



Civil Miscellaneous Appeal No.299 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.299 of 2024

1.P.Rajini

2.K.Pandurangan

... Appellants

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division,
Villupuram - 605 401.

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.09.2019 made in M.C.O.P.No.2802 of 2016 on the file of Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai - 104, Motor Accident Claims Tribunal as per G.O.(Ms) No.716, Home (Tr IV) Department, dated 07.06.2016.

For Appellants : Mr.K.Balaji

For Respondent : Mr.S.S.Santhosa Kumar
Standing Counsel

JUDGMENT

The appellants/claimants, who are the parents of the deceased Krishnakanth, not being satisfied with the quantum of compensation



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awarded by the Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai - 104, Motor Accident Claims Tribunal as per G.O.(Ms) No.716, Home (Tr IV) Department, dated 07.06.2016, have filed this appeal against the award passed in M.C.O.P.No.2802 of 2016, dated 18.09.2019.

2. The case of the claimants is that on 28.02.2016, the deceased was travelling as a pillion rider in a two wheeler in which three persons were travelling at Guduvanchery GST road and at about 15.30 hours near Thallavaram, the bus belonging to the respondent corporation was driven in a rash and negligent manner and it hit the two wheeler from behind as a result of which all the persons, who were travelling in the two wheeler were thrown out and two of them sustained injuries and Krishnakanth died in the accident due to the grievous injuries sustained by him. A First Information Report came to be registered against the driver of the bus in Crime No.209 of 2016 on the file of Guduvanchery Police Station. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking compensation.



3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that there was negligence both on the rider of the two wheeler as well as the driver of the bus and therefore, fixed 50% liability on the transport corporation and attributed 50% negligence on the rider of the two wheeler. Having rendered the above finding, the Tribunal proceeded to fix the total compensation at Rs.9,30,000/- under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of dependency	8,10,000/-
2.	Loss of love and affection	1,00,000/-
3.	Funeral expenses	20,000/-
	Total	9,30,000/-

The Tribunal directed the respondent transport corporation to pay a sum of Rs.4,65,000/- (50%) with interest at the rate of 7.5% p.a.

4. The claimants, not being satisfied with the finding of the Tribunal attributing 50% contributory negligence on the deceased and also questioning the quantum of compensation fixed by the Tribunal, have filed the present appeal before this Court.



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5. Heard Mr.K.Balaji, learned counsel for appellants/claimants and Mr.S.S.Santhosa Kumar, learned counsel for respondent transport corporation.

6. This Court carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. When the matter came up for hearing on 22.04.2024, this Court passed the following order:

"The Tribunal has attributed contributory negligence to an extent of 50% as against the claimants. The finding of the Tribunal is to the effect that the two wheeler in which the rider and two pillion riders were travelling had hit the rear side of the bus on the left hand side and as a result, they lost balance and unfortunately, one person was caught under the tyre and he died. The present appeal confines itself only one of the claim made by the parents of the deceased in MCOP No.2802 of 2016. The Tribunal in order to come to a conclusion has strongly relied upon the evidence of RW1, PW2 and PW3. For some strange reasons, the rough sketch was also not marked in this case. Hence, there shall be a direction to the Registry to call for the original records from the Principal Special Judge, Special Court under E.C., and NDPS Act, Motor Accident Claims Tribunal, Chennai – 104 and it shall reach this Court before the next date of hearing.



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2.The learned counsel for the appellants and the learned counsel for the respondent Corporation are also directed to produce the copy of the rough sketch in this case.

3.Post this case under the same caption on 03.06.2024."

9. During the subsequent hearings, the Sub-Inspector of Police, Guduvanchery Police Station, was present before this Court and the CD file was also handed over to this Court.

10. When the matter was taken up for hearing today, it was brought to the notice of this Court that the criminal case ended in acquittal in C.C.No.293 of 2017 by the judgment of the learned Judicial Magistrate II, Chengalpet, dated 03.08.2018.

11. This Court carefully went through the evidence of PW-2, PW-3 and RW-1. PW-2 and PW-3 are the other two persons, who were travelling in the same two wheeler. Both of them, during chief examination, have stated that the bus had rammed the two wheeler from behind. However, during cross-examination, PW-3 has stated as follows:

"விபத்து சமயத்தில் நான் இரு சக்கர வாகனத்தை ஓட்டிச் சென்றேன். விபத்து சமயத்தில் இரு சக்கர வாகனத்தில் முன்று நபர்கள் சென்றோம். எனக்கு இரு சக்கர வாகனம் ஓட்டும்



உரிமம் இருந்தது, விபத்து சமயத்தில் தொலைந்து விட்டது. நான் விபத்து சமயத்தில் ஹெல்மெட் போடவில்லை. பேருந்தின் வலது பக்க பக்கவாட்டில் விபத்து நடந்தது என்றால் சரிதான். பேருந்தின் பின் பகுதியில் விபத்து நடந்தது. நாங்கள் முன்று பேர் சென்று, நான் நிலை தடுமாறி பேருந்தின் பின் பக்கத்தில் விழுந்து விபத்து ஏற்பட்டது என்றால் சரியல்ல."

12. It will also be relevant to take note of the report of the Motor Vehicle Inspector, who inspected both the two wheeler as well as the bus. Insofar as the two wheeler is concerned, the damage sustained by the two wheeler is noted as follows:

1. Front Headlight, Indicator damaged
2. Front fork damaged
3. Front wheel rim damaged
4. Rear chassis damaged
5. Rear tail lamp, Number plate damaged

13. Insofar as the offending vehicle, viz., the bus, the Motor Vehicle Inspector has noted that there was a damage in the front bumper.

14. It is also relevant to take note of the fact that the criminal case against the driver of the bus also ended in acquittal. Even though this judgment may not be binding on this Court, it certainly has a persuasive value while appreciating the evidence.

15. The evidence of PW-2 and PW-3 on the one hand and the evidence of RW-1 on the other cannot stand together. This is in view of



the fact that both of them have given contradicting versions regarding the accident. However, considering the evidence of PW-3 and also the report of the Motor Vehicle Inspector, this Court comes to the conclusion that the finding of the Tribunal to the effect that 50% contributory negligence must be attributed against the rider of the two wheeler, does not warrant any interference. It is also relevant to take note of the fact that none of them were wearing a helmet at the time of accident.

16. The next issue pertains to the compensation fixed by the Tribunal. The deceased, in this case, was aged about 19 years and it was claimed that he was a technician and earning a monthly salary of Rs.15,000/-. The Tribunal had fixed the notional monthly income at Rs.5,000/-, which is on the lower side. This Court is inclined to fix the monthly income at Rs.10,000/- p.m. If 40% is added towards future prospects, the monthly income would be Rs.14,000/-. The Tribunal has deducted 1/4 towards personal expenses, which also requires interference. Admittedly, the deceased was a batchelor in this case and therefore, 1/2 must be deducted towards personal expenses.

17. In the light of the above discussion, the compensation under the head 'loss of dependency' is calculated as follows:



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Monthly Income	:	Rs. 10,000/-
Add: Future Prospects 40% of Rs.10,000/-	:	Rs. 4,000/- ----- Rs. 14,000/-
Annual Income (14,000 * 12)	:	Rs. 1,68,000/-
Less : Personal expenses Rs.1,68,000/- * 1/2	:	Rs. 84,000/- ----- Rs. 84,000/- x 18
Multiplier	:	
Loss of income	:	Rs.15,12,000/- -----

18. The Tribunal has granted a sum of Rs.1,00,000/- towards loss of love and affection and the same is reduced to Rs.80,000/- (40000 x 2). The Tribunal has not granted any compensation under the head 'loss of estate' and hence, a sum of Rs.15,000/- is granted under this head. The compensation of Rs.20,000/- awarded under the head 'funeral expenses' is reduced to Rs.15,000/-.

19. In the light of the above discussion, this Court modifies the compensation in the following manner:



<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Loss of dependency	8,10,000/-	15,12,000/-
2.	Loss of love and affection	1,00,000/-	80,000/-
3.	Funeral expenses	20,000/-	15,000/-
4.	Loss of estate	-	15,000/-
	Total	9,30,000/-	16,22,000/-
	Less: 50% Contributory negligence	4,65,000/-	8,11,000/-
	Compensation payable	4,65,000/-	8,11,000/-

20. The compensation awarded by the Tribunal at Rs.4,65,000/- is enhanced to Rs.8,11,000/-. The respondent transport corporation is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. On such deposit, it will be open to the appellants/claimants to withdraw the amount on due application. Insofar as the enhanced compensation of Rs.3,46,000/- is concerned, the appellants/claimants will not be entitled for interest for the period of

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delay of 1338 days as was ordered by this Court in C.M.P.No.28587 of 2023 in C.M.A.Sr.No.159002 of 2023 dated 01.02.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

27.06.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,
Principal Special Judge,
Special Court under E.C. & NDPS Act,
Chennai - 104.

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