

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.2.2009

CORAM:-

The Hon'ble Mr. Justice R. SUDHAKAR

C.M.A. No. 2505 of 2003

The Managing Director,
Tamilnadu State Transport
Corporation,
Bharathipuram,
Dharmapuri.

.. Appellant/ Respondent

Vs.

1. Rajamani
2. Minor Parvathy
3. Minor Kawaskar
4. Minor Kapilthev
(Respondents 2 to 4 minors rep.
by Natural Guardian and mother
R-1 Rajamani)
5. Kuttyappean

.. Respondents/Petitioners

Appeal filed under Section 173 of M.V. Act against the award and decree dated 18.3.2003 made in M.C.O.P. No.236 of 1998 on the file of the Motor Accidents Claims Tribunal, (Sub Court), Dharmapuri.

For Appellant : Mr. P. Jagadeeswaran

For Respondents : No Appearance

JUDGMENT

Transport Corporation has filed this appeal challenging the award dated 18.3.2003 made in M.C.O.P. No.236 of 1998 on the file of the Motor Accidents Claims Tribunal, (Sub Court), Dharmapuri.

2. It is a case of fatal accident. The accident in this case happened on 6.10.1997 on the Arur - Uthankarai main road. The deceased Parasuraman, an agriculturist, aged about 34 years was riding a cycle on the said main road when he was hit by the

appellant transport corporation bus driven by its driver in a rash and negligent manner and in that accident, he sustained grievous injuries and died. On his death, the wife aged 25 years, three minor children aged 6 years, 4 years and 3 years respectively and the father aged 55 years are the claimants. They claimed a sum of Rs.5,00,000/- as compensation stating that the income of the deceased was Rs.3,500/- p.m.

3. In support of the claim, the wife of the deceased was examined as P.W.1. Documents Exs. A1 to A4 were marked. On behalf of the appellant/ respondent before the Tribunal, the driver of the bus was examined as R.W.1. No documentary evidence was let in on behalf of the appellant/ respondent before the Tribunal.

4. The finding of negligence on the part of the driver of the appellant transport corporation bus and the liability to compensate the claimant is not disputed and such finding of the Tribunal is confirmed.

5. The only contention raised by the learned counsel for the appellant is on the quantum of compensation. According to the claimants, the deceased was engaged in agriculture and earning a sum of Rs.3,500/- p.m. The Tribunal, however, fixed the income of the deceased at Rs.2,000/- p.m. i.e. Rs.24,000/- p.a. of which 1/3rd was deducted towards personal expenses of the deceased and the contribution to the family was fixed at Rs.16,000/- p.a. The Tribunal adopted 18 multiplier and granted a sum of Rs.2,88,000/- (Rs.16,000/- x 18 = Rs.2,88,000/-) towards loss of pecuniary benefits. In addition, the Tribunal granted compensation under conventional heads. In all, the Tribunal granted the following amount as compensation with interest at the rate of 9% p.a.

| Sl.No. | Head | Amount granted by the Tribunal |
|--------|---|--------------------------------|
| 1 | Loss of pecuniary benefits | Rs.2,88,000/- |
| 2 | Pain and suffering | Rs. 25,000/- |
| 3 | Funeral expenses | Rs. 2,000/- |
| 4 | Transport expenses | Rs. 2,000/- |
| 5 | Damage to cloths | Rs. 1,000/- |
| 6 | Loss of consortium to the wife | Rs. 5,000/- |
| 7 | Loss of love and affection to the other claimants | Rs. 30,000/- |
| | Total | Rs.3,53,000/- |

6. In appeal, it is contended that the sum of Rs.25,000/- granted for pain and suffering (to the claimants) is not warranted and therefore, the said sum has to be reduced.

7. This Court is not inclined to reduce the quantum of Rs.25,000/- though the same has been given erroneously towards pain and sufferings for the following reasons.

(i) In this case, the accident happened in the year 1997. Deceased, after the accident, was alive for some times before his death. Admittedly, the deceased was an agriculturist and supporting the family of wife, three minor children and father. His income should have been fixed reasonably higher and not Rs.2,000/- p.m. as decided by the Tribunal.

(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.

8. 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 1997. Considering the same, the income of the deceased should have been fixed marginally higher. If higher income is taken, the compensation will be much more than what has been awarded by the Tribunal. The excess amount of Rs.25,000/- granted for pain, shock and suffering, can be adjusted even on the head of loss of pecuniary benefits to the claimants. Therefore, the total compensation awarded by the Tribunal does not require any further reduction as also the interest at the rate of 9% p.a. as the accident happened in the year 1997 and the award was passed in the year 2003.

9. Finding no merits, the civil miscellaneous appeal is dismissed. No costs. Consequently, C.M.P.No. 15103 of 2003 is also dismissed.

Learned counsel for the appellant stated that entire award amount has already been deposited and the claimants 1 and 5 were permitted to withdraw 50% of their respective share. The first claimant was also permitted to withdraw interest on the share of the minor claimants 2 to 4 as per the order of the Division Bench of this Court dated 5.11.2003. The claimants are permitted

to withdraw the balance award amount as per the order of the Tribunal.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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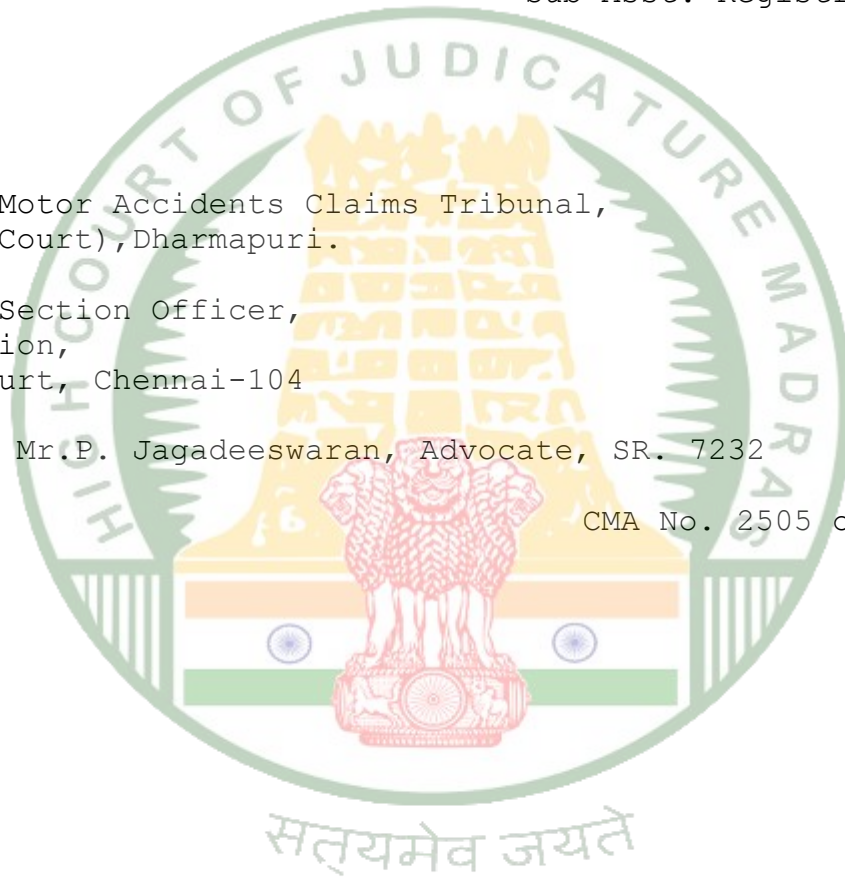
1. The Motor Accidents Claims Tribunal,
(Sub Court), Dharmapuri.

2. The Section Officer,
VR Section,
High Court, Chennai-104

1 cc to Mr.P. Jagadeeswaran, Advocate, SR. 7232

CMA No. 2505 of 2003

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