

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.3285 of 2014

1.S.Punitha

2.Minor S.Arvind

3.Minor S.Divya

4.M.Neelaveni

... Appellants/Petitioners

(Appellants represented by their
mother Natural guardian the
first petitioner herein)

Versus

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai-2

... Respondent/Respondent

Appeal filed under Section 173 of the Motor Vehicles Act,
1988, against the Judgment and Decree passed in M.C.O.P.No.549
of 2009 dated 07.10.2013 on the file of the I Additional
District Judge (Motor Accidents Claims Tribunal) Tiruvallur.

For Appellants : Mr.D.Baskar

For Respondent : Mr.K.S.Suresh

J U D G M E N T

The deceased M.Senthil Kumar aged 35 years, an Office
Assistant in Corporation of Chennai, earning a sum of
Rs.10,372/- met with an accident on 19.05.2009. The Legal
Representatives of the deceased viz., the Wife, Son and
daughter, filed a Claim Petition in M.C.O.P.No.549 of 2009,
claiming compensation of Rs.20,00,000/-. As against the claim
made, the Tribunal has awarded a sum of Rs.11,15,120/-
(deducting contributory negligence @50% i.e. Rs.22,30,240-
11,15,120). The break-up details of the same are as under:

Loss of income to the petitioners	-	Rs.21,00,240/-
For Funeral Expenses	-	Rs. 15,000/-
Love and affection	-	Rs. 40,000/-
Consortium	-	Rs. 25,000/-
For Loss of guidance	-	Rs. 50,000/-

		Rs.22,30,240/-

Less- 50% towards contributory
negligence

Rs.11,15,120/-

Rs.11,15,120/-

2. The Claims Tribunal, while quantifying the compensation has deducted 50% towards contributory negligence on the part of the Driver of the offending two wheeler. This finding is under challenge in this Civil Miscellaneous Appeal.

3. The learned counsel for the appellant would submit that when Ex.P7-charge sheet clearly speaks about the negligent of the respondent driver Evidence let in through R.W.1- driver of the respondent Corporation bus; R.W.2-conductor of the respondent Corporation bus, are contradictory to each other and hence it cannot be relied upon; It is his further submission that fixing of 50% contributory negligence on the driver of the two wheeler is unsustainable.

4. The learned counsel for the respondent would submit that claimants should have impleaded the driver of the two wheeler; Since, the same was not done, the Tribunal is justified in rightly reducing 50% of the compensation towards contributory negligence.

5. In Paragraph 22 of the Judgment , the Tribunal has clearly held as follows:

"... As per Ex.P3 and Ex.R1 opinion evidence as well as the photo evidence one can visualize that how much of speed the bus could have been driven, wherein, the bumper, the grill of the bus sustained heavy damages make clear though on seeing the two wheeler at the bus side area, where two wheeler was driven by the rider in a rash and negligent manner the bus driver RW1 also driven his bus in a high speed. If at all, RW1 evidence is considerable one, the said damage in the bus as seen from Ex.P3 and Ex.R1, the bus could not be damaged to such an extent. To an extent possible RW1 was also drove his bus not in a normal speed, therefore, in the given circumstances, this Court is of the firm view both the two wheeler rider as well as the bus driver have equally responsible for the accident and both the rider of the two wheeler as well as the respondent's bus driver are jointly liable for the said accident and both of them have negligent on their own part."

6. As already pointed out, for the mistake committed by the driver of the two wheeler, the deceased pillion rider cannot be made responsible. Only if the claim is made either by the driver or on behalf of the driver then the deduction on account of contributory negligence may be permissible. In this case,

the claim is made by the pillion rider and not by the driver. Moreover, the driver has not been impleaded in the Claim Petition.

7. The learned counsel for the respondent Corporation would submit that the Transport Corporation may be given liberty to recover 50% of the compensation from the Tort feasor, the driver of the two wheeler as well as the Insurance Company of the two wheeler bearing No.TN 05 U 1985. Under normal circumstance, this court would have either ordered apportionment of payment of compensation by the two tort feasors separately or the tribunal would have permitted one of the tort feasor to pay the compensation and recover the balance from the other tort feasor. In this case, the other tort feasor has not been impleaded at all and therefore, the question of deduction does not arise.

8. In the result, this appeal is allowed. The Transport Corporation is directed to deposit the entire compensation amount (without deducting 50% towards contributory negligence), awarded by the Tribunal, less the amount already deposited, if any, along with interest at the rate of 9% p.a., from the date of petition till the date of realisation, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, claimants shall withdraw the deposited amount as apportioned by the Tribunal excluding the share of the minor which shall be deposited in a nationalised bank until they attain majority, the interest out of such deposit shall be withdrawn by the first claimant. The Claimants shall pay the Additional Court fee, No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional District Judge
(Motor Accidents Claims Tribunal)
Tiruvallur.

2.The Record Keeper,
V.R.Section,
High Court, Madras 104.

+1cc to Mr.K.S.Suresh, Advocate, S.R.No.7256

+1cc to Mr.D.Baskar, Advocate, S.R.No.7561

C.M.A.No.3285 of 2014