



C.M.A(MD)No.712 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.08.2024

Pronounced on : .2024

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THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

C.M.A(MD)No.712 of 2022

and

C.M.P(MD)No. 7751 of 2024

The Managing Director,
M/s.Tamilnadu State Transport Corporation,
Periyamilaguparai,
Trichy.

... Appellant / Respondent

Vs.

1. Shanthi Saroja Mary

2.Minor Godlin Kishore

3.Minor.Anish

4.Arulappan

5.Rejinamary

(Minors 2nd and 3rd respondents are
represented by the 1st respondent, their
mother and next friend)

... Respondents / Claimants



C.M.A(MD)No.712 of 2022

WEB COPY

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to set aside the impugned judgment and decree passed in M.C.O.P.No.283 of 2017 dated 03.02.2020 on the file of the Motor Accident Claims Tribunal, (Special District Judge), Tiruchirapalli.

For Appellant : Mr.P.M.Vishnuvarthanan
For RR1 to 4 : Mr.P.Saravana Kumar
For R5 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the impugned judgment and decree passed in M.C.O.P.No.283 of 2017 dated 03.02.2020 on the file of the Motor Accident Claims Tribunal, (Special District Judge), Tiruchirapalli.

2. The case of the claimant is that on 04.04.2016 at about 8.40 p.m., the deceased, who is the husband of the first petitioner namely John Joseph was riding his Motor Cycle Hero Splendor bearing registration No. TN X 3998 in



C.M.A(MD)No.712 of 2022

Vaiyampatti to Karur Road from South to North on the extreme left side of the road. At that time, a bus bearing registration No.TN 45 N 3236 belongs to the respondent has been driven by its driver in a rash and negligent manner and hit the two wheeler. As a result of which, the deceased sustained grievous injuries and died on the spot itself. A case was registered in Crime No.85 of 2016 against the offending vehicle driver by the Vaiyampatty police. At the time of the occurrence, the deceased was doing the civil contract work and earning not less than Rs.15,000/- per month. Claiming compensation amount of Rs.15 Lakhs, this claim application was filed by the claimants.

3. That was resisted by the appellant by filing counter stating that the deceased has suddenly came to the wrong side of the road ie., to the right hand side of the road and invited the accident. Noticing the rash driving of the deceased, the driver of the bus slowed down the bus and stopped at the extreme left of the road. The deceased had hit the stopped bus and invited the accident. Other customary denials were made.

4. Regarding the first aspect of negligence, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent



C.M.A(MD)No.712 of 2022

driving on the part of the appellant driver. Regarding the compensation, the age of the deceased was taken as 32 years and Rs.10,000/- was taken as notional income, due to the absence of direct evidence of income. Multiplier 16 was taken. 40% of income was added towards future prospects. 1/4 share was deducted towards living and personal expenses of the deceased and finally, the Tribunal arrived at Rs.20,16,000/- as loss of dependency. To that, the other customary amounts were added and finally awarded a sum of Rs.23,52,000/-. Against which this appeal is preferred by the Tamil Nadu State Transport Corporation.

5. Learned counsel for the appellant would submit that the deceased was only a Diploma holder and therefore he must not earning permanent income. He was aged about 32 years, so the multiplier taken by the Tribunal is on the higher side.

6. Per contra, learned counsel for the respondents would submit that the amount was reasonably fixed, requires no interference.



C.M.A(MD)No.712 of 2022

WEB COPY

7. Regarding the first aspect of negligence, no argument was advanced by the appellant. Even it was contended before the Tribunal that the accident was invited due to the rash and negligent driving on the part of the deceased himself, nothing was brought on record. As mentioned above, no argument was advanced by the appellant. So the finding of the Tribunal with regard to the aspect of negligence requires no interference.

8. Regarding the compensation amount as mentioned in the preamble, the age of the deceased was 32 years on the basis of the entries made in the college records. So that cannot be doubted. Regarding the income, there was no proper proof, eventhough it was submitted that he was doing the contract work after completing the course. Normally for a degree holder or for diploma holder in Engineering Rs.15,000/- to Rs.20,000/- was taken as notional income, in the absence of any direct evidence. But considering the year of the accident, the Tribunal has fixed the notional income at Rs.10,000/- which cannot be considered to be on the higher side. Considering the fact that the deceased was holding a diploma in Civil Engineering, the notional income cannot be considered to be on the higher side. As per the procedure set out in



C.M.A(MD)No.712 of 2022

the judgment **National Insurance Co. vs Pranay sethi and others** reported in **2017 (2) TNMAC 601**, 40% was added towards future prospects. Thereby, Rs.14,000/- was taken as monthly income. From that income, 1/4 share was deducted towards the living and personal expenses of the deceased and Rs.10,500/- was fixed as monthly income of the deceased. Since the deceased was aged about 32 years at the time of occurrence, the relevant multiplier 16 was taken. So that is also correct. So the total loss of dependency is fixed at Rs.20,16,000/-. Perfectly, just and reasonable compensation is fixed towards loss of dependency, that requires no interference. The first petitioner is the wife. As per the procedure Rs.40,000/- each was allotted as parental and filial consortium, for the claimants, since the first claimant is the wife, claimants 2 and 3 are the children and claimants 4 and 5 are the parents of the deceased. Loss of love and affection was assessed as Rs.1 Lakh which is not proper. When consortium is awarded for each claimants, awarding Rs.1 Lakh towards towards loss of love and affection is unwarranted. Therefore, the award in that head is ordered to be deleted from the total compensation. Further, award under the heads of loss of estate, funeral expenses and transportation expenses have been fixed as per the procedure. Therefore, they remain unaltered. Accordingly, the award is modified as follows:



C.M.A(MD)No.712 of 2022

WEB COPY

Heads of compensation	Amount
Loss of Dependency	Rs.20,16,000/-
Consortium to the 1st petitioner / wife	Rs. 40,000/-
Parental Consortium (2nd and 3rd claimants)	Rs. 80,000/-
Filial Consortium (4th and 5th claimants)	Rs. 80,000/-
Transportation Expenses	Rs. 6,000/-
Loss of Estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Total	<u>Rs.22,52,000/-</u>

9. The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is modified as follows:

(i) The quantum of compensation awarded by the Tribunal is reduced to ***Rs.22,52,000/- (Rupees Twenty Two Lakhs Fifty Two Thousand only)*** with interest at the rate of 7.5% per annum.

(ii) The appellant / Transport Corporation is directed to deposit the award amount 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



C.M.A(MD)No.712 of 2022

M.C.O.P.No.283 of 2017 dated 03.02.2020 on the file of the Motor Accident Claims Tribunal, (Special District Judge), Tiruchirapalli, within a period of two months from the date of receipt of a copy of this judgment, if not already deposited.

(iii) On such deposit being made, the 1st respondent / 1st claimant is at liberty to withdraw a sum of **Rs.8,52,000/- (Rupees Eight Lakhs Fifty Two Thousand only)** with interest at the rate of 7.5% per annum and the 2nd and 3rd respondents / 2 and 3 claimants are entitled for a sum of **Rs.5,00,000/- EACH** ($5,00,000 \times 2 = 10,00,000$) **(Rupees Ten Lakhs only)** which shall be deposited in a Nationalized Bank till they attain majority and the mother of the minors, the 1st respondent is entitled to withdraw the interest amount every quarterly from the said deposit and spend the same for the welfare of the minors. The respondents 4 and 5 / claimants 4 and 5 are at liberty to withdraw a sum of **Rs.2,00,000/- EACH** ($2,00,000 \times 2 = 4,00,000$) **(Rupees Four Lakhs only)**, after following the due process of law, less any amount already received by them.



C.M.A(MD)No.712 of 2022

WEB COPY (iv) No costs. Consequently, connected miscellaneous petition stands closed.

.2024

NCC: Yes / No
Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal, (Special District Judge),
Tiruchirapalli,
- 2.The Section Officer, Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.



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C.M.A(MD)No.712 of 2022

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Pre-Delivery Judgment made in
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