



CMA No. 1587 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1587 of 2023

R.Praveena ... Appellant

Versus

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Illam,
Anna Salai,
Chennai – 600 002.

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.A.C.T.O.P. No. 5155 of 2019 dated 05.01.2023 on the file of the Motor Accident Claims Tribunal, Principal Special Judge, Special Court, E.C. And NDPS Act, Chennai, Small Causes Court, Chennai.

For Appellant : Ms. R.Reena

For Respondent : Mr. M.Murali Vinodh

J U D G M E N T

The appeal has been filed challenging the award passed by the



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Tribunal in M.C.O.P. No. 5155 of 2019 dated 22.08.2022.

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2.The appellant had filed a claim petition seeking compensation before the Tribunal stating that on 30.05.2015, when the deceased was riding the motorbike bearing Registration No. TN 03 Q 1866 at North Kotta Road above the RBI subway travelling from East to West, a MTC Bus bearing Registration No. TN 01 N 4476 driven by its driver in a rash and negligent manner on the same road, hit the backside of the motorbike of the deceased and at the time, back right side wheel of the bus ran over his head and he died on the spot.

3.The respondent filed a counter stating that the accident occurred due to the negligence of the deceased; that when the bus belonging to the respondent was proceeding slowly, the deceased came at a hectic speed and attempted to overtake the MTC bus in the gap between the bus and the bridge wall and grazed on the right side middle body of the bus and caught on the right rear wheel of the bus and thus resulted in the accident; and that in any case, the compensation claimed by the appellant is excessive and prayed for dismissal of the petition.



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4.The appellant examined two witnesses on her side as PW.1 and PW.2 and marked Ex.P.1 to Ex.P.13. On the side of the respondent, one witness was examined as RW.1 and Ex.R.1 was marked.

5.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent act of the driver of the bus and that of the deceased, fixed 50% contributory negligence on the driver of the bus and 50% contributory negligence on the deceased and awarded a compensation of Rs. 7,60,000/- to the appellant to be paid by the respondent. Aggrieved by the said award, the appellant had preferred the instant appeal.

6.The learned counsel for the appellant submitted that the Tribunal had erroneously fixed 50% contributory negligence on the deceased in the absence of any evidence to show that the deceased had contributed to the accident. The learned counsel further submitted that the monthly income fixed by the Tribunal at Rs.9,000/- per month is meagre although the appellant had established that the deceased was a B.Com., graduate



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and hence, prayed for enhancement of compensation.

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7.The learned counsel for the respondent, per contra, submitted that as per the evidence on record, the deceased was the tortfeasor; and that the award of the Tribunal is just and reasonable and no interference is called for. Further, the learned counsel submitted that the Tribunal rightly fixed 50% contributory negligence on the deceased and in the absence of any evidence to prove the income of the deceased, the Tribunal had rightly fixed the notional income at Rs.9,000/- . Hence, he prayed for dismissal of the appeal.

8.The questions that arise for consideration in the instant appeal are;

- (i) Whether the Tribunal was right in fixing 50% contributory negligence on the deceased?
- (ii) Whether the compensation awarded by the Tribunal is just and reasonable?

9.The appellant had examined PW2, an eye witness to prove the manner of the accident. On the side of the respondent, the driver of the offending vehicle was examined as RW1. It is his version that the



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deceased attempted to overtake the bus and since the gap between the bus and the wall of the bridge was less, his vehicle hit the right side body of the bus, thrown out of the bike and thereafter run over by the rear wheel of the bus. The final report of the Police, after investigation also is to the same effect. In the final report, the driver of the bus was charged for the offence under Section 304 A of the Indian Penal Code. The relevant portion of the final report reads as follows;

“In Ex.P.9/Copy of Charge Sheet, it is mentioned that
“...பேருந்தின் வலது பக்க பாடியால் இடத்துத்
தள்ளியதில் மோட்டர் சைக்கிள் ஓட்டுநர் தினைச்
த/பெ.ரவி என்பவர் கீழே விழுந்ததும் அதே பஸ்ஸின்
பின் பலது சக்கரம் அவரது தலையில் ஏறி
இறங்கியதில் பலத்த ரத்த காயம் தலையில் ஏற்பட்டு
சம்பவ இடத்திலேயே மரணம் அடையக் காரணமான
இருந்துள்ளார்”

PW1, the eye witness, on the other hand would state that the bus, hit the vehicle from behind. He would admit in his cross examination that he saw the accident after he heard the sound. Therefore, from the evidence of PW1 it cannot be said that the accident took place entirely due to the negligence of the driver of the bus. However, from the evidence of RW1 and Ex.P.9, final report, it can be seen that the deceased also contributed to the accident. This Court is of the view that the finding of the Tribunal



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fixing 50% contributory negligence on the deceased may not be appropriate in the circumstances of the case. RW1 was admittedly charged by the Police for the offence under Section 304 A of the Indian Penal Code. Considering the evidence and over all facts and circumstances of the case, this Court is of the view that it would be just and reasonable to fix the contributory negligence of the deceased at 30%, since the accident had predominantly taken place due to the negligent act of the driver of the bus.

10.As regards the quantum of compensation, this Court is of the view that the appellant had established the fact that the deceased was a B.Com., graduate. The accident took place in the year 2015. Considering the age, educational qualification of the deceased and year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income as Rs. 13,000/-. Since the deceased was aged 21 years at the time of accident, the multiplier applicable is 18 and the appellant is entitled to 40% enhancement towards future prospects. Since the deceased died as bachelor, 50% has to be deducted towards personal expenses. Hence, the compensation under the head loss of dependency has to be Rs. 13,000/- + Rs. 5,200/- (40% of Rs. 13,000/-) = Rs. 18,200/-



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x 12x 18x 50% = Rs. 19,65,600/-. The award under the other heads are

just and the same are confirmed. Thus, the award of the Tribunal is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	13,60,800	19,65,600	Enhanced
	After deducting 50% contributory negligence	6,80,400	---	
2.	Loss of estate	16,500	16,500	Confirmed
3.	Loss of funeral expenses	16,500	16,500	Confirmed
4.	Loss of consortium	44,000	44,000	Confirmed
	Total	7,57,400 rounded off to 7,60,000	20,42,600	Enhanced
	After deducting 30% contributory negligence	---	14,29,820 rounded off to 14,30,000	Enhanced by Rs.6,70,000/-

11. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,60,000/- is hereby enhanced to Rs.14,30,000/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The respondent is directed to deposit the award amount now determined by this Court along with



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interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary court fee if any on the enhanced award amount. No costs.

08.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal, Principal Special Judge,
Special Court, E.C. And NDPS Act, Chennai,
Small Causes Court,
Chennai.

2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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