



C.M.A(MD)No.312 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.11.2022

Pronounced on : 19.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.312 of 2014

The Tamil Nadu State Transport Corporation
represented by its General Manager,
Villupuram Division,
Cuddalore Region.

... Appellant / Respondent

Vs.

1.Hemalatha

2.Suriyakala

3.Suriyapriya

... Respondents / claimants

(Minor Respondents 2 and 3 are declared as major and the guardianship of their mother/1st Respondent is discharged vide Court order, dated 17.11.2022 made in C.M.P(MD)Nos.10951,10953 and 10954 of 2022 in C.M.A.(MD)No. 312 of 2014 by RTJ)

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 amended by Motor Vehicles (Amendment) Act, 1994, to set aside the judgment and decree passed by the Motor Accidents Claims Tribunal in M.C.O.P.No.1204 of 2012, dated 29.04.2013 on the file of the Motor Accident Claims Tribunal, I Additional District Judge (PCR Court), Thanjavur.



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For Appellant : Mr.S.Royce Emmanuel

For Respondents : Mr.Raja.Karthikeyan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order made in M.C.O.P.No.1204 of 2012, dated 29.04.2013 on the file of the Motor Accident Claims Tribunal/I Additional District Judge (PCR), Thanjavur. 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 11.08.2011 at about 11.25 p.m., when the deceased Ramasamy was walking along the Cuddalore Main Road Junction, a bus bearing Registration No.TN-32-N-3250 driven by its driver in a high speed in a rash and negligent manner, hit against the deceased. The deceased sustained grievous injury and he was taken to the Government Hospital, Pondicherry and he died succumbed to the injuries. The deceased was aged about 40 years and he was doing business under the name and style of "Suriya Fancy Store" at Thirumanur and he was earning Rs.50,000/- per month. The Petitioners are his dependants and they claim a sum of Rs.40,00,000/- as compensation.



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

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The age, income and occupation of the deceased are to be proved. It was the deceased, who suddenly crossed the road without observing traffic and he invited the accident. The driver of the bus was not responsible for the accident. The respondent is not liable to pay compensation. The amount claimed is excessive.

4. One witness (1) was examined and six (6) documents were marked on the side of the petitioners. One witness (1) was examined and no document was marked on the side of the respondent. The Tribunal has awarded Rs. 9,20,000/- as compensation, to be paid by the respondent.

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

The Tribunal is wrong in holding that the accident has occurred due to the rash and negligent driving of the bus driver. The Tribunal failed to consider that it was the deceased, who was negligent in crossing the road. The Tribunal has fixed the annual income of the deceased at Rs.52,000/- and added 30% towards future prospectus and applied multiplier '15', which are



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all wrong. The Tribunal has awarded Rs.50,000/- towards loss of consortium and Rs.75,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses and awarded Rs.5,000/- towards Transportation Expenses, which are all excessive.

6.PW1 was examined as an eye witness. Ex.P1 is the copy of the FIR. RW1 is the driver of the bus. Except the bus driver, no other independent witness was examined on the side of the respondent. Hence, it is decided that the accident has occurred due to the rash and negligent of the bus driver.

7.On the side of the appellant, it is stated that the Tribunal has fixed the annual income as Rs.52,000/-, which is excessive. On the side of the respondent it is stated that the deceased was running a shop by the name "Suriya Fancy Store" at Thirumanur and he was earning Rs.50,000/- per month. The photograph of "Suriya Fancy Store" was marked as Ex.P4. The CD of Ex.P4 was marked as Ex.P5.

8.On the side of the appellant, it is stated that the claimants failed to produce the income tax particulars. Considering the year of the accident and



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considering the cost of living and labourer's income, the Tribunal has fixed the monthly income as Rs.5,000/- per month, which is reasonable.

9.The Tribunal has added 30% towards future prospectus. Considering the age of the deceased and considering that he was running only a fancy store and that he was not doing any permanent job, it is decided that only 25% is to be added towards future prospectus. Including the future prospectus, the deceased might have earned Rs.6,250/- per month. After deducting 1/3rd towards his own expenses, the deceased might have contributed Rs.4,167/- to his family members. Since the deceased was aged about 40 years, multiplier 15 is applicable. Hence, the loss of income is calculated as $(4167 \times 15 \times 12)$ Rs.7,50,060/-.

10.On the side of the appellant, it is stated that the Tribunal has awarded Rs.15,000/- towards loss of consortium for the first Petitioner, Rs.75,000/- towards loss of love and affection for the 1 to 3 petitioners, Rs.10,000/- towards funeral expenses and Rs.5,000/- towards transportation charges, which are all excessive.



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11.Considering the date of accident and 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. The award is modified as follows:

Loss of Income	-	Rs. 7,50,060/-
Conventional Charges	-	Rs. 70,000/-
Total	-	----- Rs. 8,20,060/- -----

The award is fixed as Rs.8,20,060/-

12.The Civil Miscellaneous Appeal is allowed in part.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.9,20,000/- to Rs.8,20,060/- (Rupees Eight lakhs Twenty Thousand Sixty only) which shall carry interest at the rate of 7.5% per annum.

(ii) The Appellant/Transport Corporation, is directed to deposit the entire compensation of Rs.8,20,060/- (Rupees Eight lakhs Twenty Thousand Sixty only) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with costs to the credit of M.C.O.P.No.1204 of 2012 on the file of the Motor Accident Claims Tribunal /I Additional District Judge (PCR Court), Thanjavur, within



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a period of eight weeks from the date of receipt of a copy of this order.

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(iii) On such deposit being made by the Appellant/Transport Corporation, the first Respondent/claimant is entitled to a share of Rs.4,20,060/- (Rupees Four Lakhs Twenty Thousand Sixty only) with interest and the Respondents 2 and 3 are entitled to a share of Rs.2,00,000/- (Rupees Two lakhs only) each with proportionate interest and the claimants are entitled to withdraw their respective shares with proportionate interest and cost on filing petition before the trial Court.

19.01.2023

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

To

- 1.The Motor Accident Claims Tribunal/
I Additional District Judge (PCR),
Thanjavur.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.THARANI, J.

vsd

Pre - Delivery Judgment made in
C.M.A(MD)No.312 of 2014

19.01.2023