

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31-8-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

C.M.A.No.569 of 2000
Cross Objection No.40 of 2001

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram Division-III) Ltd.,
Kancheepuram - 631 501

... Appellant in CMA No.569/2000
& Respondent in Cross Objection
/Respondent

Vs.

1. D. Vasantha
2. D. Parvathi
3. D. Kumar
4. D. Anandan
5. D. Anjalakshi
6. D. Sudhakar

... Respondents in CMA No.569/2000
& Cross Objectors/Petitioner

(R-6 in CMA No.569/2000 and 6th Cross Objector
declared as major and guardian discharged vide
order of this Court dated 14.2.2002 in CMP Nos.22722
& 22723 of 2001)

C.M.A.No.569 of 2000 and Cross Objection No.40 of 2001 are preferred
against the order dated 17.3.1999 in M.C.O.P.No.67 of 1997 on the file of
the Motor Accident Claims Tribunal (Sub Judge), Thiruvallur.

For Appellant in CMA.569/2000 : Mr.A.Babu
& Respondent in Cross Objection

For Respondents in CMA.569/2000 : Mr.R.Selvakumar
& Cross Objectors

COMMON JUDGMENT

C.M.A.No.569 of 2000 has been preferred by the Tamil Nadu State Transport Corporation (Villupuram Division-III) Limited, Kancheepuram, challenging the award of the Motor Accident Claims Tribunal in M.C.O.P.No.67 of 1997 dated 17.3.1999 ordering compensation of Rs.2,19,000/- as against the claim of Rs.5,00,000/-. The claimants have filed the Cross Objection No.40 of 2001 claiming the disallowed portion of their claim of Rs.2,81,000/-.

2. As could be seen from the award of the Tribunal, on 23.10.1996 at 10.45 a.m. one Durai Asari was walking on the left side of the Tiruvallur-Tiruthani road and he was hit by the Transport Corporation bus bearing registration No.TN-21-N-0085, which was driven by its driver in a rash and negligent manner and due to the said accident, the said Durai Asari died on the spot. A criminal case was registered and charge sheet was also filed against the driver of the Transport Corporation bus on 15.11.1996. The claimants viz., the widow, mother, sons and daughter of the deceased Durai Asari have filed the claim petition claiming compensation of Rs.5,00,000/-, contending that the deceased was a skilled Carpenter, who was undertaking contract work for the buildings and was manufacturing household furnitures and thereby was earning a sum of Rs.6,000/- per month and was aged 45 years at the time of the accident.

3. The appellant/Transport Corporation resisted the claim petition by contending that the driver of the Transport Corporation was not driving the bus in rash and negligent manner and when the bus was nearing Kuppamma Chatram, a lorry was coming on the opposite side and when the bus was crossing the lorry, the deceased suddenly crossed the road, without observing the traffic rules and without noticing the Transport Corporation bus, which was proceeding in its lane and thereby the accident had occurred.

4. The widow of the deceased Durai Asari was examined as PW-1 and one Ravi, eye witness to the occurrence was examined as PW-2 and Exs.P-1 to P-4 were marked on the side of the Claimants. The driver of the Transport Corporation bus was not examined and only the conductor of the bus, who has not witnessed the accident was examined as RW-1. No document was produced on behalf of the Transport Corporation.

5. The Tribunal considered the FIR, which was registered at the instance of Village Administrative Officer and the charge sheet filed against the driver of the Transport Corporation bus under sections 279 and 304A IPC, which were marked as Exs.P-1 and P-3 and found that the accident had occurred due to the rash and negligent driving of the Transport Corporation bus and therefore the Transport Corporation is liable to pay compensation. The defence raised by the appellant/Transport Corporation that only due to the negligence of the deceased, the accident had occurred

was not proved before the Tribunal. On behalf of the Transport Corporation, the evidence given was by the conductor, who has not seen the manner in which the accident had occurred. On the other hand, PW-2 the eye witness deposed that the driver of the bus was driving the bus in a rash and negligent manner. Hence the findings given by the Tribunal are legal and valid and no exception could be taken to the said findings.

6. Insofar as the quantum of compensation is concerned, the claimants have stated that he was earning Rs.6,000/- per month and was aged 45 years at the time of the accident. However, the Tribunal assessed the daily income of the deceased as Rs.50/- and the monthly income as Rs.1,500/- and after deducting personal expenses of 1/3rd a sum of Rs.1,000/- was taken as contribution to the claimants herein. The Tribunal adopting multiplier 12 arrived at a figure of Rs.1,44,000/- towards loss of income.

7. The learned counsel for the claimants/cross objectors submitted that the amount arrived at by the Tribunal is too low in view of the special nature of work performed by the deceased as an experienced Carpenter and therefore minimum of Rs.100/- per day shall be taken as his daily income and Rs.3,000/- as the monthly income. The learned counsel also submitted that the multiplier 12 adopted by the Tribunal is on the lower side and the multiplier 15 should have been adopted considering the age of the deceased as 45 years.

8. Considering the said submission and having regard to the fact that the deceased was a skilled labourer/an experienced Carpenter, I am of the view that a sum of Rs.3,000/- can be taken as monthly income of the deceased. After deducting 1/3rd for personal expenses the contribution can be fixed as Rs.2,000/- per month. I also deem it proper to adopt 14 multiplier as the deceased was aged 45 years at the time of the accident and so calculating the loss of income can be arrived at Rs.3,36,000/- (Rs.2000 x 12 x 14).

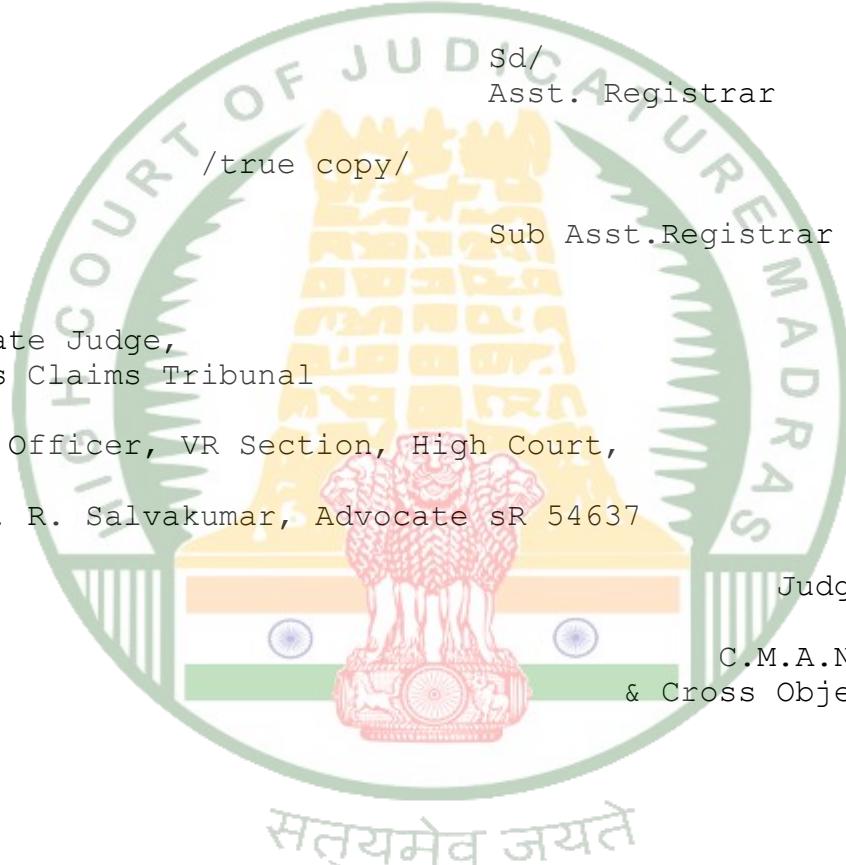
9. The Tribunal awarded a sum of Rs.25,000/- towards loss of consortium to the wife and a sum of Rs.50,000/- towards loss of love and affection to other claimants. I am of the view that the said amounts are just and proper. The Tribunal has not awarded any amount towards funeral expenses and hence a sum of Rs.5,000/- is awarded towards funeral expenses. Thus the Claimants/cross objectors are entitled to a total compensation of Rs.4,16,000/-.

10. The Tribunal has ordered 12% interest. As the accident had occurred in the year 1996, I am of the view that ordering 12% interest is on the higher side and the same is reduced to 9% per annum from the date of the claim petition.

11. Out of the compensation now awarded, the first claimant/widow of the deceased is entitled to get Rs.1,16,000/- with proportionate interest and costs. The claimants 2 to 6/respondents 2 to 6 herein are entitled to get Rs.60,000/- each with proportionate interest. On deposit of the entire compensation amount by the Transport Corporation, the claimants are permitted to withdraw their respective share.

12. In the result, the Civil Miscellaneous Appeal is dismissed and the cross objection is allowed in part with the above modification in the award of the Tribunal dated 17.3.1999 in MCOP.No.67 of 1997. No costs.

vr



To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal
Thiruvallur.
2. The Section Officer, VR Section, High Court,
Madras-1404
+ One cc to Mr. R. Salvakumar, Advocate SR 54637
VRK (co)
sg 01/10/07

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