



C.M.A.(MD)No.747 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 09.02.2023

Delivered On : 01.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.747 of 2014

The Managing Director,
Tamil Nadu State Express Transport Corporation Limited,
Pallavan Salai,
Chennai – 600 002.

.. Appellant

Vs.

1.Indirani
2.Minor Karthik
3.Minor Soundarya
(The second and third minor respondents are rep. By
next friend and guardian mother, the first respondent Indirani)
4.Renganayagi Ammal .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 26.03.2012 passed in M.C.O.P.No.117 of 2011 on the file of the Motor Accident Claims Tribunal/Additional District Court/Fast Track Court No.2, Trichirappalli.

For Appellant	: Mr.P.Prabhakaran
For Respondents 1 to 4	: Mr.A.Saravanan



C.M.A.(MD)No.747 of 2014

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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.117 of 2011 dated 26.03.2012, on the file of the Motor Accident Claims Tribunal/Additional District Court/Fast Track Court, Trichirappalli.

2.The appellant herein is the respondent and the respondents herein are the petitioners in the claim petition. The respondents herein have filed a claim petition in M.C.O.P.No.117 of 2011, claiming compensation for the death of one Kathirvel, in an accident that took place on 01.08.2010. The Tribunal has awarded a sum of Rs.11,96,300/- (Rupees Eleven Lakhs Ninety Six Thousand Three Hundred only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.117 of 2011 is as follows:

On 01.08.2010, when the deceased was working as a Conductor in a bus bearing registration No.TN-45-N-2937, due to heavy traffic, the bus was stopped. The deceased got down from the bus to inquire the reason for the traffic. At that time, another bus bearing registration No.TN-01-N-4789 came in a rash and negligent manner and dashed against the deceased from behind. The deceased was



C.M.A.(MD)No.747 of 2014

taken to Salem Government hospital and then he was admitted in Salem Vinayaka Mission hospital and died on 02.08.2010. The petitioners are the dependants of the deceased and they claimed a sum of Rs.40,00,000/- (Rupees Forty Lakhs only) as compensation.

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

The accident did not happen as narrated in the petition. The respondent bus driver is not responsible for the accident. The respondent bus driver was following the ongoing vehicles. It was the deceased, who suddenly crossed the road from right to left without adhering to the traffic and he dashed against the front side bumper of the bus and he invited the accident. The age, income, expenditure are to be proved.

5.On the side of the claimants, 12 witnesses were examined and three documents were marked. On the side of the respondent therein, one witness was examined and no document was marked and three Court documents were marked. After trial, the Tribunal has awarded a sum of Rs.11,96,300/- (Rupees Eleven Lakhs Ninety Six Thousand and Three Hundred only) as compensation to be paid by the respondent therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:



C.M.A.(MD)No.747 of 2014

The Tribunal has failed to consider that it was not the driver of the appellant bus, who is responsible for the accident. It was the deceased, who suddenly crossed the road without noticing the upcoming vehicle and he invited the accident. The Tribunal is wrong in awarding Rs.40,000/- (Rupees Forty Thousand only) towards loss of love and affection and separately awarding Rs.10,000/- (Rupees Ten Thousand only) for loss of consortium. The Tribunal is wrong in awarding Rs. 32,500/- (Rupees Thirty Two Thousand and Five Hundred only) towards medical expenses. The award amount is excessive.

6.On the side of the appellant, it is stated that it was the deceased who invited the accident by suddenly crossing the road without observing the upcoming vehicle. On the side of the respondents, it is stated that the FIR is against appellant driver and that P.W.2 was examined as eye witness. P.W.2 has deposed that the accident has happened only due to rash and negligent driving of the appellant driver. Rough sketch was marked as Ex.P12 and that there is no negligence on the part of the deceased.

7.A perusal of the records reveals that the appellant bus came from behind the bus wherein the deceased was working as the conductor. It is seen that there was heavy traffic at the time of the accident. The deceased got down from the bus to



C.M.A.(MD)No.747 of 2014

know the reason for the traffic. When there is traffic jam, it is the duty of the upcoming vehicle to park the vehicle on the extreme left side of the road.

8.It is seen that instead of parking the vehicle on the left side of the road, the appellant bus driver has tried to overtake the vehicles parked due to traffic jam. The copy of the FIR was marked as Ex.P1. Chargesheet was marked as Ex.P3. Rough Sketch was marked as Ex.P12. P.W.2 has deposed that it was the appellant bus driver who was rash and negligent. Hence, it is decided that appellant bus driver is responsible for the accident. Since the appellant driver is responsible for the accident, the appellant is duty bound to pay compensation for the claimants.

9.On the side of the appellant, it is stated that the Tribunal fixed the age of the deceased as 49 years. The reason for fixing the age was not discussed by the Tribunal. The Conductor license was marked as Ex.P7. School Certificate of the deceased was marked as Ex.P8. Service Register was marked as Ex.C2. On the basis of the above said documents, it is decided that the deceased was aged about 49 years at the time of accident.

10.On the side of the appellant, it is stated that the Tribunal has adopted



C.M.A.(MD)No.747 of 2014

multiplier '11' without any basis.

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11.For the age of 49 years, multiplier '11' is to be adopted and hence, the calculation of loss of income by applying multiplier '11' is reasonable.

12.On the side of the appellant, it is stated that the Tribunal is wrong in awarding Rs.40,000/- (Rupees Forty Thousand only) towards loss of love and affection and separately awarding Rs.10,000/- (Rupees Ten Thousand only) towards loss of consortium for the first claimant.

13.It is seen that the Tribunal has awarded Rs.5,000/- (Rupees Five Thousand only) towards funeral and transport expenses, Rs.40,000/- (Rupees Forty Thousand only) towards loss of love and affection, Rs.10,000/- (Rupees Ten Thousand only) towards loss of consortium. The Tribunal has also awarded a sum of Rs.32,500/- towards medical expenses. Considering the date of accident, it is decided that the compensation awarded under the aforesaid heads are reasonable.

14.It is seen that the salary of the deceased as per the salary certificate, Ex.P9 is Rs.12,615/- (Rupees Twelve Thousand Six Hundred and Fifteen only). After deducting 1/3rd towards his own expenses, the deceased might have contributed



C.M.A.(MD)No.747 of 2014

Rs.8,410/- (Rupees Eight Thousand Four Hundred and Ten only) for his family.

After applying multiplier '11', the loss of income is calculated as Rs.11,10,120/- (Rupees Eleven Lakhs Ten Thousand One Hundred and Twenty only). In total, the compensation awarded by the Tribunal is reasonable.

15.In the result, this Civil Miscellenaous Appeal is **dismissed**. The claimants are entitled to a compensation of Rs.11,97,620/- (Rupees Eleven Lakhs Ninety Seven Thousand Six Hundred and Twenty only) with interest and costs. The appellant herein is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order.

16.The respondents 1 to 3 are entitled to a sum of Rs.3,00,000/- (Rupees Three Lakhs only) each as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The 4th respondent is entitled to a sum of Rs.2,97,620/- (Rupees Two Lakhs Ninety Seven Thousand Six Hundred and Twenty only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization. On deposit, the respondents 1 and 4/major



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C.M.A.(MD)No.747 of 2014

R. THARANI, J.

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claimants are permitted to withdraw their respective shares with proportionate interest after deducting any amount received by them earlier. The Tribunal is directed to deposit the share of the respondents 2 and 3/minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. The claimants are not entitled for interest for the default period, if there is any. No Costs.

01.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1.The Motor Accidents Claims Tribunal,
Additional District Judge, Fast Track Court No.II
Trichirappalli.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

C.M.A.(MD)No.747 of 2014