



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.100 of 2023

WEB COPY

1.Saroja

2.Priya

3.Kalpana

4.Minor Sharmila,

5.Minor Suryalakshmi

6.Minor Rohini

:Appellants/Petitioners

(Minor Petitioners 4 to 6 are represented through their mother and next friend, the first Petitioner Saroja)

/vs/

The Managing Director,
M/s.Tamil Nadu State Transport Corporation Limited,
Dindigul Region,
Bye Pass Road, Collectorate Post,
Dindigul - 624 004.

:Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal order made in M.A.C.O.P.No.480 of 2017, dated 14.12.2018, on the file of the Motor Accidents Claims Tribunal(Principal District Judge), Dindigul.

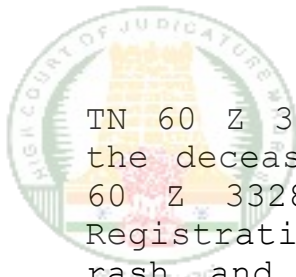
For Appellants : Mr.S.Pugalendhi
For Respondent : Mr.K.A.Thirumalaiappan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation.

2.The parties are referred to herein as per their ranking before the Tribunal.

3.The deceased Thangapandi , aged 43 years at the time of
<https://www.mca211.co.in/judis> driver-cum-owner of the lorry bearing Registration No.



TN 60 Z 3328 and earning a sum of Rs.35,000/- per month. The deceased was driving his lorry bearing Registration NO. TN 60 Z 3328 in Dindigul to Oddanchatram Road, the bus bearing Registration No. TN 57 N 1942 came in the opposite direction in a rash and negligent manner and while overtaking the vehicle proceeding the bus, came in the wrong side and dashed against the lorry. As a result, the deceased succumbed to injuries. Hence the claim petition.

4. It is the case of the respondent that the bus was driven by its driver in a cautious manner and the lorry came in a rash and negligent manner and on seeing the lorry, the respondent's bus driver reduced the speed, made sound horn to avert the accident with the lorry but the lorry driver was unable to control the lorry and dashed against from the side body of the bus and hence the respondent disputed the liability.

5. Before the Tribunal, on the side of the Petitioners, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P8 are marked. On the side of the respondent, R.W.1 was examined and no document was marked.

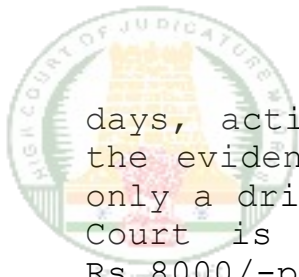
6. On the basis of the evidence of P.W.1 and P.W.2, the trial Court has come to the conclusion that it is only the driver of the offending vehicle was rash and negligent in driving the vehicle and awarded the compensation as follows:

- | | | |
|---------------------------|---|----------------|
| 1. for loss of dependency | - | Rs.12,60,000/- |
| 2. Loss of consortium to | - | Rs.40,000/- |
| to the first Petitioner | | |
| 3. Loss of Estate | - | Rs.15,000/- |
| 4. for funeral expenses | - | Rs.15,000/- |

total	-Rs.13,30,000/-
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A crime is also registered against the driver of the offending vehicle. The Criminal Case is also pending and charge-sheet is filed against him. The evidence of P.W.2 would clearly points out the manner in which the accident took place and investigation is also carried out and final report filed against the bus driver. The Tribunal has rightly come to the conclusion that only the driver of the offending vehicle was rash and negligent in driving the bus and the same is not challenged by the respondent. The Tribunal, however, fixed the notional income of the deceased at Rs.8,000/-p.m.. The evidence on record clearly indicate that the deceased is not only driver by profession but also owned a lorry bearing Registration No. TN 45 W 4676. Ex.P6 is filed to that effect.

7. Therefore, when a person is acting as a driver-cum-owner of the transport vehicle, his income would be more and even now a



days, acting driver will earn more than Rs.10,000/-. Adr /, the evidence on record clearly indicate that the deceased is not only a driver by profession, but he also owns a lorry. Hence, this Court is of the view that fixing the notional income at Rs.8000/-p.m by the Tribunal is very low and accordingly in order to award a reasonable compensation, taking note of the age of the deceased and his profession as a driver and is also owning a lorry, fixed the notional income at Rs.14,000/-p.m and if 25% is added towards future prospects of the deceased as per the dictum laid down in the **Pranay Sethi's case**, the monthly income comes to Rs.17,500/- and if one fourth of the monthly income is deducted towards the personal expenditure of the deceased, then the monthly income comes to Rs.17,500/- - Rs.4375/- = Rs.13125/- and if multiplier of '14' is applied, the total loss of dependency comes to Rs.13,125/- x 12 x14 = Rs.22,05,000/-. Further the award of loss of consortium to the first petitioner at Rs.40,000/-, loss of estate at Rs.15,000/- and funeral expenses at Rs.15,000/- stands confirmed. The Tribunal has failed to award any amount to the Petitioners 2 to 6 towards loss of love and affection and hence this Court awards a sum of Rs.40,000/- each to the Petitioners 2 to 6 and the same comes to Rs.2,00,000/- and thus the total compensation is arrived as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of dependency	Rs.12,60,000/-	Rs.22,05,000/-	enhanced
2	Spousal consortium to the first Petitioner/wife	Rs.40,000/-	Rs.40,000/-	same
3	For loss of estate	Rs.15,000/-	Rs.15,000/-	same
4	For funeral expenses	Rs.15,000/-	Rs.15,000/-	same
5.	For loss of love and affection to the Petitioners 2 and 6	----	Rs.2,00,000/- (Rs.40,000/- each)	Newly awarded
6	Total	Rs.13,30,000/-	Rs.24,75,000/-	enhanced

Thus the total compensation payable to the Petitioners is Rs.24,75,000/- with interest at the rate of 7.5%p.a from the date of claim petition till the date of realization.



8. In the result, the Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.13,30,000/- to Rs.24.75,000/- with interest at the rate of 7.5%p.a., from the date of claim petition till the date of realization. The respondent Transport Corporation is directed to deposit the above said modified enhanced award amount with accrued interest and costs, less the award amount already deposited, if any, to the credit of claim petition before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first petitioner/wife is entitled to a sum of Rs.10 lakhs and the Petitioners 2 to 6 are each entitled to equal share in the balance award amount, with proportionate accrued interest and costs, less the award amount, if any already withdrawn. The Petitioners 1 to 3 are permitted to withdraw their share in the award amount as stated supra, by filing necessary application before the Tribunal. The share of the minor claimants/petitioners 4 to 6 are directed to be deposited in any one of the nationalized Bank, in interest bearing fixed deposits, initially for a period of three years, renewable thereafter, till the minor attains majority. The first Petitioner/mother is permitted to withdraw interest from the said deposits directly from the bank, once in three months and utilize the same for the welfare of the children. The Petitioners/claimants are directed to pay the excess Court fee, if any, towards the enhanced award amount to the credit of Registry. Only on such payment being made, Registry is directed to draft the decree in the appeal. No costs.

Sd/-

Assistant Registrar(CS II)

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/07/2023

Sub Assistant Registrar(CS)

vsn

To

1. The Principal District Judge
Motor Accidents Claims Tribunal,
Dindigul.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD) No.100 of 2023

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