



C.M.A(MD)No.836 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.11.2022

Pronounced on : 31.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.836 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Having its Office at New Railway Station Road,
Kumbakonam

... Appellant

Vs.

1.Parameswari
2.Kalyani
3.Muruganandham

... Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Special District Court, Thanjavur in M.C.O.P.No.135 of 2017, dated 24.08.2017.

For Appellant : Mr.D.Sivaraman

For R1 : No Appearance

For R2 – R3 : Mr.R.Rajaraman



C.M.A(MD)No.836 of 2018

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JUDGMENT

This Civil Miscellaneous Appeal is filed against the order made in M.C.O.P.No.135 of 2017, dated 24.08.2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Thanjavur. The appellant is the respondent. The respondents 1 to 3 are the claimants in the original claim petition.

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

On 21.05.2016 at about 7.30 p.m., when the deceased Rajeshkannan was travelling in a two wheeler, bearing Registration No.TN-45-K-8436, a bus bearing Registration No.TN-49-N-1946 came in a rash and negligent manner and dashed against the two wheeler. The deceased was working in a private company at Abudabi and was earning Rs.50,000/- per month. The Petitioners are his dependants and they claim a sum of Rs.80,00,000/- as compensation.

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

The accident occurred due to the rash and negligent driving of the



C.M.A(MD)No.836 of 2018

driver of the respondent. It was the deceased, who drove the two wheeler in a rash and negligent manner and dashed against the bus and he invited the accident. The respondent denied the age, income and profession of the deceased.

4.Two witnesses (2) were examined and fifteen (15) 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.15,71,000/- as compensation, to be paid by the respondent.

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

The Tribunal has failed to consider that the accident had happened only due to the negligence of the deceased himself. The First Information Report alone is not sufficient to fix the liability on the bus driver. The Tribunal has failed to appreciate the evidence of RW1 in the proper perspective. The Tribunal is wrong in fixing the income as Rs.9,750/- per month. The Tribunal has wrongly added 50% towards future prospectus. The Tribunal has awarded Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- towards loss of love



C.M.A(MD)No.836 of 2018

and affection, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, Rs.10,000/- towards Transportation charges, which are all excessive.

6.On the side of the appellant, it is stated that it was the deceased, who drove the vehicle in a rash and negligent manner and invited the accident.

7.PW2 was examined as an eye witness. A copy of the Motor Vehicle Inspector Report was marked as Ex.P8. RW1 has admitted that the FIR was lodged against him. RW1 was cited as an accused in the FIR. Based on the independent evidence of PW2 and on the basis of Ex.P1, it is decided that the accident has occurred due to the negligent driving of the bus driver.

8.On the side of the appellant, it is stated that there was no proof of income and that the notional income to be fixed Rs.6,500/-.

9.On the side of the respondents, it is stated that the deceased was working in Abudabi and was earning more than Rs.50,000/- per month. A copy of the passport was marked as Ex.P6. Pay certificate and the copy of the appointment order was filed on the side of the claimants. Documents



C.M.A(MD)No.836 of 2018

regarding education of the deceased also filed on the side of the claimants.

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10.PW1 has deposed that the deceased was working in Abudabi as Archives Clerk in William Hare UAE LLC and was earning Rs.40,000/- per month. But he has not filed any documents to prove the education, occupation and income of the deceased. The accident has taken place in the year 2016. Hence, it is decided that the notional monthly income of the deceased is to be fixed as Rs.7,500/-. After deducting 1/3rd towards his own expenses, the deceased might have contributed Rs.5,000/- to his family members. Since the deceased was working in a private unit, only 40% is to be added towards future prospectus. After adding 40% towards future prospectus the income is calculated as Rs.7,000/- per month. Since the deceased was aged about 28 years, multiplier 17 is applicable. Hence, the loss of income is calculated as (7000 x 17 x 12) Rs.14,28,000/-.

11.The Tribunal has awarded Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- towards loss of love and affection, Rs.10,000/- towards transportation charges, Rs.10,000/- towards loss of estate, Rs.25,000/- towards funeral expenses. As per the dictum of the Hon'ble Supreme Court of



C.M.A(MD)No.836 of 2018

India in **National Insurance Co. vs Pranay Sethi and others** reported in

2017 (2) TNMAC 601, the claimants are entitled to Rs.70,000/- towards conventional charges. The award is modified as follows:

Loss of Income	-	Rs.14,28,000/-
Conventional charges	-	Rs. 70,000/-

Total	-	Rs.14,98,000/-

The award is fixed as Rs.14,98,000/-.

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.15,71,000/- to Rs.14,98,000/- (Rupees Fourteen lakhs Ninety Eight Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The Appellant/Transport Corporation, is directed to deposit the modified compensation amount of Rs.14,98,000/- (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 with costs to the credit of M.C.O.P.No.135 of 2017 on the file of the Motor Accident Claim Tribunal



C.M.A(MD)No.836 of 2018

(Special District Court), Thanjavur, 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/Transport Corporation, the first respondent is permitted to withdraw her share of Rs.7,00,000/- (Rupees Seven Lakhs only) and the second respondent is permitted to withdraw he share of Rs.4,00,000/- (Rupees Four lakhs only) and the third respondent is permitted to withdraw his share of Rs.3,98,000/- (Rupees Three lakhs Ninety Eight Thousand only), along with proportionate interest.

31.01.2023

Index: Yes / No
Internet : Yes / No
vsd

To

- 1.The Motor Accident Claims Tribunal, Special District Court,
Thanjavur.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

7/8



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C.M.A(MD)No.836 of 2018

R.THARANI, J.

vsd

Pre - Delivery Judgment made in
C.M.A(MD)No.836 of 2018

31.01.2023