



WEB COPY



Civil Miscellaneous Appeal No.1087 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1087 of 2024
and CMP.No.10059 of 2024

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division, Vellore Region,
Vellore.

..Appellant

.vs.

1.Lakshmi
2.Sekar
3.Gopi
4.Ramesh
5.Kumar
6.Murugesh
7.Santhi

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 26.06.2020 passed in MACTOPNo.789 of 2016 on the file of the Motor Accident Claims Tribunal, Magalir Needhi Mandram, (Fast Track Mahila Court at Vellore).

For Appellant : Mr.S.S.Santhosa Kumar

For Respondent : Mr.C.Prabakaran
for R1 to R7



Civil Miscellaneous Appeal No.1087 of 2024

JUDGMENT

WEB COPY

This Civil Miscellaneous Appeal has been filed by the Transport Corporation against the Award passed by the Magalir Needhi Mandram, (Fast Track Mahila Court at Vellore) in MACTOPNo.789 of 2016 , dated 26.06.2020.

2.The claimants, who are the wife and children of the deceased Ramachandran filed the claim petition on the ground that the deceased Ramachandran, on 23.05.1994 was travelling in the bus belonging to the appellant corporation and at about 05.00 p.m, when he was attempting to get down from the bus, the driver of the bus without noticing the same, started the bus, as a result of which, the deceased fell down and he was run over and died on the spot. An FIR came to be registered against the driver of the bus in Crime No.420 of 1994. In these circumstances, the claim petition came to be filed before the Tribunal.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident took place only due to the rash and negligent



Civil Miscellaneous Appeal No.1087 of 2024

driving on the part of the driver of the bus belonging to the Transport Corporation.

4.Having rendered the above finding, the Tribunal fixed the total compensation of Rs.18,15,000/- under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	For loss of income	16,20,000/-
2.	For loss of consortium	25,000/-
3.	For love and affection	1,50,000/- (Petitioners 2 to 7 each Rs.25,000/-)
4.	For funeral expenses	15,000/-
5.	For transport expenses	5,000/-
	Total	18,15,000

The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5.The Transport Corporation aggrieved by the award passed by the Tribunal has filed the present appeal.



WEB COPY

6.Heard Mr.S.S.Santhosa Kumar, learned counsel appearing on behalf of the appellant, Mr.C.Prabakaran, learned counsel appearing on behalf of the respondents.

7.The first ground that was raised by the learned counsel for the appellant was that the very same claimants had earlier filed MCOP.No.196/01 and this claim petition came to be dismissed on 13.09.2005 for default and without restoring the same, a fresh claim petition came to be filed in the year 2016 and the same is not maintainable.

8.The fact that the earlier claim petition filed was not suppressed by the claimants and the earlier claim petition was in fact marked as Ex.P4.On carefully going through Ex.P4, it is seen that the petition was dismissed for default on the ground that there was no representation on the side of the claimants. Such dismissal will fall within the scope of Order 9 Rule 3 of CPC. Order 9 Rule 4 of CPC specifically provides that a fresh suit/claim can be brought forth even if the earlier suit/petition is dismissed for default. In view of the same, there is no bar in law to maintain a fresh claim petition even though the earlier claim petition was



Civil Miscellaneous Appeal No.1087 of 2024

dismissed for default. At the relevant point of time, the limitation was not applicable for filing the claim petition and therefore it cannot be said that the claim petition is barred by limitation. Hence, this Court holds that the claim petition filed by the claimants is permissible in law.

9.The next ground that was raised by the learned counsel for the appellant is that the accident had taken place in the year 1994 and the Tribunal had fixed the monthly income of the deceased at Rs.9,000/- which is on the higher side.

10.The above submission made by the learned counsel for the appellant carries some force. The deceased is set to be a Coolie and there was no evidence to show his income. Therefore, only a notional income can be fixed. The notional income of Rs.9,000/- fixed by the Tribunal is on the higher side. This Court is inclined to fix the notional monthly income at Rs.5,000/-. Thus, the compensation under the head 'loss of income' is calculated as follows:

Monthly Income : Rs. 5,000/-



Civil Miscellaneous Appeal No.1087 of 2024

WEB COPY

Add: Future Prospects 25% of Rs.5,000/-	:	Rs. 1,250/- ----- Rs. 6,250/-
Annual Income (6,250 * 12)	:	Rs. 75,000/-
Less : Personal expenses Rs.75,000/- * 1/5	:	Rs. 15,000/- ----- Rs. 60,000/-
Multiplier	:	x 15 -----
Loss of income/dependency	:	Rs.9,00,000/- -----

11.The compensation awarded under the other heads is justified and does not require the interference of this Court.

12.In the light of the above discussion, this Court modifies the compensation in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	For loss of income	16,20,000/-	9,00,000/-
2.	For loss of consortium	25,000/-	25,000/-
3.	For love and affection	1,50,000/-	1,50,000/-
4.	For funeral expenses	15,000/-	15,000/-
5.	For transport expenses	5,000/-	5,000/-
	Total	18,15,000/-	10,95,000/-



WEB COPY



Civil Miscellaneous Appeal No.1087 of 2024

13.The compensation awarded by the Tribunal at Rs.**18,15,000/-** is reduced to Rs.**10,95,000/-**. The appellant Transport Corporation is directed to deposit the reduced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

14.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

11.06.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

ub



WEB COPY



Civil Miscellaneous Appeal No.1087 of 2024

N.ANAND VENKATESH, J.

ub

To
The Motor Accident Claims Tribunal, Magalir Needhi Mandram,
(Fast Track Mahila Court at Vellore).

Civil Miscellaneous Appeal No.1087 of 2024

11.06.2024