



C.M.A.(MD) Nos.94 & 649 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.10.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.94 & 649 of 2010

In C.M.A.(MD)N0.94 of 2010

1.Premayee @ Prema,
2.M.Duraisamy @ Thiyagu. ... Appellants
(A2 was impleaded *vide* order dated 23.10.2024
in C.M.P.(MD)Nos.12817 to 12819 of 2024)

Vs.

1.Periasamy,
2.Minor Sathiyamoorthy,
(Represented by the guardian and next friend/first respondent)
3.M/s.Tamil Nadu State Transport Corporation Ltd.,
Perimilaguparai,
Trichy. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 10.04.2007 passed in M.C.O.P.No.2350 of 2001, on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.2, Trichy.

For Appellants : Mr.S.Gokul Raj
For Respondents
for R1 & R2: Mr.Jeganathan
for R3 : Mr.A.V.B.Krishnakanth

In C.M.A.(MD)No.649 of 2010



C.M.A.(MD) Nos.94 & 649 of 2010

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Tiruchirappalli.

... Appellant

Vs.

1.Periasamy,
2.Minor Sathiyamoorthy,
(Represented by the guardian and next friend/first respondent)
... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 10.04.2007 passed in M.C.O.P.No.2350 of 2001, on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.2, Trichy.

For Appellant : Mr.A.V.B.Krishnakanth

For Respondents :Mr.Jeganathan

COMMON JUDGMENT

For the sake of convenience, the parties are referred to as per their ranking in C.M.A.(MD)No.94 of 2010.

2. The wife of the deceased had preferred the appeal in C.M.A.(MD)No.94 of 2010 challenging the award given to the persons, who



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claimed to be the brother and the adopted son of the deceased stating that they are the legal representatives of the deceased; that she had filed an individual claim petition in M.C.O.P.No.48 of 2000 before the Tribunal at Kulithalai; that after she came to know that the respondents 1 and 2 had filed a claim petition before the Tribunal at Trichy, she filed a Transfer Tr.C.M.P.No.17122 of 2002 before this Court seeking for transfer of the claim petition in M.C.O.P.No.48 of 2000 pending on the file of the Motor Accidents Claims Tribunal, Kulithalai filed by her to be transferred to the Motor Accidents Claims Tribunal, Trichy to be tried along with M.C.O.P.No.2946 of 2001 filed by the respondents 1 and 2, which was renumbered as M.C.O.P.No.2350 of 2001 on the file of the Additional District Court, Fast Track Court No.2, Trichy; that since the claim petition was not transferred to the Motor Accidents Claims Tribunal at Trichy, the Tribunal had only considered the claim petition filed by the respondents 1 and 2 and awarded compensation to them, which is erroneous.

3. The Transport Corporation has preferred C.M.A.(MD)No.649 of 2010 seeking a reduction of the quantum of compensation.



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4. The facts leading to the filing of these appeals are as follows:

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a. The respondents 1 and 2 filed a claim petition before the Motor Accidents Claims Tribunal, Trichy, in M.C.O.P.No.2946 of 2001, which was subsequently transferred to the Additional District Court, Fast Track Court No.2, Trichy and renumbered as M.C.O.P.No.2350 of 2001.

b. The first appellant/since deceased had earlier filed a claim petition in M.C.O.P. No.48 of 2000 before the Motor Accidents Claims Tribunal at Kulithalai, which was transferred to the III Additional Sub Court, Trichy and renumbered as M.C.O.P.No.1 of 2004. She filed Tr.C.M.P.No.17122/2022 before this Court. This Court by the order, dated 30.09.2003, in the said transfer petition, had directed both the claim petitions to be decided together. However, it appears that the claim petition filed by respondents 1 and 2 was decided separately. The said award is now under challenge in C.M.A.(MD).No.94 of 2010. The claim petition filed by the appellant in M.C.O.P.No.1 of 2004 on the file of the III Additional Sub Court, Trichy, it appears was dismissed for default on 30.06.2011.

5. The learned counsel for the appellants submitted that since the



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Tribunal had tried the claim petition filed by the respondents 1 and 2 in M.C.O.P.No.2350 of 2001 separately, contrary to the directions of this Court to try it along with M.C.O.P.No.1 of 2004, the award is liable to be set aside.

6. The learned counsel for the transport corporation/third respondent, who filed the appeal in C.M.A.(MD)No.649 of 2010 challenging the quantum of compensation, submitted that the quantum is excessive inasmuch as the notional income fixed by the Tribunal is at Rs.3,000/- p.m. is excessive and therefore, the compensation has to be reduced.

7. The findings on negligence and liability are not in dispute. Hence, the facts leading to the filing of the claim petition filed by the first appellant and the respondents 1 and 2 are unnecessary for the disposal of these appeals.

8. The points for consideration in the instant appeal are as follows:

‘a. Whether the quantum of compensation awarded by the Tribunal is just and reasonable?’



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b. Whether the appellant in C.M.A.No.94 of 2010 or the respondents 1 and 2 would be entitled to the compensation or both?'

9. As regards the first question, it is seen from the award of the Tribunal that the deceased was working as a vegetable vendor. The first respondent, the brother of the deceased, who had filed the claim petition in M.C.O.P.No.2350 of 2001, was examined as P.W.1 to show that he was earning Rs.6,000/- p.m. However, no documentary proof had been produced either to prove his avocation or the income of the deceased. The Tribunal, therefore, fixed the monthly income of Rs.3,000/- p.m. The appellants also were unable to point out any infirmity in the notional income fixed by the Tribunal for an accident that took place in the year 2000. The Tribunal had awarded a total compensation of Rs.2,49,000/-. Considering the year of the accident, this Court is of the view that the quantum of compensation is reasonable and no interference is called for. Accordingly, point No.1 is answered. Consequently, the appeal filed by the third respondent/Transport Corporation seeking reduction of compensation is dismissed.

10. As regards the second question, it is seen that the respondents 1



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and 2 before the Tribunal had established that the first respondent is the brother and the second respondent is the adopted minor son of the deceased. They had filed Ex.P3/Invitation of Ear-boring Ceremony of the second respondent and Ex.P4/ration card to show that the deceased was living with them. Ex.P5 would show that they had conducted the funeral of the deceased and had spent substantially for the same. Considering the above fact, the Tribunal held that the second respondent is the adopted son. At the same time, there is no dispute that the first appellant (since deceased) was the wife of the deceased. The only submission of the learned counsel for respondents 1 and 2 is that the first appellant had not taken care of the deceased and she had deserted the deceased long before his death. In view of the admitted fact that the first appellant/Premayee is the wife, this Court is of the view that she would certainly be entitled to a share in the compensation and consequently, her legal heir, who was impleaded on her death, would be entitled to a share. Considering the fact that the deceased was living with the respondents 1 and 2, this Court is of the view that 1/3 of the compensation can be apportioned to the legal heir of the first appellant, (i.e.,) the second appellant. A sum of Rs.50,000/- can be paid to the first respondent and the remaining compensation can be apportioned to the second respondent, who is the adopted son of the



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deceased.

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11. The third respondent/Transport Corporation shall deposit the compensation amount of **Rs.2,49,000/-** (Rupees Two Lakhs Forty Nine Thousand only) with interest at 7.5% p.a from the date of claim petition till the date of realisation and costs, less the amount already withdrawn, if any, within a period of six (6) weeks from the date of receipt of a copy of this order.

12. On such deposit, the second appellant shall be entitled to Rs.82,170/- (33%), the first respondent would be entitled to Rs.50,000/- and the second respondent would be entitled to the remaining amount of Rs.1,16,830/- with proportionate interest and costs, less the amount already withdrawn, if any. The claimants are permitted to withdraw their share by filing a suitable application before the Tribunal.

13. The second respondent was a minor when the claim petition was filed in 2001. He would have attained majority now. Hence, he is directed to file an appropriate application for recording himself as a major and to withdraw his share.



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WEB COPY 14. In the result, C.M.A.(MD)No.94 of 2010 is partly allowed and
C.M.A.(MD)No.649 of 2010 is dismissed. No costs.

23.10.2024
(2/2)

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1. The Motor Accidents Claims Tribunal, Fast Track Court No.2, Trichy.
2. The III Additional Sub Court, Trichy.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

SUNDER MOHAN, J.

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(2/2)