



C.M.A.(MD)No.872 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 16.11.2022

Delivered On : 19.01.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.872 of 2018

The Divisional Manager,
Tamil Nadu Transport Corporation,
Coimbatore Division,
Door No.37, Mettupalayam Salai,
Coimbatore.

.. Appellant / Respondent

Vs.

1.Marammal
2.Pandiammal

.. Respondents / Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 04.01.2016, made in M.C.O.P.No.349 of 2014, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Dindigul District.

For Appellant	: Mr.D.Sivaraman
For Respondents	: No appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 04.01.2016, made in M.C.O.P.No.349 of 2014, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Dindigul District. The appellant herein is the respondent and the respondents herein are the claimants in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in M.C.O.P.No.349 of 2014, is as follows:

On 23.01.2014, while the deceased - Madhavan was riding a two wheeler bearing Registration No.TN-65-P-2793 along the Dindigul-Palani road, a bus bearing Registration No.TN-39-N-0051, came in a rash and negligent manner, dashed against the deceased. The deceased sustained injuries. He was taken to hospital, where, he was declared dead. The deceased was aged about 29 years and was earning Rs.15,000/- per month as a loadman. The petitioners are his dependents and they claimed a sum of Rs.20,00,000/- as compensation.

3. A brief substance of the counter filed by the respondent, in M.C.O.P.No.349 of 2014, is as follows:-



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The driver of the bus is a necessary party to the case. The driver of the bus take the trip from Srirangam to Pollachi by observing all the traffic Rules.

When the bus was nearing the by-pass over bridge near Anil Semiya Company, the driver of the bus drove the bus in a slow and cautious manner, keeping the left side of the road, at that time, a motorcycle bearing Registration No.TN-65-P-2793, came from the opposite direction from behind a lorry in a high speed and attempted to go to the right side, without considering the bus. The bus driver blowing the horn and applied the brake, but, the deceased, who came in a rash and negligent manner, lost his control, dashed against the front left head light portion of the bus and he fell down. He voluntarily invited the accident. The driver of the bus is not responsible for the accident. The rider of the two wheeler was not wearing helmet. He is liable for contributory negligence. The age, income and liability to be proved. The claim is excessive. The respondent is not liable to pay compensation.

4. 2 witnesses were examined and 4 documents were marked on the side of the petitioners. 1 witness was examined and no document was marked on the side of the respondent. After considering both sides, the Tribunal has awarded a sum of Rs.9,69,000/- as compensation.



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5. Against the award, the respondent/ appellant has filed this appeal for enhancement of compensation, on the following grounds:-

The Tribunal failed to note that the accident has occurred only due to the negligence of the deceased, who tried to suddenly cross the road, without observing the traffic. The Tribunal failed to appreciate that F.I.R was not sufficient to fix the negligence against the driver. The Tribunal failed to consider that the deceased was not wearing helmet, he has violated the statutory provision and he was liable for contributory negligence. The Tribunal is wrong in holding that the driver of the bus is responsible, since he was suspended for service for a brief period, during departmental enquiry. The Tribunal is wrong in fixing the income as Rs.6,000/- and that the Tribunal is wrong in adopting multiplier '18' and that the proper multiplier for the age of 29 years is only '17'. The total award amount is excessive.

6. Though name of the respondents was printed, there was no representation on the side of the respondents. Hence, no oral argument on the side of the respondents is recorded.

7. On the side of the appellant, it is stated that the Tribunal is wrong in fixing the responsibility on the bus driver. The Tribunal has failed to consider that the deceased was not wearing helmet at the time of accident.



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WEB COPY 8. P.W.2 was examined as an eye witness. Ex.P1 was the copy of F.I.R. The driver of the bus was examined as R.W.1. No independent witness was examined on the side of the respondent. F.I.R was registered against the bus driver. In the above circumstances, it is decided that the bus driver is responsible for the accident.

9. The claim of the appellant is that the deceased was not wearing helmet at the time of accident. It is seen that the deceased died due to head injuries. In the above circumstances, it is decided that the deceased was not wearing helmet and 10% contributory negligence is fixed on the deceased.

10. On the side of the appellant, it is stated that the Tribunal has fixed the monthly income as Rs.6,000/-, without any proof. The claim of the claimants is that the deceased was earning Rs.15,000/- per month as a loadman. No appeal was filed and no cross objection was filed on the side of the claimants. Considering the date of accident, it is decided that notional income fixed by the Tribunal is reasonable.



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11. On the side of the appellant, it is stated that the age of the deceased was 29 years and hence, multiplier 17 is applicable, but, the Tribunal has adopted multiplier 18, which is wrong. The age of the deceased was 29 years and multiplier 17 is applicable.

12. It is seen that the deceased was married and hence, $\frac{1}{3}$ rd of the income has to be deducted towards his own expenses. After deducting $\frac{1}{3}$ rd of the income, the deceased might have contributed Rs.4,000/- per month to his family members. By applying multiplier 17, the loss of income is calculated as Rs.8,16,000/- (Rs.4,000/- X 12 X 17 = Rs.8,16,000/-).

13. The Tribunal has awarded Rs.50,000/- towards loss of consortium, Rs.40,000/- towards loss of love and affection and Rs.15,000/- towards funeral expenses. As per the dictum of the Hon'ble Supreme Court in Pranay Sethi's case, The claimants are entitled to Rs.70,000/- towards conventional charges.

14. The total compensation is calculated as follows:-

Loss of income	:	Rs. 8,16,000/-
Conventional charges	:	Rs. 70,000/-
		
Compensation	:	Rs. 8,86,000/-
		



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15. After deducting 10% (Rs.88,600/- towards contributory negligence, the claimants are entitled to Rs.7,97,400/- as compensation.

16. This Appeal is partly allowed. No costs.

(i) The claimants are entitled to Rs.7,97,400/- as compensation. The first respondent, who is the wife of the deceased, is entitled to Rs.5,00,000/- along with proportionate interest and costs and the second respondent, who is the mother of the deceased, is entitled to Rs.2,97,400/- with proportionate interest.

(ii) The appellant is directed to deposit the entire compensation of Rs.7,97,400/-(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 and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant, the respondents 1 to 2 herein / claimants are permitted to withdraw their shares as apportioned by this Court with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimants are not entitled for interest for the default period, if there is any. Excess amount, if any, shall be refunded to the appellant.

19.01.2023

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R. THARANI, J.

Ls

To

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

Pre-delivery Judgment made in
C.M.A.(MD)No.872 of 2018

19.01.2023