL-1156 and he stopped the vehicle on the western side of Maudrai-Trichy highway in front of another lorry bearing Registration No.57-W-0977. At that time, the bus bearing Registration No.TN-45-N-3341 driven in a rash and negligent manner, while overtaking the other vehicle in the wrong side, dashed against the rear portion of the Lorry bearing Registration No.TN-57-W-0977. As a result, the front tire of the lorry bearing Registration No.TN-57-W-0977 ran over the head of the deceased and he died on the spot. Therefore, the claimants being the legal heirs of the deceased filed the claim petition seeking compensation.



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(ii)The Transport Corporation before the Tribunal took a stand that only the driver of the lorry bearing Registration No.TN-57-0977 was negligent in driving the lorry. He suddenly moved the lorry from right side of the highway and dashed against the bus. Hence, the accident had taken place.

4. Before the Tribunal, on the side of the claimants P.W.1 to P.W.3 were examined and Ex.P1 and Ex.P19 were marked. On the side of the respondents R.W.1 was examined and no documentary evidence was marked.

5.Though the manner of accident was denied by the Transport Corporation, on perusal of the evidence, the Tribunal came to the conclusion that only the driver of the Transport Corporation bus was rash and negligent in driving the bus. The Tribunal having considered the age and profession of the deceased and also taking note of the salary bill issued by P.W.3, owner of the lorry driven by the deceased, fixed the monthly income of the deceased at Rs.13,000/- and awarded a sum of Rs.26,66,000/- towards compensation.



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6. Though various grounds had been raised in the appeal, the learned counsel for the appellant mainly submitted that the Hon'ble Division Bench of this Court in a case of *Andal and others vs. Avinav Kannan and another* [2019 (1) TNMAC 54 (DB)], for the accident occurred in the year 2014, had fixed the monthly income of the deceased only at Rs.11,000/-. In the present case, the accident had taken place in the year 2015 and hence, the income fixed by the Hon'ble Division Bench of this Court shall be adopted.

7. The learned counsel for the respondents submitted that the Tribunal after considering the evidence and materials placed on record had rightly fixed the monthly income of the deceased at Rs.13,000/- and the same does not warrant any interference by this Court.

8. In the light of the submissions, now the point arise for consideration in this appeal is:

Whether the Tribunal is right in fixing the notional income of the deceased at the rate of Rs.13,000/-?



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9.Heard the learned counsel appearing on either side and perused the entire evidence available on record.

10.The fact that the deceased was a driver by profession is not disputed. The fact that the driver of a Transport lorry will be paid more than Rs.500/- per day cannot be disputed. P.W.3, owner of the lorry was examined to show the nature of the salary paid to the deceased. Salary bills issued by P.W.3 were also placed to substantiate the same. His evidence also indicates that the deceased also owned an auto. RC book of the said auto is also marked as Ex.B10 to substantiate the same.

11.In such view of the matter, fixation of Rs.13,000/- as notional income of the deceased cannot be found fault. Merely because the Hon'ble Division Bench of this Court had fixed the notional income of the driver at the rate of Rs.11,000/-, the same cannot be applied to all the cases mechanically. Every case has to be decided on its own facts and circumstances. In such view of the matter, I do not find any merits in this appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is confirmed.



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12.The Transport Corporation is directed to deposit the entire compensation as awarded by the Tribunal with interest at the rate of 7% from the date of petition till the date of realization to the credit of M.C.O.P.No.100 of 2016, on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court, Srivilliputhur 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 major claimants are permitted to withdraw the amount as apportioned by the Tribunal, less the amount if any already withdrawn, by making necessary application before the Tribunal. The share of the minor claimant shall be deposited in any one of the Nationalized Bank, till the minor claimant attains majority. The guardian of the minor claimant is entitled to withdraw the interest once in three months directly from the bank. No costs. Consequently, connected miscellaneous petition is closed.

22.06.2023

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

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To

- 1.The Motor Accident Claims Tribunal/
Additional District and Sessions Court, Srivilliputhur.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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