

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.8.2008

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THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.No.2678 of 2008
and
M.P.No.1 of 2008

The Managing Director,
Tamilnadu State Express
Transport Corporation Ltd.,
Pallavan House,
Kamaraj Salai,
Chennai-600 002.

... Appellant/Respondent

vs.

1.Meharunisha,
2.Minor Afsan,
3.Minor Aslum Khan,
4.Minor Asruf Khan,
5.Mymoonbee.

(Minor respondents 2 to 4
are represented by their
next friend and mother
Meharunisha, the first
respondent)

... Respondents/Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of
Motor Vehicles Act, 1988 against the award and decree dated
17.7.2006 passed in M.C.O.P.No.794 of 2004 on the file of the
Motor Accidents Claims Tribunal (Additional District-cum-Special
Court, Essential Commodities Act), Salem.

For appellant : Mr.M.Krishnamoorthy

JUDGMENT

Tamil Nadu State Express Transport Corporation is on appeal challenging the award dated 17.7.2006 passed in M.C.O.P.No.794 of 2004 on the file of the Motor Accidents Claims Tribunal (Additional District-cum-Special Court, Essential Commodities Act), Salem.

2. It is a case of fatal accident. The brief facts of the case is as follows:- The accident in this case happened on 21.1.2004 at 4.45 p.m. near Manjavadi Hills on the Harur to Salem main road. The deceased Sathick Basha, son of Hasan said to be aged 40 years old and a business man engaged in manufacture of iron bureau, was travelling as a passenger in the appellant transport corporation bus and the said bus over short the road and capsized. In that accident, some of the passengers of the bus including the said Sathick Basha suffered grievous injuries and died. The wife aged 34 years, minor daughter aged 12 years, two minor sons aged 10 and 8 years respectively and mother aged 74 years filed a claim for compensation in a sum of Rs.20 lakhs stating that the deceased was earning Rs.10,000/- per month.

3. In support of the claim, the wife of the deceased was examined as P.W.1. One Thiru Babu, the eye witness was examined as P.W.2. Exs.P-1 to P-3 were marked. The details of the documents are as follows:-

Ex.P-1 is the certified copy of F.I.R. dated 23.1.2004,
Ex.P-2 is the certified copy of post-mortem certificate dated 31.1.2004 and
Ex.P-3 is the legal heir certificate dated 17.2.2004.

One Thiru Chandrasekaran, an Assistant Engineer of the appellant transport corporation was examined as R.W.1. No document was marked on behalf of the appellant transport corporation.

4. The Tribunal disbelieved the evidence of R.W.1, Assistant Engineer as he did not witness the accident. The driver of the bus was not examined. P.W.2 is the eye witness to the accident. Therefore, the Tribunal held that the driver of the appellant transport corporation bus was rash and negligent in driving the bus and he was responsible for the accident and the death of the deceased. Such finding is not controverted by any other evidence on record. Accordingly, the finding of negligence and the liability fixed on the appellant transport corporation to compensate the claimants is confirmed.

5. As far as compensation is concerned, the same was decided in paragraph 10 onwards in answer to point No.2 of the award. As per post-mortem certificate Ex.P-2, the age of the deceased was taken as 40 years. As far as the income is concerned there is no document except the oral evidence of the wife of the deceased. Therefore, the Tribunal fixed the income of the deceased at Rs.3,000/- per month. After deduction of 1/3 towards personal expenses of the deceased, the contribution to the family of the deceased was fixed at Rs.2,000/- per month and the annual contribution at Rs.24,000/-. Insofar as the multiplier is concerned, since the deceased was 40 years old at the time of accident, the Tribunal based on the second schedule to the Motor Vehicles Act, adopted 15 multiplier and granted a sum of Rs.3,60,000/- as compensation towards pecuniary loss to the dependents of the deceased. In addition, the Tribunal also granted compensation under conventional heads. In all, the Tribunal granted the following amounts as compensation with interest at 7.5%:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the family of the deceased	Rs.3,60,000/-
2	Funeral expenses	Rs. 2,000/-
3	Loss of consortium to the wife and loss of love and affection to the three children	Rs. 8,000/-
	Total	Rs. 3,70,000/-

6. Counsel for the appellant pleaded for reduction in the quantum of compensation stating that 15 multiplier adopted by the Tribunal is on the higher side for the death of 40 years old person.

7. This court is not inclined to interfere with the quantum of compensation in this case for the following reasons:-

- (i) The accident in this case happened on 23.1.2004. The income of the deceased fixed at Rs.3,000/- per month by the Tribunal is not in dispute. After deducting 1/3 towards personal expenses, the loss of contribution to the family of the deceased was fixed at Rs.2,000/- per month and Rs.24,000/- per year. According to the appellant if multiplier 13 is adopted, the total pecuniary loss to the family of the deceased would be Rs.3,12,000/- (Rs.24,000/- x 13 = Rs.3,12,000/-).

- (ii) No amount was granted to the mother of the deceased towards loss of love and affection.
- (iii) No amount was granted towards transport expenses.
- (iv) A very very meagre amount was granted towards loss of consortium to the wife and loss of love and affection to the three minor children of the deceased.
- (v) The wife of the deceased, in this case, will be entitled to a sum of Rs.20,000/- towards loss of consortium. The three minor children will be entitled to a sum of Rs.10,000/- each totally Rs.30,000/- towards loss of love and affection. The mother of the deceased will be entitled to a sum of Rs.7,500/- towards loss of love and affection on the death of her son. The claimants will be entitled to a sum of Rs.2,500/- towards transport expenses. If the above amounts are added to the loss of pecuniary benefits of Rs.3,12,000/- based on 13 multiplier and the sum of Rs.2,000/- granted towards funeral expenses, the total comes to Rs.3,74,000/-, but, the Tribunal granted Rs.3,70,000/- only. Therefore, this court is not inclined to interfere with the quantum of compensation by way of reduction.

8. The interest granted by the Tribunal at 7.5% stands confirmed, since the accident in this case happened in the year 2004 and the award of the Tribunal is 2006.

9. The counsel for the appellant has not made out a case for reduction of the compensation.

10. Finding no merit, this Civil Miscellaneous Appeal is dismissed at the admission stage. Counsel for the appellant prays eight weeks time to deposit the award amount and is granted. On such deposit the respondents/claimants are entitled to withdraw the amount as ordered by the Tribunal. Consequently, connected miscellaneous petition is closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

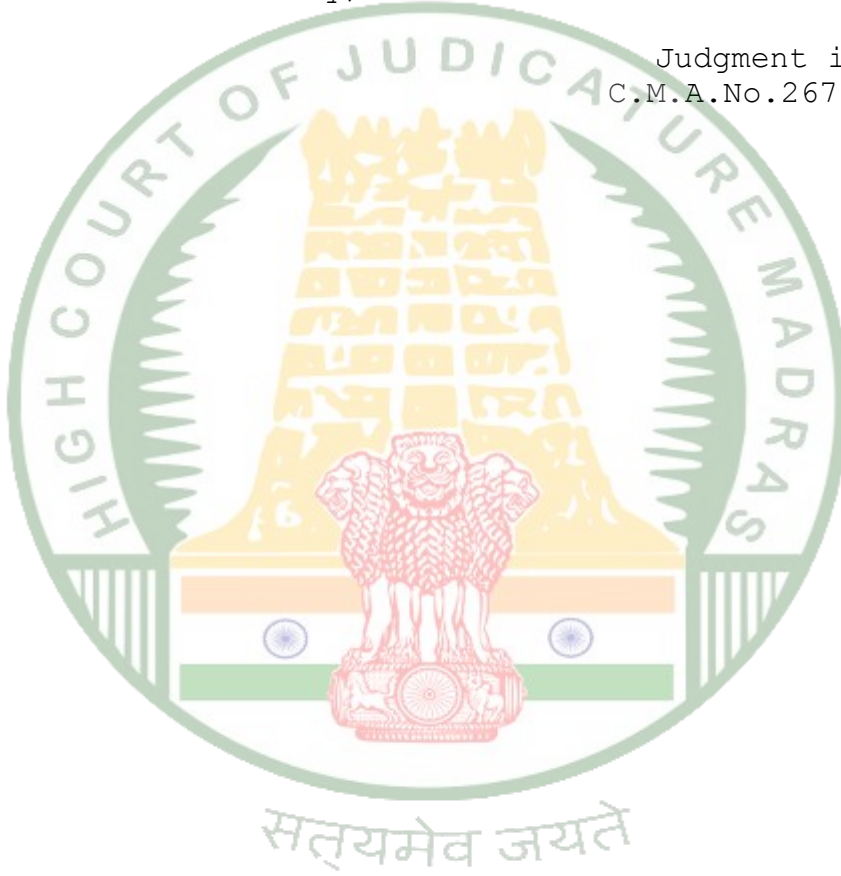
To

The Additional District-cum-Special Judge,
Essential Commodities Act,
(Motor Accidents Claims Tribunal),
Salem.

+ 1 cc to Mr. M. Krishnamoorthy, Advocate SR No. 48900

Judgment in
C.M.A.No.2678 of 2008

RSY(CO)
SR/24.10.2008



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