



C.M.A(MD)Nos.918 of 2021 and 154 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2024

Pronounced on : 29.07.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

C.M.A(MD)Nos.918 of 2021 and 154 of 2022
and
C.M.P(MD)No.2891 of 2024

C.M.A(MD)No.918 of 2021

1.Malarvizhi
2.Rithika
3.Minor Thanshika

... Appellants/Petitioners 1 to 3

(The 2nd appellant declared as major and Guardianship of Mrs.Malarvizhi is discharged, vide common order, dt:20.02.2024 made in CMP(MD) Nos.15185 & 15188 of 2023)

(Minor 3rd Appellant represented by her mother and natural guardian Malarvizhi, the 1st appellant herein)

Vs.

1.The Managing Director,
Karnataka State Transport Corporation,
Central Office,
Bangalore – 560 027.

...1st Respondent/Respondent



C.M.A(MD)Nos.918 of 2021 and 154 of 2022

2.Lakshmi

3.Marudhamuthu ... 2nd & 3rd Respondents/Petitioners 4 & 5

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli in M.C.O.P.No.752 of 2016, dated 23.11.2020.

For Appellant : Mr.D.Sivaraman

For R1 : Mr.K.Rajeswaran

For R2 and R3 : Mr.R.J.Karthick

C.M.A(MD)No.154 of 2022

The Managing Director,
Karnataka State Transport Corporation,
Central Office,
Bangalore – 560 027.

...Appellant/Respondent

Vs.

1.Malarvizhi

2.Rithika

3.Minor Thanshika

4.Lakshmi

5.Marthamuthu

...Respondents/Claimants

(Minor 3rd Respondent represented by her mother and natural guardian Malarvizhi)



C.M.A(MD)Nos.918 of 2021 and 154 of 2022

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the impugned award (Judgment and Decree) passed in M.C.O.P.No.752 of 2016, dated 23.11.2020 on the file of the MACT/Special District Court (Dealing with MCOP Cases), Tiruchirapalli.

For Appellant : Mr.K.Rajeswaran
For R1 to R3 : Mr.D.Sivaraman
For R4 and R5 : Mr.R.J.Karthick

COMMON JUDGMENT

(Judgment of the Court was delivered by P.VADAMALAI, J.)

These Civil Miscellaneous Appeals are preferred challenging the Award dated 23.11.2020 passed in M.C.O.P.No.752 of 2016 by the Motor Accident Claims Tribunal/Special District Court, Tiruchirappalli.

2.The petitioners/claimants in M.C.O.P.No.752 of 2016 have preferred the appeal in C.M.A.No.918 of 2021 seeking for enhancement of compensation.



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3. The respondent/Karnataka State Transport Corporation has preferred the appeal in C.M.A.No.154 of 2022 to set aside the award.

4. For the sake of convenience, the parties as arrayed in M.C.O.P.No.752 of 2016 is adopted hereunder.

5. The brief facts of the case:

The deceased Sathiyamoorthy was travelling as a pillion rider in the two wheeler bearing registration number KA 51 ED 7334 ridden by one Sethankumar along the Hosur-Bangalore highway on 11.02.2016. At 1.30 p.m. when they were riding near R.K.Dhaba Hotel of Old Chandrapura, Attipelli, the respondent Karnataka State Transport Corporation bus bearing registration number KA 42 F 1795 was driven by its driver in a rash and negligent manner dashed behind the bike. Due to impact, the deceased Sathiyamoorthy sustained multiple grievous injuries all over the body and died on the way to hospital. The rider Sethankumar sustained injuries. F.I.R. was registered by the Hebbakodi police station in Crime No.109 of 2016 against the driver of the respondent bus. The deceased



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Sathiyamoorthy was working as a Senior Quality Manager in M/s.Ashirwad Pipes (P) Limited, Bangalore and was earning Rs.1,05,690/- p.m. The petitioners, who are the wife, children and parents of the deceased Sathiyamoorthy depending on the income of the deceased. Hence, the petitioners 1 to 5 filed the claim petition seeking compensation of Rs.4,00,00,000/-.

6. The respondent/Karnataka State Transport Corporation objected the claim petition by contending that the respondent's driver had driven the bus KA 42 F 1795 with moderate speed by observing traffic rules. Whiles, the rider of the two wheeler KA 51 ED 7334, which the deceased was riding as a pillion rider, had ridden the bike with high speed and attempted to overtake the bus on left side and dashed the parked tempo van. The respondent's driver was not responsible for the accident. Moreover, the rider of the bike had no valid driving licence. The accident occurred due to negligence of the rider of the two wheeler KA 51 ED 7334 and the driver of the tempo van KA 51 C 0544. The claim petition is bad for nonjoinder of the Insurance Company of both vehicles. The deceased



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was riding as a pillion rider without wearing helmet. The petitioners are not entitled to claim from the respondent.

7. The Tribunal has tried the M.C.O.P.No.752 of 2016. Both sides adduced oral and documentary evidence. On the side of the petitioners, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.16 were marked. On the side of the respondent, R.W.1 was examined and Ex.R.1 to Ex.R.3 were marked and Ex.X.1 was also marked.

8. After hearing both and after considering the evidences, the Tribunal has passed the impugned order and awarded a total compensation of Rs.82,35,350/- with interest. Aggrieved by the said award, the petitioners/claimants and respondent/Karnataka State Transport Corporation have preferred these respective Civil Miscellaneous Appeals.

9. Heard both sides and perused the records in these Civil Miscellaneous Appeals.



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10. The learned counsel for the appellant/respondent/Karnataka State Transport Corporation in C.M.A.No.154 of 2022 (hereinafter called as respondent) has mainly argued that the rider of the two wheeler drove the vehicle in a rash and negligent manner in the National Highways in three lane roads having independent track for two wheeler on the left side of the road. On the respondent side, Ex.R.1 - Rough Sketch has been marked and revealed from Ex.R.1 that the accident took place in the middle of the road. The Tribunal has failed to discuss Ex.R.1 and simply refused it was in Kannada language. The claimant has not filed any translated version of that document. The Tribunal erred in relying on the whole evidence of P.W.2, who was admittedly rider of the bike at the time of accident. Further, the respondent contended that the two wheeler was driven by its rider in a rash and negligent manner with high speed, in zig-zag manner, hit against the parked van and invited the accident. The respondent took contention to implead the owner and insurer of the bike, but the Tribunal failed to consider these aspects. The respondent's bus driver was not at all responsible for the accident.



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11. It is contended on the side of the petitioners/claimants that the respondent's bus dashed the bike from behind and thereby, the two wheeler was thrown away, an accident occurred and the bike was dragged and hit the parked van. Even for the sake of argument, if the two wheeler hit against the parked van, the back side of van would get damaged, but Ex.R.3 - Photos show that the parked van does not get damaged. As per the respondent's contention, the accident happened in the middle of the road.

12. On perusal of records, it is clear that the respondent's bus dashed behind the bike ridden by P.W.2. It is evident from Ex.R.2 - Motor Vehicle Inspector's Report of bus and bike, which clearly shows that the left front side of the bus got damaged and the back side of bike damaged. Moreover, from Ex.R.3 - Photo, it is clear that the bike fell down underneath the parked van, the back side of parked van did not get even a little damage. So, the contention of the respondent that the rider of two wheeler hit against the parked van is not acceptable. The driver of the bus was examined as R.W.1, who deposed in his chief as follows:

“எனது பேருந்தின் இடதுபுறமாக இரு சக்கர
மோட்டார் வாகனம்..... என் வாகனத்தை முந்தி செல்ல



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முயன்றார். என்னுடைய பேருந்தின் இடது சைடு கண்ணாடி வழியாக நான் அதை பார்த்தபோது நான் வேகத்தை குறைத்து சத்தமாக ஆரன் அடித்தேன்..... இந்த விபத்து சம்பந்தமாக எனது நிரீவாகத்தினர் எனக்கு எதிராக எந்த நடவடிக்கையும் எடுக்கவில்லை...”

In cross examination, he deposed that,

“எனக்கு எதிராக பதிவு செய்யப்பட்ட முதல் தகவல் அறிக்கை சம்பந்தப்பட்ட வழக்கில் புலன் விசாரணை மேற்கொண்டு நான்தான் விபத்தை ஏற்படுத்தினேன் என்பதாக முடிவு செய்து குற்ற அறிக்கை தாக்கல் செய்துள்ளார்கள் என்றால் அது எனக்கு தெரியாது. குற்றவியல் வழக்கில் வாய்தாக்களுக்கு நான் ஆஜராகி வருகிறேன்.....”.

A conjoint reading of the above evidence of R.W.1 with Ex.R.3 -

Photos, it is very clear that the two wheeler was coming on the left side of the bus and the bus dashed against the two wheeler left side of the bus. Thereby, the two wheeler dragged and stalled beneath the parked van on the left side. The two wheeler did not hit the parked van as there is no damage seen on the back side of the van. It is pertinent to note here that though the respondent contended that the claimants or Tribunal have not added all



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parties, the respondent has not taken steps to add the rider or owner of the two wheeler and van driver or their respective Insurance Company by filing separate impleading petitions. Hence, the Tribunal correctly appreciated the evidence and held that the accident happened due to rash and negligent driving of the bus driver and the finding of the Tribunal does not need any interference by this Court.

13. The next contention raised by the respondent that the deceased was not wearing helmet at the time of accident and it is also admitted by the petitioners' side witnesses. So, the Tribunal ought to have held 50% contributory negligence instead of 15%. In reply, the learned counsel for the petitioners/claimants submitted that even assuming the rider of the two wheeler has contributed negligence to the accident, there can be no deduction on the compensation payable for the death of the pillion rider when there is no negligence on his part and further the third party victim are free to initiate the claim proceedings against any one of the tortfeasors and impleading of both the tortfeasors in the claim is not necessary and the claimant can recover at his option. In support of his argument, the learned



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counsel for the petitioners/claimants relied on citation reported in **(2015) 9 Supreme Court Cases 273 (Khenyei /v/ New India Assurance Co.Ltd.,).**

14. On perusal of records, it is admitted fact that the deceased did not wear helmet at the time of accident. The Tribunal held that the deceased being a B.E., decree holder and well known about traffic rules, was not wearing helmet and hence, the Tribunal held 15% contribution of negligence. **In (2015) 9 Supreme Court Cases 273 (Khenyei /v/ New India Assurance Co. Ltd., and Ors.),** the Hon'ble Supreme Court held that there can be no deduction on the compensation payable for the death of the pillion rider when there is no negligence on his part and further the third party victim are free to initiate the claim proceedings against any one of the tortfeasors and impleading of both the tortfeasors in the claim is not necessary and the claimant can recover at his option. In that case, the accident occurred due to composite negligence i.e., two vehicles, a bus and trailer-truck collided with each other. But, in this case, as evident from records, the accident took place due to rash and negligence on the part of the respondent's driver. So, the citation relied on by the



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petitioners/claimants is not applicable to the facts of the case. Further, the respondent raised an objection that the bike owner and its insurer are necessary parties, but it has not taken steps to implead them. However, the fact remains the deceased was travelling as a pillion rider without wearing helmet. This Court has already held in various cases that though the rider was wearing helmet with possession of driving license, if the pillion rider was not wearing helmet, 10% contributory negligence is to be fixed. Hence, this Court fixed 10% contributory negligence instead of 15% fixed by the Tribunal on the part of the deceased in this case.

15. On the side of the petitioners/claimants (appellants in C.M.A(MD)No.918 of 2021) it is submitted that the deceased Sathiyamoorthy was working as a Senior Quality Manager in M/s.Ashirwad Pipes (P) Ltd., and was drawing Rs.1,20,568/- p.m. as seen from Ex.P.13 - Pay Slip, but the Tribunal arrived income of the deceased as Rs.10,27,804/- based on Ex.P.6 - Form 16(A). The respondent's counsel contended that the Tribunal failed to fix the income based on Form 16 (A) in the absence of examination of the author of that document and that the income tax upon



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the annual income of the deceased was not deducted by the Tribunal.

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16. On perusal of Ex.P.13 - Pay Slip, the total gross income including bonus, provident fund of the employer, gratuity and annual benefits were included and arrived at Rs.1,20,568/-. But, as per Ex.P.13 - Pay Slip the basic pay with other allowances, the monthly gross is shown as Rs.1,04,790/-. So, the said Rs.1,04,790/- is to be taken as income of the deceased. The accident occurred on 11.02.2016. Ex.P.13 - Pay Slip is related to January 2016 of the deceased. Ex.P.13 has been marked through P.W.3, who is a competent officer of the M/s.Ashirwad Pipe Company, wherein the deceased was working. So, Ex.P.13 is the correct document to fix the monthly salary of the deceased. Hence, this Court fixed the monthly income of the deceased at Rs.1,04,790/- p.m. The deceased was a salaried man, who was getting permanent monthly income. As per the settled proposition of law in **Pranay Sethi case** reported in **2017 (2) TNMAC 609 (SC)**, 50% has to be added towards future prospects of the deceased, who was working as a Quality Manager and who died at his age 40 at the time of accident. Hence, the Tribunal fixed 25% towards future prospects is



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modified and enhanced as 50% and 50% of Rs.1,04,790/- = Rs.52,395/- is to be added with monthly income. By adding 50%, the income of the deceased is fixed at Rs.1,57,185/- (Rs.1,04,790/- + Rs.52,395/-). Therefore, the annual income of the deceased is fixed at Rs.1,57,185/- x 12 = Rs.18,86,220/-.

17. At this juncture, the contention of the respondent's counsel that the income tax of the annual income has to be taken into account for deduction is acceptable one. In respect of income tax, the income of the deceased including future prospectus based on Ex.P.13 - Pay Slip of January 2016, it is arrived at Rs.1,57,185/- p.m. and so, annual income Rs.1,57,185/- x 12 = Rs.18,86,220/-. The said period is the corresponding financial year 2015 - 2016. As per the income tax slab for the financial year 2015 - 2016, the income tax has to be calculated as below:

Upto Rs.2.5 lakhs	- Nil
Rs.2.5 lakhs to Rs.5. Lakhs	- 10%
Rs.5 lakhs to Rs.10 lakhs	- 20%
Above Rs.10 lakhs	- 30%
Add: 3% Education Cess	



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Applying the above slab, the income tax is arrived over annual income of Rs.18,86,220/- as follows:

Upto Rs.2.5 lakhs	- Nil
Rs.2.5 lakhs to Rs.5 laksh (10%)	- Rs. 25,000/-
Rs.5 laksh to Rs.10 lakhs (20%)	- Rs.1,00,000/-
Above Rs.10 lakhs (30%)	
(Rs.8,86,220/- x 30%)	- Rs.2,65,866/-

Total income tax	- Rs.3,90,866/-
Add: Education Cess 3%	- Rs. 11,726/-

Net income tax payable	- Rs.4,02,592/-

So, Rs.4,02,592/- is deducted from annual income of Rs.18,86,220/-, thereby, the annual income of the deceased arrived at Rs.14,83,628/- at the time of accident. The deceased was a family man consisting of wife, children and parents and hence, as per the settled proposition (**Sarla Verma case and Pranay Sethi Case**), 1/4th income has to be deducted towards personal expenses. Accordingly, Rs.3,70,907/- (1/4 of Rs.14,83,628/-) is to be deducted towards personal expenses. After deducting the personal expenses, the loss of income of deceased dependants arrived at Rs.11,12,721/-.



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18. The age of the deceased was 40 years at the time of accident, there is no dispute in it. In view of **Sarla Verma case** multiplier is taken as '15'. Thus, the total loss of income of the petitioners/claimants, who are dependants of the deceased, is arrived at Rs.11,12,721/- x 15 = Rs.1,66,90,815/-.

19. While considering the loss of consortium, the Tribunal has only awarded Rs.35,000/- to the petitioners. As per dictum laid down by the Hon'ble Supreme Court in **Pranay Sethi case (2017 (2) TNMAC 609 (SC))**, each dependents of the deceased are entitled to Rs.40,000/- each towards spouse consortium, parental consortium and filial consortium. Therefore, the petitioners are also entitled to Rs.40,000/- each towards loss of love and affection. It is not disputed by the learned counsel for the respondents. Hence, the petitioners being the wife, children and parents of the deceased are entitled to Rs.40,000/- each towards consortium and so, the consortium of Rs.35,000/- each awarded by the Tribunal is modified.



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20. On perusal of the award passed by the Tribunal, the Tribunal awarded Rs.7,000/- towards transport expenses, Rs.10,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, which is less than the settled compensation as per **Pranay Sethi Case**. So, Rs.15,000/- each is awarded under the head loss of estate and funeral expenses and Rs.10,000/- is awarded towards transport expenses.

21. Thus, this Court holds that the total compensation payable to the appellants/petitioners/claimants in M.C.O.P.No.752 of 2016 as follows:

Sl. No.	Description	Amount awarded by this Court
1.	Loss of Income (Rs.11,12,721/- p.a. x 15)	Rs.1,66,90,815/-.
2.	Towards spousal consortium to the 1 st petitioner, being wife of the deceased	Rs. 40,000/-
3.	Towards filial consortium for petitioners 2 and 3 (Rs.40,000/- x 2) (being children of the deceased)	Rs. 80,000/-
4.	Towards parental consortium for petitioners 4 and 5 (Rs.40,000/- x 2) being parents of the deceased)	Rs. 80,000/-
5.	Towards Funeral Expenses	Rs. 15,000/-
6.	Loss of Estate	Rs. 15,000/-
7.	Towards Transport Expenses	Rs. 10,000/-
	Total	Rs.1,69,30,815/-



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(iii)The first claimant /wife of the deceased, who is the first appellant herein is entitled to receive a sum of Rs.72,37,750/- (Rupees Seventy two lakhs thirty seven thousand seven hundred and fifty only), the claimants 2 & 3/children of the deceased, who are the appellants 2 and 3 herein are entitled to receive a sum of Rs.30,00,000/- (Rupees Thirty lakhs only) each and the claimants 4 and 5/parents of the deceased, who are the respondents 2 and 3 herein are entitled to receive a sum of Rs.10,00,000/- (Rupees Ten lakhs only) each with proportionate interests and costs.

(iv) At the time when C.M.A.(MD)No.154 of 2022 was admitted, this Court directed the appellant/Karnataka State Transport Corporation/ 1st respondent to deposit Rs.50,00,000/- (Rupees Fifty lakhs only) to the credit of the appeal before the Indian Bank, High Court Branch, Madurai. Out of this amount, the first claimant/the widow of the victim was allowed to withdraw Rs.25,00,000/- (Rupees Twenty five lakhs only) and the second claimant, the elder daughter of the victim was permitted to withdraw Rs.5,00,000/- (Rupees five lakhs only) on she attaining majority and the parents of the victim were allowed to withdraw Rs.2,00,000/- (Rupees two lakhs only) each. Now, Rs.16,00,000/- with accrued interest remains in the



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account of the Indian Bank. The first claimant/the widow of the victim is now permitted to withdraw the balance amount now left in the deposit of the Indian Bank, High Court Branch, Madurai.

(v)The respondent/Karnataka State Transport Corporation is directed to deposit the entire enhanced compensation amount of Rs.1,52,37,750/- (Rupees one crore fifty two Lakhs thirty seven thousand seven hundred and fifty only), less the amount already deposited together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.752 of 2016 on the file of the Motor Accident Claims Tribunal/Special District Court (MCOP Cases), Tiruchirappalli within a period of six weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made by the Karnataka State Transport Corporation/1st respondent herein, the appellants 1 & 2/claimants 1 & 2 and respondents 2 & 3/claimants 4 & 5 are permitted to withdraw their respective balance share amount as apportioned by this Court with proportionate interest cost by filing appropriate application before the Tribunal, less the amount already withdrawn. The share amount of minor



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3rd appellant/3rd claimant shall be deposited in anyone of the Nationalized Bank till she attains majority and the 1st petitioner/1st appellant herein is entitled to receive interest payable on the said deposit once in three months.

24. In the result, the Civil Miscellaneous Appeal in C.M.A.(MD) No.154 of 2022 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S.,J.)

(P.V.M.,J.)

29.07.2024

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

To

1.The Motor Accident Claims Tribunal/ Special District Court,
Tiruchirappalli.

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



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N.SESHASAYEE, J.

AND

P.VADAMALAI. J.

VSD

Pre-delivery Judgment in
C.M.A(MD)Nos.918 of 2021 and 154 of 2022

29.07.2024