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C.M.A(MD)No.25 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.01.2023

Pronounced on : 14.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.25 of 2020

The Tamilnadu State Transport
Corporation, Thevaram Depo,
Through its Branch Manager,
Bodinayakanur Taluk,
Thevaram, Theni District.

... Appellant / 1st Respondent

Vs.

1.N.Murugan

2.Minor.M.Shreenithi

3.Minor.M.Yoga Sri

... 1 to 3 Respondents / petitioners 1 to 3

4.S.Manikandan

... 4th respondent / 2nd respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree in M.C.O.P.No.29 of 2018 dated 05.07.2019 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Theni.



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For Appellant : Mr.K.Sudalaiyandi
For R1 to R3 : Mr.B.Rajesh Saravanan

JUDGMENT

This appeal is filed against the judgment and decree passed in M.C.O.P.No.29 of 2018 on the file of the Additional District and Sessions Court, Theni. The appellant herein is the first respondent, respondents 1 to 3 are claimants 1 to 3 and the fourth respondent herein is the second respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 28.12.2017, at about 10 p.m., when the deceased Suganya was travelling with her family members in the bus bearing registration number TN 57 N 1946 from Palani to Thevaram and when the bus came near the Vaigai Anai Pirivu at Periyakulam at about 1 a.m., on 29.12.2017, to avoid the cool breeze, the deceased tried to move to the front side. At that time, the driver of the bus drove the vehicle in a rash and negligent manner, in a turning and due to the same, the deceased was thrown out of the back side entrance of the bus. She sustained serious injuries. She was taken to the Government Hospital,



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Periyakulam, then she was taken to Theni Medical College Hospital and she died there on 29.12.2017 at about 3 a.m. Petitioners claimed a sum of Rs. 25,00,000/- as compensation.

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

The compensation claimed is excessive. The real manner of accident was suppressed. The driver of the bus drove the vehicle in a careful and cautious manner. The bus driver, picked up the passengers at Periyakulam bus stop at 1 a.m., on 29.12.2017. The deceased was sitting in the back side of the bus. Only to avoid cool breeze, the petitioners moved and sat in the front seat of the bus without giving any information to the conductor. When the bus was slowly turning in a curve of the road, the deceased stood up in the moving bus along with her luggage and tried to come to the front seat. In this process, she lost her control and fell down from the moving bus. The accident has happened only due to the negligent act of the deceased and not due to the rash and negligent driving of the bus driver. The respondent is not liable to pay compensation.



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4.Three witnesses were examined and nine documents were marked on the side of the petitioner. Three witnesses were examined and one document was marked on the side of the respondent. The Tribunal has awarded a sum of Rs.19,03,000/- as compensation.

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

The Tribunal failed to note that there was no negligence on the part of the driver of the bus. The First Information Report is not a conclusive proof. The Tribunal failed to consider that it was the deceased who stood up in the moving bus along with her luggage and tried to come forward to sit along with her husband. In that process, she lost her control and fell down outside the moving bus. The Tribunal fixed the monthly income as Rs.7500/- which is excessive. The Tribunal awarded Rs.5,000/- towards transport expenses, Rs.15,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.4,00,000/- towards maintenance of minor children which are all excessive. An award under the head of maintenance of minor children is wrong.



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6.The First Information Report, registered against the bus driver, was marked as Ex.P1. P.W.2 was examined as an eye witness. The driver of the bus was examined as R.W.1. The conductor of the bus was examined as R.W. 2. R.W.3 has deposed that the First Information Report registered against the driver was closed as mistake of fact and the final report was marked as Ex.R1.

7.The admitted case of the petitioner is that, when the deceased was trying to move from the backside seat of the bus to the front side seat, she fell down outside the bus. P.W.1 and P.W.2 have deposed that the driver was rash and negligent in driving the bus in a curve and that he was responsible for the accident. R.W.1 and R.W.2 have deposed that it was the deceased who tried to move to the front seat with her luggage in a negligent manner and that she invited the accident.

8. P.W.1 and R.W.1 are interested witnesses. The Tribunal fixed the responsibility on the bus driver based on the evidence of P.W.2 and based on the First Information Report. The Tribunal failed to discuss anything regarding Ex.R1, the final report. From Ex.R1, it is clear that the First



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Information Report was closed as mistake of fact. In Ex.X1, it is clearly stated that the deceased handed over the baby to the first petitioner and in the process, she failed to hold the iron bars in the bus and that lead to her fall. Hence it is decided that the deceased was also responsible for the accident. The liability is fixed as 50% on the driver and 50% on the deceased.

9.On the side of the appellant, it is stated that the Tribunal is wrong in fixing the monthly income as Rs.7,500/-. P.W.3 was examined. He has deposed that the deceased was working as a cook in Amma Unavagam through Anna Poorani Ammal self help group, and she was receiving a salary of Rs.7,500/- and the salary certificate was marked as Ex.P9.

10.Considering the date of accident, the income fixed by the Tribunal is low. The age of the deceased was 28 years and that the multiplier applied, is reasonable. After adding 40% towards future prospects, the loss of income is calculated as Rs.10,500/-(7500+3000[40/100 of 7500]). After deducting 1/3 towards her own expense, the deceased might have contributed Rs.7000/- to her family members. After applying multiplier 17, the loss of income is calculated as Rs.14,28,000/- (7000 x 12 x 17) which is reasonable.



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11.The Tribunal awarded Rs.5000/- towards transport expenses, Rs. 15,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium. Rs.15,000/- towards loss of estate, which are all reasonable.

12.On the side of the appellant, it is stated that the Tribunal is wrong in awarding Rs.4,00,000/- under the head of maintenance of the minor children. On the side of the respondent it is stated that one of the minor is 10 months old and the other child is 6 years old and they need an attendant to take care of them and the award is reasonable.

13.Considering the dictum of the Hon'ble Supreme Court reported in **2018(4) RCR Civil 837**, in the case of **Magma General Insurance Co. Ltd., Vs Nanu Ram Alias Chuhru Ram**, it is decided that both the minor claimants are entitled for Rs.40,000/- each towards loss of love and affection and loss of consortium.

Hence, the calculation of compensation is modified as under:

Loss of income	-	Rs.14,28,000/-
Transport expenses	-	Rs. 5,000/-



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Funeral expenses	-	Rs. 15,000/-
Loss of consortium for the petitioners 1 to 3	-	Rs. 1,20,000/-
Loss of estate	-	Rs. 15,000/-

Total	-	Rs.15,83,000/-

After deducting 50% towards contributory negligence on the part of the deceased, the claimants are entitled to **Rs.7,91,500/-**.

14. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.19,03,000/- to **Rs.7,91,500/-(Rupees Seven Lakhs Ninety One Thousand and Five Hundred only)** which shall carry an interest of 7.5% per annum.

(ii) The appellant / Transport Corporation is directed to deposit the compensation amount i.e., Rs.7,91,500/- (less the amount 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 cost to the credit of M.C.O.P.No.29 of 2018 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Theni, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) The Transport Corporation is at liberty to withdraw the excess amount if any, already deposited.

(iv) On such deposit being made, the first respondent / first claimant is at liberty to withdraw his share of Rs.2,00,000/-(Rupees Two Lakhs only) with proportionate interest and costs, after following the due process of law, less any amount already received by him.

(v) The second respondent / second claimant(minor) is entitled for an amount of Rs.3,00,000/-(Rupees Three Lakhs only) with proportionate interest and the third respondent herein/ third claimant(minor) is entitled for an amount of Rs.2,91,500/- (Rupees Two Lakhs Ninety One Thousand and Five Hundred only) with proportionate interest, which is ordered to be deposited in any one of the nationalized bank until they attain majority and the first respondent/claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

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NCS: Yes / No
Index: Yes / No
Internet : Yes / No

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To

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

Pre - Delivery Judgment made in
C.M.A(MD)No.25 of 2020

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