



C.M.A(MD)No.571 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.571 of 2017

1.Neelavathi

2.Lakshmi Ammal

3.Malaiyappan

... Appellants/Claimants

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Division – I,
Kumbakonam,
Thanjavur District.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 (1) of the Motor Vehicles Act, to set aside the portion of the judgment which fixed contributory negligence on the part of deceased and fix the complete negligence on the part of driver of the respondent corporation and to allow the appeal to the effect that so as to enhance the compensation to the tune of Rs.5,00,000/- in addition to compensation awarded by the tribunal by modifying the judgment and decretal order made in M.C.O.P.No.98 of 2012 by the judgment dated 24.03.2017 by the learned Motor Accident Claims Tribunal/III-Additional District and Sessions Judge, Thanjavur at Pattukkottai.



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For Appellants : Mr.S.Deenadhayalan

For Respondent : Mr.D.Sivaraman

JUDGEMENT

The claimants in M.C.O.P.No.98 of 2012 on the file of Motor Accident Claims Tribunal, Thanjavur at Pattukkottai have filed the above appeal challenging the fixation of 50% of contributory negligence and for enhancement of compensation.

2. According to the claimants, the deceased was driving a two wheeler on 22.12.2011 and he was hit by the bus belonging to the transport corporation on the rear side of the bike. In the said accident, the deceased was injured seriously and had died in the said accident. According to the claimants, he was working as a Tailor and earning a sum of Rs.12,000/- per month. The claimants had made a claim of Rs.20,00,000/- as compensation.

3. The transport corporation has filed a counter contending that the bus was driven on the left side of the road slowly and the deceased attempted to overtake the bus, but could not do so in view of herd of



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cattle coming from the opposite direction. This has resulted in error in judgment and he had hit against the right side of the bus. He fell down and sustained injuries and passed away. Therefore, the deceased alone was responsible for the accident and the transport corporation is not liable to pay any compensation. The transport corporation further disputed the quantum as prayed for in the claim petition.

4. The tribunal after considering the oral and documentary evidence arrived at a finding that the deceased by his negligence has contributed to the accident by attempting to overtake the bus. After arriving at such a finding, the tribunal fixed the contributory negligence at 50% on the deceased. The tribunal arrived at a finding that the claimants are entitled to Rs.9,40,000/- as compensation and after deducting 50%, a sum of Rs.4,70,000/- was awarded. This award is under challenge in the appeal by the claimants.

5. According to the learned counsel appearing for the appellants, the two wheeler has been dashed against by the bus belonging to the transport corporation on the rear side of the bike. An F.I.R has been lodged by the pillion rider and in the claim petition also, it has been specifically averred. He further contended that one of the eye witnesses



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has been examined as P.W.2 in order to prove that the accident has happened only due to the rash and negligent driving on the part of the bus driver. The tribunal based upon the conjectures and surmises has arrived at a finding that the deceased was also responsible to the extent of 50% of negligence which has resulted in the accident. Therefore, he contended that the entire negligence is only upon the bus driver and the 50% of contributory negligence fixed by the tribunal should be set aside.

6. The learned counsel appearing for the appellants had further contended that the award amount has not been properly quantified in view of the fact that the future prospects has not been taken into consideration. The amount awarded under the head of loss of consortium is on the lesser side and no amount has been awarded under the head of transport expenses. Hence, he prayed for enhancement of the compensation at Rs.5,00,000/-.

7. I have carefully considered the submissions made on either side and perused the records and perused the award of the tribunal.

8. It is the specific case of the claimants that the bus belonging to the transport corporation had hit on the rear side of the motor bike and it



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has resulted in the accident. However, in the counter, the corporation has taken a stand that the deceased was attempting to overtake the bus and due to error of judgment, he had hit against the right side of the bus and fell down and sustained injuries. The pillion rider of the vehicle is the informant in the F.I.R, in which he has stated that the accident has happened only due to the rash and negligent driving of the bus belonging to the transport corporation. The eye witness who has been examined as P.W.2 has also stated that the motor bike was hit on the rear side by the bus belonging to the transport corporation.

9. This Court in view of the following reasons, is of the considered opinion that there was some kind of negligence on the part of the deceased also.

(i) The motor bike which was driven by the deceased was not subjected to any inspection by a Motor Vehicle Inspector. This could have disclosed the fact whether the bike was damaged on the rear side or not.

(ii) The pillion rider of the bike is the right person to depose about the manner of the accident. Though he has lodged an F.I.R, he has not come forward to depose with regard to the manner of accident.



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(iii) The corporation has taken a specific stand in the

counter that at about 4.30 p.m, a herd of cattle was coming in the opposite direction and when the deceased attempted to overtake the bus, he could not do so and due to error of judgment, he had hit against the right side of the bus. The said fact is admitted during cross examination of P.W.1

10. A combined reading of the above said facts will clearly disclose that there was some kind of contributory negligence on the part of the deceased person in contributing to the accident. However, whether such contribution would amount to 50% is the issue that has to be decided. According to the version of the transport corporation, the deceased was attempting to overtake the bus from the right side and herd of cattle was coming from the opposite direction. Therefore, the bus driver would be in the best position to warn any overtaking vehicle and to stop the vehicle, in case any attempt is being made to overtake the vehicle in violation of a signal of the bus driver. Therefore, the tribunal was not correct in fixing 50% of contributory negligence on the part of the deceased person. Therefore, this Court is of the considered opinion that 25% of contributory negligence could be fixed on the deceased person.



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11. The tribunal has taken into consideration the monthly income at Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) and deducted 1/3rd towards his personal expenses and applied a multiplier of 15 and arrived at a total loss of income at Rs.9,00,000/- (Rupees Nine Lakh only). The claimants have produced Exhibits P.6 and P.7 to establish that they were running a Tailor Shop. Therefore, the tribunal was in error in not adding 40% towards future prospects. If 40% is added as future prospects to Rs.9,00,000/- (Rupees Nine Lakh only), loss of income would be come to Rs.12,60,000/- (Rupees Twelve Lakh and Sixty Thousand only).

12. The 1st claimant is the wife and the claimants 2 and 3 are the parents, each one of them will be entitled to Rs.40,000/- (Rupees Forty thousand only) towards love and affection, so totally a sum of Rs.1,20,000/- (Rupees One Lakh and Twenty Thousand only) is awarded towards loss of love and affection. A sum of Rs.15,000/- (Rupees Fifteen Thousand only) is awarded towards funeral expenses and a sum of Rs.15,000/- (Rupees Fifteen Thousand only) is awarded towards loss of estate and a sum of Rs.10,000/- (Rupees Ten Thousand only) is awarded for transport expenses. Therefore, total amount of compensation is Rs.14,20,000/- (Rupees Fourteen Lakh and Twenty Thousand only).



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13. Out of the said Rs.14,20,000/- (Rupees Fourteen Lakh and Twenty Thousand only), after deducting 25% towards contributory negligence, it would come at Rs.10,65,000/- (Rupees Ten Lakh and Sixty Five Thousand only). Accordingly, a total amount of Rs.10,65,000/- (Rupees Ten Lakh and Sixty Five Thousand only) is awarded towards compensation. This would carry an interest at the rate of 7.5% from the date of claim petition till the date of realization. The enhanced award amount shall be deposited by the transport corporation within a period of eight (8) weeks from the date of receipt of a copy of this order. The claimants/appellants are directed to pay the deficit Court fee. Only thereafter, the decree may be drafted by the High Court.

14. In view of the above said observations, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs.

24.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal /
III-Additional District and Sessions Judge,
Pattukkottai,
Thanjavur.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Judgment made in
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