



C.M.A. (MD)No.5 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.03.2024

Pronounced on : 04.06.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.5 of 2017

and

C.M.P.(MD)No.27 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
Tiruchirapalli.

...Appellant

Vs.

1. Sudha @ Arockiamary
2. Minor Santhosh
3. Minor Sanjai
4. Minor Anbarasi
5. District Superintendent of Police,
Office of the District Police,
Pudukkottai.
6. The Inspector of Police,
Town Police Station,
Pudukkottai.

...Respondents



C.M.A. (MD)No.5 of 2017

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Additional District and Sessions Court, Pudukkottai, in M.C.O.P.No.166 of 2012 dated 12.04.2016.

For Appellant : Mr.A.V.B.Krishnakhanth
For R1 to R4 : Mr.V.Janakiramulu
For R5 & R6 : Mr.J.Ashok
Additional Government Pleader

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.166 of 2012 dated 12.04.2016 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court, Pudukkottai.

2. The appellant/Transport Corporation, who was directed to pay compensation of Rs.14,92,000/- (Rupees Fourteen Lakhs and Ninety Two Thousand only) with interest and costs to the respondents 1 to 4/claimants for the death of Selvaraj, consequent to an accident occurred on 17.02.2011, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.



C.M.A. (MD) No.5 of 2017

WEB COPY

3. For the sake of convenience and brevity, the parties herein will be referred to as per their status/ranking in the Tribunal.

4. The case of the claimants is that on 17.02.2011 at about 07.00 p.m., the deceased Selvaraj was travelling as a passenger in a bus bearing Registration No.TN-45-N-2833 from Pudukkottai to Trichy and when the bus was nearing Hotel Impala at New Bus Stand at Pudukkottai – Sathiyamoorthy Road, the bus driver drove the bus in a rash and negligent manner on a pit, due to which, the deceased Selvaraj was thrown away from the bus through rear entrance and sustained grievous injuries, that the injured Selvaraj was immediately taken to Pudukkottai Government Headquarters Hospital and subsequently was referred to Thanjavur Medical College Hospital, that despite treatment, he succumbed to the injuries on 18.02.2011 and that the accident was occurred only due to the rash and negligent driving of the bus driver.

5. It is the further case of the claimants that the deceased Selvaraj was aged 35 years at the time of accident, that he was a heavy vehicle driver and that he was earlier employed in Singapore and was earning Rs.20,000/- per month.



C.M.A. (MD) No.5 of 2017

WEB COPY

6. The defence of the first respondent-Transport Corporation is that the bus bearing Registration No.TN-45-N-2833 was not at all involved in the accident held on 17.02.2011, that FIR registered in Crime No.44 of 2011 does not refer about the involvement of the bus in the accident, that the bus bearing Registration No.TN-45-N-2833 was placed at the Karur-I Depot, Karur for oil service at 19.00 hours on 17.02.2011, that the claimants' allegation of involvement of the said bus is nothing but an imaginary story, that father-in-law of the deceased Selvaraj has lodged a complaint with the police stating that the deceased Selvaraj was in unconscious stage in the road and that since the bus bearing Registration No.TN-45-N-2833 is not involved in the accident, the first respondent-Transport Corporation is not liable for the claim.

7. During trial, the claimants have examined the first claimant Sudha @ Arockiamary as P.W.1 and one Manivannan alleged to be the occurrence witness as P.W.2 and exhibited 9 documents as Ex.P.1 to Ex.P.9. The respondents 2 and 3 had remained *ex parte*. The first respondent-Transport Corporation has adduced neither oral nor documentary evidence.



C.M.A. (MD) No.5 of 2017

WEB COPY

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 12.04.2016 holding that the rash and negligent driving of the bus driver was responsible for the accident and consequently mulcted liability on the first respondent-Transport Corporation directing them to pay the compensation of Rs.14,92,000/- with interest and costs. Aggrieved by the impugned order, the Transport Corporation has preferred the present appeal.

9. The learned counsel appearing for the first respondent-Transport Corporation would mainly contend that their bus bearing Registration No.TN-45-N-2833 was not at all involved in any accident on 17.02.2011 as alleged by the claimants and their vehicle has been falsely implicated in the above case as an after thought so as to claim compensation from the first respondent-Transport Corporation, that FIR says that the deceased Selvaraj was found in an unconscious stage near Hotel Impala, that the deceased Selvaraj was not at all injured due to any motor vehicle accident and that mere registration of FIR is not sufficient to fix the negligence against the bus driver. He would further contend that the Tribunal, in the



C.M.A. (MD) No.5 of 2017

absence of any substantial evidence, has fixed the monthly income of the deceased Selvaraj at Rs.6,000/-, that addition of 50% of the income towards future prospects is unsustainable, that the income fixed by the Tribunal was notional and speculative, that the amounts awarded under the other heads are highly excessive and that therefore, the first respondent-Transport Corporation is constrained to prefer the present appeal.

10. The learned counsel appearing for the claimants would submit that the Tribunal, by appreciating the evidence of P.W.2-occurrence witness and other evidence adduced, has rightly come to a decision that the accident was occurred only due to the rash and negligent driving of the bus driver, that the first respondent-Transport Corporation has not adduced any evidence to prove their alleged defence and that therefore, the finding of the Tribunal fixing the responsibility on the bus driver is liable to be sustained.

11. No doubt, as rightly pointed out by the learned counsel appearing for the first respondent-Transport Corporation, in the complaint lodged by the father-in-law of the deceased Selvaraj, he has stated that the deceased Selvaraj was found in unconscious stage at about 07.00 p.m. on



C.M.A. (MD) No.5 of 2017

WEB COPY

17.02.2011. But according to the claimants, the jurisdictional police, after investigation, has implicated the involvement of the bus bearing Registration No.TN-45-N-2833.

12. P.W.2 in his evidence would say that he had witnessed the occurrence, that when he was taking tea at 06.45 p.m. on 17.02.2011 opposite to the Impala Hotel, at about 07.00 p.m. a bus bearing Registration No.TN-45-N-2833, which came from Pudukkottai towards Trichy, was driven rashly and negligently on a pit and as a result of which, the deceased was thrown out of the bus through rear side entrance and that he had sent the injured to the hospital through 108 ambulance. In cross-examination, he would say that he was taking tea in a tea stall situated opposite to the Impala Hotel, that the deceased Selvaraj was travelling as a passenger in the bus and that when the bus was proceeding on a pit, the deceased Selvaraj was thrown out from the bus. During cross-examination of P.W.2, it was suggested by the other side that while the deceased Selvaraj was attempting to enter into the bus through rear entrance, he fell down and the relevant portions are extracted hereunder for better appreciation;



C.M.A. (MD) No. 5 of 2017

□செல்வராஜ் ஓடும் பேருந்தில் பின்பக்கம் வாசல் படிக்கட்டு வழியாக ஏற முயற்சித்து ஏற முடியாமல் கீழே விழுந்து அடிப்பட்டார் என்றும் நான் மனுதாரர்கள் எனக்கு வேண்டியவர்கள் என்பதானால் பார்க்காததை பார்த்தது போல் பொய் சொல்கிறேன் என்பது சரியல்ல. செல்வராஜ் மரணத்திற்கும் பேருந்து ஓட்டுநர் மற்றும் நடத்துனர்க்கும் எந்த தொடர்பும் இல்லை என்பது சரியல்ல. ஓடும் பேருந்தில் செல்வராஜ் ஏறாமல் இருந்திருந்தால் செல்வராஜ் விபத்தை தவிர்த்திருக்கலாம் என்பது சரியல்ல. செல்வராஜ் மட்டும்தான் கீழே விழுந்தார்.□

13. As rightly contended by the learned counsel appearing for the claimants, considering the suggestion put forth by the first respondent-Transport Corporation's side to the occurrence witness P.W.2, it can easily be inferred that they have admitted the involvement of their bus in the accident.

14. Though the first respondent-Transport Corporation has taken a stand that their bus was not at all involved in the accident and that the bus was in Karur-I Depot at about 07.00 p.m. on 17.02.2011 for oil service, they have not produced any iota of evidence to substantiate the same. As already pointed out, the first respondent-Transport Corporation has not



C.M.A. (MD) No.5 of 2017

adduced any evidence. It is not the case of the first respondent-Transport Corporation that their bus driver has lodged a complaint before the higher officials for mulcting liability on him or preferred any private complaint before the jurisdictional criminal Court. In the absence of any evidence adduced by the first respondent-Transport Corporation, taking note of the evidence of P.W.2 and other records, the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the bus driver cannot be found fault with and this Court is in entire agreement with the findings recorded by the Tribunal.

15. Now turning to the quantum of compensation, according to the claimants, the deceased Selvaraj was working as heavy vehicle driver and he was earning Rs.20,000/- per month in Singapore. Though the claimants have produced the passport and the Singapore work permit, they have not produced any evidence to prove the income of the deceased. The Tribunal, by observing that any person can get Rs.200/- as daily coolie, has fixed the notional income of the deceased at Rs.6,000/- and the same cannot be found fault with. The Tribunal, taking note of the passport of the deceased Selvaraj, has rightly fixed the age of the deceased Selvaraj as 37 years at



C.M.A. (MD) No.5 of 2017

the time of accident. The Tribunal has added 50% of the income towards future prospects. But as per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, 40% of the income has to be added towards future prospects and by addition, it would come to Rs.8,400/- {Rs.6,000/- + Rs.2,400/- (40% of the income)}. Considering the number of claimants, the Tribunal has rightly deducted 1/4th of the income towards personal and living expenses of the deceased and after such deduction, it would come to Rs.6,300/- {Rs.8,400/- - Rs.2,100/-}. As per the dictum laid down by the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104***, the Tribunal has rightly applied multiplier 15. Hence, the loss of dependency would come to Rs.11,34,000/- (Rs.6,300/- x 12 x 15).

16. The Tribunal has awarded Rs.2,00,000/- for loss of love and affection and mental agony, Rs.25,000/- for funeral and transportation expenses, Rs.2,000/- for loss of articles and Rs.50,000/- for loss of consortium to the first claimant. Our Hon'ble Supreme Court in ***Pranay Sethi's*** case has permitted to award Rs.40,000/- towards spousal



C.M.A. (MD) No.5 of 2017

WEB COPY

consortium. But, subsequently, the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others*** reported in ***(2018) 18 SCC 130***, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. The Hon'ble Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, the Hon'ble Apex Court in ***The New India Assurance Company Ltd. Vs. Smt.Somwati and others***, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in ***Pranay Sethi's*** case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

17. The first claimant being the wife of the deceased is entitled to get Rs.40,000/- towards loss of spousal consortium and the claimants 2 to



C.M.A. (MD) No.5 of 2017

4 being the children of the deceased are entitled to get Rs.40,000/- each towards loss of parental consortium. The claimants are also entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads. Considering the above, the claimants are entitled to get total compensation of Rs.13,24,000/- (Rupees Thirteen Lakhs and Twenty Four Thousand only) and the compensation awarded by 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 or reduced
1.	Loss of dependency	12,15,000	11,34,000	Reduced
2.	Loss of love and affection and mental agony	2,00,000	Nil	Nil
3.	Transport expenses	25,000	Nil	Nil
4.	Loss of articles	2,000	Nil	Nil
5.	Spousal consortium (first claimant)	50,000	40,000	Reduced
6.	Parental consortium (claimants 2 to 4)	Nil	40,000 x 3 = 1,20,000	Granted
7.	Funeral Expenses	Nil	15,000	Granted
8.	Loss of estate	Nil	15,000	Granted
	Total	14,92,000	13,24,000	Reduced by Rs.1,68,000/-



C.M.A. (MD) No.5 of 2017

WEB COPY

18. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

19. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,92,000/- (Rupees Fourteen Lakhs and Ninety Two Thousand only) is hereby reduced to **Rs.13,24,000/- (Rupees Thirteen Lakhs and Twenty Four Thousand only)** together with interest at 7.5% per annum and costs. The appellant/ Transport Corporation is directed to deposit the modified award amount with interest and costs from the date of petition till the date of realization excluding the default period, if any, to the credit of M.C.O.P.No.166 of 2012 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court, Pudukkottai, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. Out of the said amount, the first respondent/first claimant is entitled to get **Rs.7,24,000/- (Rupees Seven Lakhs and Twenty Four Thousand only)** and the respondents 2 to 4/claimants 2 to 4 are entitled to get **Rs.2,00,000/- (Rupees Two Lakhs only)** each.



C.M.A. (MD) No.5 of 2017

Accordingly, the first respondent/first claimant and the respondents 2 to 4/claimants 2 to 4, who have attained majority, are permitted to withdraw their shares as per the apportionment fixed by this Court together with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. If the amount was already deposited by the appellant/Transport Corporation, the balance amount shall be withdrawn by them. Consequently, connected Miscellaneous Petition is closed. Parties are directed to bear their own costs.

04.06.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Motor Accident Claims Tribunal/
Additional District and Sessions Court, Pudukkottai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.5 of 2017



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C.M.A.(MD)No.5 of 2017

K.MURALI SHANKAR,J.

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Pre-Delivery Judgment made in
C.M.A.(MD)No.5 of 2017
and
C.M.P.(MD)No.27 of 2017

Dated : 04.06.2024