



C.M.A(MD)No.810 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 26.03.2024

CORAM:

THE HON'BLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**

and

THE HON'BLE **MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.810 of 2022

and

C.M.P.(MD)No.7443 of 2022

Branch Manager,
Tamil Nadu State Transport Corporation,
Kumbakonam Division,
Pudukottai.

...Appellant

Vs.

1. Deepadevi
2. S.R.Thangappan
3. Poongothai

...Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the impugned award passed in M.C.O.P.No.481 of 2015 on the file of the MACT (Additional District-cum-Special Judge), Pudukottai dated 22.01.2019.

For Appellant : Mr.P.M.Vishnuvarthanan

For R1 : Mr.P.Aju Tagore

For R2 & R3 : Mr.RMS.Sethuraman



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JUDGMENT

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(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN,J.**)

Being aggrieved over the award passed by the Motor Accident Claims Tribunal / Additional District cum Special Judge, Pudukottai in M.C.O.P.No.481 of 2015, dated 22.01.2019, the appellant/Transport Corporation has filed the present appeal.

2.The appellant/Transport Corporation is the first respondent in M.C.O.P.No.481 of 2015 on the file of the Motor Accident Claims Tribunal / Additional District cum Special Judge, Pudukottai. The respondents 1 to 3 herein are the claimants. They filed the claim petition in M.C.O.P.No.481 of 2015, claiming a sum of Rs.75,00,000/- (*Rupees Seventy Five Lakhs only*) as compensation for the death of the husband of the first respondent. By the award, dated 22.01.2019, the Tribunal awarded a sum of Rs.30,69,040/- (*Rupees Thirty Lakhs Sixty Nine Thousand and Forty only*) as compensation along with 7.5% interest from the date of filing of the claim petition.



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3.Facts of the Case:-

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According to the respondents 1 to 3, the deceased namely Thavakumar, was working as an Electrician in Pudukkottai Zone of the Tamil Nadu State Transport Corporation. A construction work was going on, in the bus depot at Gandharvakottai and hence, materials were being transported on 16.10.2014, by the transport vehicle bearing registration No. TML 2357, Ashok Leyland Semi Saloon and wherein, three persons namely, Balan, Ravi Pandian and Thavakumar were travelling in the cabin of the bus. The deceased Thavakumar was sitting near the left entrance of the bus cabin, which did not have any door. During the time of accident, Balan drove the vehicle. He applied the brakes suddenly on hitting the speed breaker, on account of which, Thavakumar was thrown off the vehicle and fell on the road and was taken to the Government Hospital, Gandarvakottai and then shifted to the Meenakshi Hospital, Thanjavur due to injury to vital organ, namely, brain. The deceased, Thavakumar succumbed to the injuries on 18.10.2014. In this regard, a Criminal Case was filed in Madurai Bench of Madras High Court in CrI.O.P.(MD).No. 6081 of 2017, by the father of the deceased and dismissed by this Court, on 07.07.2017.



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4.The appellant/Transport Corporation filed the counter statement and denied the allegation that the death was caused due to the rash and negligence of the driver of the transport corporation. The deceased was sitting learner's bus in the foot steps of the bus using his cell phone. When the driver of the bus slowed down the bus in the speed break, he fell down and caught unawares into the coming lorry. Therefore he alone is responsible for accident and the private complaint relating to the accident is pending. Hence they seeks to dismiss the claim petition.

5.The respondents No. 2 and 3 are parents of the deceased and they made a separate claim and they pleaded to give suitable compensation considering their contribution to the growth of the deceased.

6.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and documents were marked as Ex.P1 to Ex.P5. On the side of the appellant/Transport Corporation R.W.1 to R.W.3 were examined and documents were marked as Ex.R1 & Ex.R2 and C.W.1 was examined and Court documents were marked as Ex.C1 and Ex.C2.



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7. Finding of the Tribunal:

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The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants held that the accident occurred only due to the rash and negligent driving by the driver of the appellant/Transport Corporation and directed the appellant/Transport Corporation, to pay a sum of Rs.30,69,040/- (*Rupees Thirty Lakhs Sixty Nine Thousand and Forty only*) as compensation along with 7.5% interest from the date of filing of the claim petition. The Tribunal awarded the compensation to the claimants under the following heads:

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of Income	29,09,040/-
2	Loss of consortium	40,000/-
3	Loss of Estate	15,000/-
4	Loss of love and affection	80,000/-
5	Transport Expenses	10,000/-
6	Funeral Expenses	15,000/-
	Total	Rs.30,69,040/-



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8. Aggrieved against the said award dated 22.01.2019, the appellant /Transport Corporation has filed the present appeal.

9. Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant/Transport Corporation stated that there was no justification in giving finding that the driver of the appellant corporation bus is solely responsible for the accident. The deceased himself is responsible for the accident and he was tortfeasor and hence the learned tribunal judge has not considered the same in proper manner. Therefore they seek to set aside the award.

10. Submission of the learned counsel for the respondents:

The learned counsel appearing for the respondents/claimants stated that the learned tribunal judge considered the evidence of the eye witness PW2 and PW3 and held that the accident happened only due to the negligence of the driver. Even though, RW1 was examined, the same was not corroborated by any other evidence. Therefore they seek to confirm the said finding of learned tribunal judge.



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11. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and also perused all the materials available on record.

12. The following points arise for consideration of this appeal:

12.1. Whether the Tribunal fixing the negligence upon the driver of the appellant/transport Corporation bus is correct or not?

12.2. Whether the compensation granted is in accordance with law?

13. Discussion on the negligence:

The deceased namely Thavakumar, was working as an Electrician in Pudukkottai Zone of the Tamil Nadu State Transport Corporation. A construction work was going on, in the bus depot at Gandharvakottai and hence, materials were being transported on 16.10.2014, by the transport vehicle bearing registration No. TML 2357, Ashok Leyland Semi Saloon wherein, namely, Balan, Ravi Pandian and Thavakumar were travelling in the cabin of the bus. The deceased Thavakumar was sitting near the left entrance of the bus cabin, which did not have any door. During the time of accident, Balan drove the vehicle. He applied



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the brakes suddenly on hitting the speed breaker, on account of which, Thavakumar was thrown off the vehicle on the road and taken to the Government Hospital, Gandarvakottai. Thereafter, he was shifted to the Meenakshi Hospital, Thanjavur due to injury to vital organ, namely, brain. The deceased, Thavakumar succumbed to the injuries on 18.10.2014. A Criminal Case was filed in Madurai Bench of Madras High Court in CrI.O.P.(MD).No.6081 of 2017, by the father of the deceased and the same was dismissed by this Court, dated 07.07.2017. The Statement of PW.1, namely Deepa Devi, wife of the deceased Thavakumar shows that on that day, around 2.30 pm, both were conversing over the phone. Suddenly, the conversation got snapped and after sometime, she received the information that her husband had fallen from the transport vehicle and sustained injuries. The cross examination of RW2 shows that, he is not a eyewitness, and in the occurrence place of accident none of the persons were not questioned. The cross examination of RW3 shows that, the case was registered against the driver of the appellant transport corporation vehicle in CC.No.231/2014, u/s.304(A) IPC, on the file of the Judicial Magistrate, Pudukkottai and Final Report was filed against the driver of the appellant transport Corporation bus, on



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the basis of the re-investigation report.

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13.1. Therefore, the learned Tribunal Judge has correctly held that the rash and negligent driving of the driver of the appellant transport Corporation bus is the cause for the accident. This Court finds no reason to interfere with the said findings. Therefore, this Court concurs with the finding of the learned trial Judge that the driver of the vehicle of the appellant transport corporation is responsible for the accident. The appellant transport corporation is liable to pay the compensation. Therefore, first point is answered accordingly.

14. Discussion on quantum:

The appellant has not disputed the quantum. The deceased was working in the “handicraft industry” in the Tamilnadu State Transport Corporation, Pudukkottai on the basis of permanent job and earning a sum of Rs.14,260/- as monthly income. The deceased age was about 30 years as per Ex.P.2/postmortem report. The Learned Tribunal judge after considering judgments of the Hon'ble Supreme Court, namely,

(i) In the case of *Sarla Verma and others vs. Delhi Transport*



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Corporation and another reported in **2009(2) TNMAC 1 (SC)** ;

WEB COPY (ii) In the case of **National Insurance Co.Ltd., Vs. Pranay Sethi** reported in **2017(2) TNMAC 609(SC)**;

(iii) In the case of **Archit Saini and another Vs. The Oriental Insurance Company Ltd.**, reported in **2018(3) SCC 365** determined the compensation as per the following calculation:-

14.1.Calculation of the amount:

Considering the age of the deceased, 50% towards future prospects and took multiplier of 17. Thereafter, deducted 1/3 towards personal expenses of the deceased and calculated the loss of income as follows:

- (i) Monthly income = Rs.14,260/-
- (ii) **Add:** 50% future prospects
 $\text{Rs.14,260/-} + \text{Rs.7,130/-(50/100)} = \text{Rs.21,390/-}$
- (iii) Annual income
 $\text{Rs.21,390/-} \times 12 = \text{Rs.2,56,680/-}$
- (iv) multiplier 17
 $\text{Rs.2,56,680/-} \times 17 = \text{Rs.43,63,560/-}$
- (v) **Less:** 1/3 personal expenses
 $[\text{Rs.43,63,560/-} - (-) \text{Rs.14,54,520/-} \{1/3\}] = \text{Rs.29,09,040/-}$



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15.Conclusion:

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For the foregoing reasons, the compensation awarded by the Tribunal, under the various heads are enumerated hereunder:-

<i>SL.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
1	Loss of Income	29,09,040/-
2	Loss of consortium	40,000/-
3	Loss of Estate	15,000/-
4	Loss of love and affection	80,000/-
5	Transport Expenses	10,000/-
6	Funeral Expenses	15,000/-
Total		Rs.30,69,040/-

In view of the above, this Court finds no merit in the contentions of the learned counsel appearing for the appellant/ Transport Corporation.

16. Accordingly, this Civil Miscellaneous Appeal is dismissed. The compensation awarded in M.C.O.P.No.481 of 2015, on the file of the Additional District-cum-Special Judge, Pudukottai, dated 22.01.2019, is hereby confirmed. The appellant transport Corporation is directed to deposit the award amount with proportionate accrued interest and costs, less any amount if already deposited, within a period of 6 weeks from the

12/14



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date of receipt of a copy of this order. On such deposit, the major claimants are permitted to withdraw the award amount, as apportioned by the Tribunal, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

[V.B.S.,J.] [K.K.R.K.,J.]
26.03.2024

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

- 1.The Motor Accident Claims Tribunal /
Additional District -cum-Special Judge,
Pudukottai.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.
and
K.K. RAMAKRISHNAN, J.

akv/sbn

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Dated: 26.03.2024