

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.3.2009

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THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.No.750 of 2009

and

M.P.No.1 of 2009

The Managing Director,  
Tamil Nadu State Transport  
Corporation Limited,  
Villupuram Division III,  
Kancheepuram.

... Appellant/Respondent

vs.

1.Tmt.Parvathi,  
2.M.Sankar.

... Respondents/Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 29.4.2008 passed in M.C.O.P.No.5030 of 2003 on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

For appellant : Mrs.B.Vijayalakshmi

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JUDGMENT

The Tamil Nadu State Transport Corporation is on appeal challenging the award dated 29.4.2008 passed in M.C.O.P.No.5030 of 2003 on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

2. It is a case of fatal accident. The brief facts of the case are as follows:- The accident in this case happened on 4.6.2003. The deceased K.Mani, aged 37 years, a mason by profession, was proceeding on the left side of the road near Ottar colony, Velanjeri village. The bus belonging to the appellant transport corporation driven by its driver in a rash and negligent manner, hit the said

Mani. In that accident, the said Mani died. The wife aged 36 years and son aged 19 years filed a claim for compensation in a sum of Rs.5 lakhs stating that the deceased was earning a sum of Rs.4,500/- per month.

3. In support of the claim, the wife of the deceased was examined as P.W.1 and one Logan as P.W.2. Exs.A-1 to A-6 were marked on behalf of the claimants, the details of which are as follows:-

Ex.A-1 is the FIR,

Ex.A-2 is the post mortem certificate,

Ex.A-3 is the charge sheet,

Ex.A-4 is the sketch,

Ex.A-5 is the ID Card and

Ex.A-6 is the legal heir certificate.

No oral or documentary evidence was let on behalf of the appellant transport corporation, the respondent before the Tribunal.

4. Based on the FIR Ex.A-1 and the charge sheet Ex.A-3, the Tribunal came to the conclusion that the death of Mani was due to rash and negligent driving by the driver of the appellant transport corporation bus. In the absence of any other material to the contrary, the Tribunal held that the negligence is on the part of the driver of the appellant transport corporation bus and the liability has fixed on the appellant transport corporation. This finding is not seriously disputed by the learned counsel for the appellant. The only contention raised in this appeal is on the quantum of compensation.

5. Though the claimants stated that the income of the deceased was Rs.4,500/- per month, the Tribunal, however, held that in the absence of any document, the income should be fixed as Rs.3,000/- per month, of which 1/3 was deducted and the annual contribution to the family of the deceased was taken as Rs.24,000/-. The Tribunal adopted 16 multiplier based on the age of the deceased and the total pecuniary loss was fixed as Rs.3,84,000/- (Rs.24,000/- x 16 = Rs.3,84,000/-). The Tribunal also granted compensation under conventional heads. In all, the Tribunal granted the following amounts as compensation with 7.5% interest as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the dependents of the deceased	Rs.3,84,000/-
2	Loss of love and affection to the wife and son (Rs.5,000/- each)	Rs. 10,000/-

Sl. No.	Head	Amount granted by the Tribunal
3	Funeral expenses	Rs. 2,000/-
	Total	Rs.3,96,000/-

6. In appeal, the contention of the appellant's counsel is that the multiplier of 16 adopted by the Tribunal in a case of 37 years old earning member is high. Therefore, the quantum of compensation has to be reduced.

7. On going through the award, this Court is not inclined to interfere with the award of the Tribunal on the above contention and to reduce the quantum of compensation for the following reasons:-

- (i) The accident in this case happened on 4.6.2003. Admittedly, the deceased was aged 37 and was a mason. The income claimed is at Rs.4,500/- per month. The Tribunal, reduced the income to Rs.3,000/- per month.
- (ii) The following decisions will have to be kept in mind while fixing the income of the deceased:-

(a) A Division Bench of this Court in B.Anandhi - vs. - Latha reported in 2002 ACJ 233 (P.SATHASIVAM,J., as he then was) observed that a coolie would earn Rs.100/- per day. In that case, the accident happened in the year 1995.

(b) The Apex Court in State of Haryana and another - vs. - Jasbir Kaur and others reported in 2004-1 Law Weekly, was of the view that an agriculturist would earn Rs.3,000/- per month. In that case, the accident happened in the year 1999.

In the above cited cases, the income of the deceased was taken at Rs.3,000/- per month for the year 1995 and 1999 respectively, whereas in the present case, the accident happened in the year 2003. Considering the same, the income of the deceased, ought to have fixed at Rs.4,500/- per month as claimed at the time of accident. This will be keeping in line with the living wages during the period of accident.

- (iii) Since the income of the deceased has been drastically reduced, the marginally higher multiplier will compensate for the same. Further a very meagre amount has been granted for loss of love and affection to the son and also towards loss of consortium to the wife, who lost her husband on her prime age. For funeral expenses a meagre amount has been granted and no amount has been granted towards transport expenses.

- (iv) Considering all the above aspects the total compensation

granted in a sum of Rs.3,96,000/- by the Tribunal does not require any further reduction as also the interest granted at 7.5% as the accident in this case happened in the year 2003 and the award is of the year 2008.

8. Finding no merit, this Civil Miscellaneous Appeal is dismissed at the admission stage. Counsel for the appellant seeks eight weeks' time to deposit the award amount and is granted and on such deposit, the claimants are permitted to withdraw the same as per order of the Tribunal. Consequently, connected miscellaneous petition is closed.

Sd/  
Asst.Registrar

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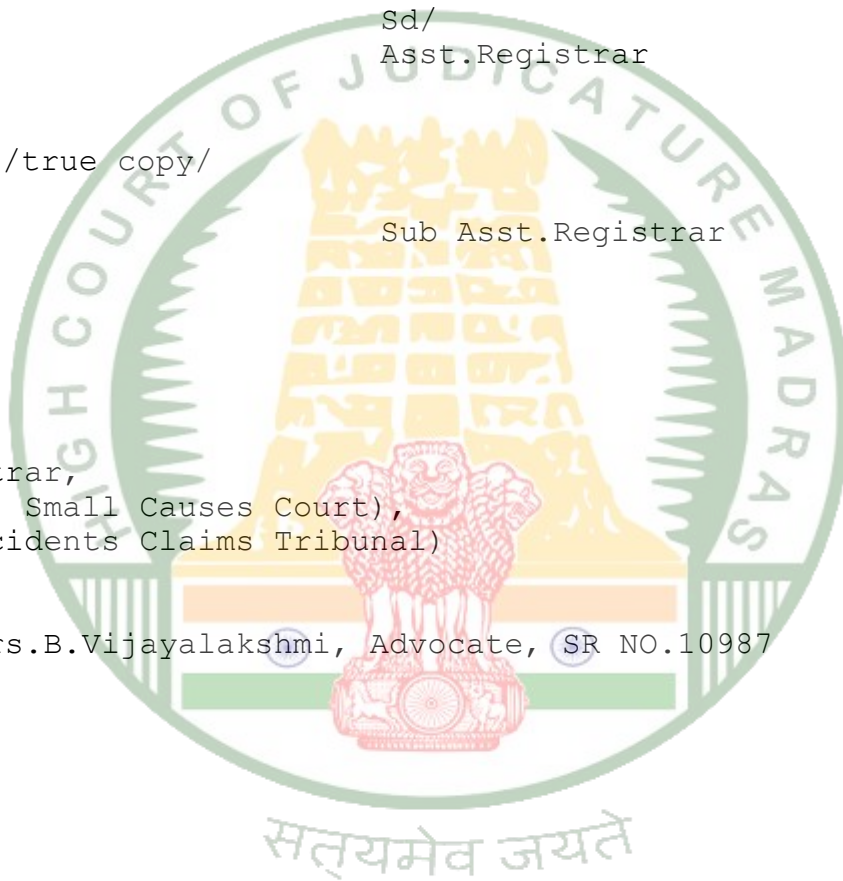
Sub Asst.Registrar

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To

The Registrar,  
(VI Judge, Small Causes Court),  
(Motor Accidents Claims Tribunal)  
Chennai.

1 CC To Mrs.B.Vijayalakshmi, Advocate, SR NO.10987



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