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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.1456 to 1458 of 2015 and 2307 of 2016  
and Cross Objection No.112 of 2021  
in C.M.A.No.2307 of 2016  
& M.P.Nos.1, 1, 1 of 2015 & C.M.P.No.16268 of 2016

The Managing Director,  
Tamil Nadu State Transport Corporation Ltd.,  
Kumbakonam Division II,  
Periyamilaguparai, Trichy 1  
... Appellant/Respondent in all C.M.As.

Vs.

1.Elavarasi  
2.Devi ... Respondents in C.M.A.Nos.1456  
& 1458 of 2015

1.Alamelu  
2.Sundarraaj  
3.Ramesh ... Respondents in C.M.A.No.1457 of 2015

1.Sellappappu  
2.Sellamuthu ... Respondents in C.M.A.No.2307 of 2016

Common Prayer: These Civil Miscellaneous Appeals are filed under  
Section 173 of Motor Vehicles Act, 1988, against the judgment  
and decree dated 03.04.2014, made in M.C.O.P.Nos.367, 368, 370  
of 2010 & 311 of 2011, on the file of the Principal District  
Court, (Motor Accidents Claims Tribunal), Namakkal.  
Cross Objection No.112 of 2021

1.Sellappappu  
2.Sellamuthu ... Cross Objectors  
Vs.

The Managing Director,  
Tamil Nadu State Transport Corporation Ltd.,  
Kumbakonam Division II,  
Periyamilaguparai, Trichy 1. ... Respondent



Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 03.04.2014 made in M.C.O.P.No.311 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

In all C.M.As.

For Appellant: Mr.D.Venkatachalam

In C.M.A.No.1456 to 1458 of 2015

For Respondents: Mr.C.Kulanthaivel

In C.M.A.No.2307 of 2016

For Respondents: Mr.Ma.Pa.Thangavel

In Cross Objection

For Cross appellants :Mr.Ma.Pa.Thangavel

For Respondent :Mr.D.Venkatachalam

C O M M O N J U D G M E N T

The Civil Miscellaneous Appeals have been filed by the Transport Corporation against the award dated 03.04.2014 made in M.C.O.P.Nos.367, 368, 370 of 2010 & 311 of 2011, on the file of the Principal District Court, (Motor Accidents Claims Tribunal), Namakkal.

The Cross-Objection has been filed by the claimants in M.C.O.P.No.311 of 2011, seeking enhancement of compensation granted by the Tribunal in the award dated 03.04.2014 made in M.C.O.P.No.311 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.All the appeals and the cross-objection arise out of the same accident and hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the Civil Miscellaneous Appeals.

3.The appellant in all the appeals is the respondent and respondents in all the appeals are the claimants in M.C.O.P.Nos.367, 368, 370 of 2010 & 311 of 2011, on the file of



the Principal District Court, (Motor Accidents Claims Tribunal), Namakkal respectively. The claimants filed the said claim petitions claiming a sum of Rs.10,00,000/-, Rs.10,00,000/-, Rs.10,00,000/- and Rs.15,00,000/- as compensation for the death of Gobi, Suresh, Prabu and Vijayakumar respectively, who died in the accident that took place on 10.05.2010.

4. According to the respondents, on the date of accident, the deceased Prabu along with 3 pillion riders was travelling in the motorcycle bearing Registration No. TN 50 E 2352 on Padalur, Mascon TNEB, keeping left side of the road. At that time, the driver of the bus bearing Registration No. TN 72 N 7328 owned by the Transport Corporation, who was coming in the opposite direction drove the same in a rash and negligent manner, dashed against the motorcycle and caused the accident. In the accident, all the four persons died. Hence, the respondents filed the said claim petitions, claiming compensation against the appellant-Transport Corporation.

5. The appellant-Transport Corporation filed separate counter statements and denied all the averments made by the respondents in their respective claim petitions. According to the appellant-Transport Corporation, the driver of the bus owned by the Transport Corporation, drove the same with due care and caution at a moderate speed. At that time, the deceased Prabu along with three pillion riders of the motorcycle tried to overtake a lorry, from the opposite direction. On seeing this, the driver of the bus sounded horn, switched the head lights of the bus 'on' and 'off' and alerted the deceased and drove the bus to the extreme left side and applied brakes and stopped. But, the deceased Prabhu along with 3 pillion riders, lost his balance and dashed against the front portion of the bus. Therefore, the accident has occurred only due to the negligence on the part of the rider as well as the pillion riders of the motorcycle and not due to the negligence on the part of the driver of the bus owned by the appellant-Transport Corporation. The deceased Prabhu, rider of the motorcycle, was not possessing valid driving license at the time of accident. Immediately after the accident, the driver of the bus owned by the appellant preferred a complaint in Padalur Police Station. The Police, after investigation, registered a Criminal Case in Crime No. 186/2010, against the deceased/rider of the motorcycle, under Sections 279, 337 and 304(a) of I.P.C. The deceased/rider of the motorcycle violated the policy conditions by riding the motorcycle along with three pillion riders. The claim petitions are bad for non-joinder of owner and insurer of the motorcycle.



Hence, the appellant-Transport Corporation is not liable to pay any compensation to the respondents. In any event, the total compensation claimed by the respondents are excessive and prayed for dismissal of the claim petitions.

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In C.M.A.Nos.1456 to 1458 of 2015

6(i).Before the Tribunal, the 1<sup>st</sup> respondent in C.M.A.Nos.1456 and 1458 of 2015 examined herself as P.W.1, one Sundararaj, father of the deceased Suresh, who is 2<sup>nd</sup> respondent in C.M.A.No.1457 of 2015, was examined as P.W.2, one Pachamuthu, eye-witness was examined as P.W.3 and 17 documents were marked as Exs.P1 to P17. The appellant-Transport Corporation examined one Saravanan, driver of the bus as R.W.1 and did not mark any document.

In C.M.A.Nos.2307 of 2016

6(ii).Before the Tribunal, the 1<sup>st</sup> respondent examined herself as P.W.1, one Sureesh, eye-witness was examined as P.W.2 and 18 documents were marked as Exs.P1 to P18. The appellant-Transport Corporation examined one Saravanan, driver of the bus as R.W.1 and did not mark any document.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the bus owned by the appellant-Transport Corporation and directed the appellant-Transport Corporation to pay a sum of Rs.5,60,000/-, Ra.5,60,000/-, Rs.5,60,000/- and Rs.13,44,000/- as compensation to the respondents.

8.Against the award of the Tribunal dated 03.04.2014, made in M.C.O.P.Nos.367, 368, 370 of 2010 & 311 of 2011, the appellant has come out with the present appeals.

9.Not being satisfied with the amounts awarded by the Tribunal, the respondents in C.M.A.No.2307 of 2016 have filed Cross-Objection No.112 of 2021, seeking enhancement of compensation.

10.The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal ought not to have considered the evidences of P.W.1 and P.W.2, who are mother and father of the deceased Gopi and Suresh respectively and not eye-witnesses to the accident. The Tribunal failed to note that the



First Information Report has been registered against the deceased Prabhu/ rider of the motorcycle, as he rode the same with three pillion riders, which caused the accident. The Tribunal ought not to have relied on the evidence of P.W.3, who is friend of the deceased, as the said evidence has not been corroborated by any independent witness and documentary evidence. The appellant examined the driver of the bus as R.W.1. The driver of the bus is the competent person to speak about the accident, who deposed that the accident occurred when the Motorcycle which came in the opposite direction in a rash and negligent manner, overtook a lorry and dashed against the bus. The Tribunal ought to have considered the evidence of R.W.1 and Ex.P1/FIR and fixed entire negligence on the part of the deceased Prabhu/rider and pillion riders of the Motorcycle. In the absence of any document to prove the age of the deceased, the Tribunal erred in fixing the monthly income at Rs.5,000/-, for a student who is a non-earning person. As per the Motor Vehicles Act, a sum of Rs.15,000/- has to be fixed as annual income of the non-earning member. In any event, the total compensation awarded by the Tribunal are excessive and prayed for setting aside the award of the Tribunal and dismissal of Cross-Objection filed by the respondents in C.M.A.No.2307 of 2016.

11.The learned counsel appearing for the respondents separately contended that the respondents have examined independent eye-witnesses viz., one Sureesh as P.W.2 in M.C.O.P.No.311 of 2011 and one Pachamuthu as P.W.3 in M.C.O.P.Nos.367, 368 and 370 of 2010, who deposed that the accident has occurred only due to the rash and negligent driving by the driver of the bus owned by the appellant-Transport Corporation. The appellant-Transport Corporation, except examining the driver of the bus, did not examine any eye-witness to prove their case. In the absence of contra evidence to the evidence of P.W.2 and P.W.3, the Tribunal accepted the evidence of P.W.2/Suresh and fixed negligence on the part of the driver of the bus. There is no error in the award of the Tribunal fixing negligence on the part of the driver of the bus owned by the appellant.

12.The learned counsel appearing for the respondents in C.M.A.No.2307 of 2016/Cross objector in Cross Objection No.112 of 2021 further submitted that the amount awarded by the Tribunal is very meagre. The deceased Vijayakumar was studying 4<sup>th</sup> year M.B.A in Annamalai University at the time of accident. The Tribunal ought to have fixed notional income of the deceased at Rs.20,000/- per month and granted 50% enhancement towards



future prospects and prayed for dismissal of C.M.A.No.2307 of 2016 filed by the appellant/Transport Corporation and for allowing the Cross Objection filed by him for enhancement of the compensation. Both the counsel appearing for the respondents prayed for dismissal of the Civil Miscellaneous Appeals.

13.Heard the learned counsel appearing for the appellant/Transport Corporation as well as the learned counsel appearing for the respondents and perused the entire materials available on record.

14.From the materials on record, it is seen that it is the case of the respondents that when the deceased persons were traveling in the motorcycle, the driver of the bus owned by the appellant-Transport Corporation drove the same in a rash and negligent manner, dashed on the motorcycle and caused the accident. In the accident, all four persons sustained grievous injuries and died. From the case of the respondents itself it is seen that at the time of accident, four persons have traveled in the motorcycle which is meant only for two persons. It is consistently held that when more than two persons travel in the motorcycle, the rider of the motorcycle will not have full control over the motorcycle and he will not be in a position to ride the motorcycle properly, as rider of the motorcycle will be almost sitting on the petrol tank. In the present case, apart from the driver of the motorcycle, three pillion riders have travelled at the time of accident and the same is not only in violation of statutory provisions but also in violation of policy conditions. The accident is head on collision and since four persons travelled in the motorcycle, they have also contributed to the accident. This issue was considered by a Division Bench of this Court and in paragraph numbers 11 and 12 of the judgment reported in 2003 1 MLJ 489 [The Managing Director, Tamilnadu State Transport Corporation, Coimbatore Vs. Abdul Salam and others], this Court has held as follows:

"11.We are concerned as to whether such action of the individuals is permissible under law. The motor cycle and any other two wheelers are meant only for two persons, the rider and a pillion rider. If more than two persons are travelling in a motor cycle or any other two wheeler, undoubtedly such action of the individual would become illegal and unauthorised. It is an awful sight when we come across three persons travelling in a motor cycle. They are sitting in such a cramped manner that the rider of the motor cycle almost sitting on the petrol tank or at the front





travel in two-wheeler, the rider of the two wheeler will not have control over the handle bar and brake. The Tribunal failed to consider these aspects and erroneously fixed entire negligence on the part of the driver of the bus. Considering the entire materials on record in its entirety and the judgment of the Division Bench of this Court referred to above, this court is of the view that the rider of the motorcycle and pillion riders have also contributed negligence to the accident. Hence, 35% contributory negligence is fixed on the rider as well as the pillion riders of the motorcycle and 65% contributory negligence is fixed on the part of the driver of the Bus owned by the appellant-Transport Corporation. Hence, the respondents are entitled to only 65% of the compensation awarded by the Tribunal.

C.M.A.Nos.1456 to 1458 of 2015

16(i).As far as the quantum of compensation awarded by the Tribunal in M.C.O.P.Nos.367, 368 and 370 of 2010 are concerned, the contention of the learned counsel appearing for the appellant-Transport Corporation is not acceptable as the amounts awarded by the Tribunal are not excessive. The respondents are entitled to only 65% of the amount awarded by the Tribunal as this Court fixed 35% on the part of the rider as well as the pillion rider. The amount of Rs.5,60,000/- awarded by the Tribunal is not interfered with.

C.M.A.No.2307 of 2016

16(ii).As far as the quantum of compensation granted by the Tribunal in M.C.O.P.No.311 of 2011 is concerned, it is the case of the appellant that the deceased Vijayakumar was doing 4<sup>th</sup> year M.B.A in Annamalai University. To prove the same, the respondents have produced Exs.B11 to B18. The Tribunal fixed only a sum of Rs.7,000/- per month as notional income of the deceased and the same is meagre. The accident is of the year 2010. Considering the date of accident and educational qualification of the deceased, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. The Tribunal has erroneously granted 50% enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the respondents are entitled to only 40% enhancement towards future prospects. The deceased was a bachelor at the time of accident. The Tribunal rightly deducted 50% towards personal expenses of the deceased and applied multiplier "18". Thus the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.15,12,000/-



(Rs.14,000/- (Rs.10,000/- + Rs.4,000/- [40% of Rs.10,000/-]) x 18 x 12 x  $\frac{1}{2}$ ). The Tribunal has awarded Rs.10,000/- each towards funeral expenses and loss of love and affection to the respondents, which are meagre and hence, the same are hereby enhanced to Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of love and affection. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. The compensation awarded by the Tribunal under the head of Medical bills is hereby confirmed. Thus, 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                                                | 11,34,000                       | 15,12,000                         | Enhanced                                          |
| 2.    | Loss of love and affection                                        | 10,000                          | 40,000                            | Enhanced                                          |
| 3.    | Funeral expenses                                                  | 10,000                          | 15,000                            | Enhanced                                          |
| 4.    | Medical bills                                                     | 1,90,000                        | 1,90,000                          | Confirmed                                         |
| 5.    | Loss of estate                                                    | -                               | 15,000                            | Granted                                           |
|       | Total                                                             | 13,44,000                       | 17,72,000                         |                                                   |
|       | 65% of the award amount now determined by this Court<br>11,51,800 |                                 |                                   |                                                   |

17(i).In the result, C.M.A.Nos.1456 to 1458 of 2015 are partly allowed and the sum of Rs.5,60,000/- each awarded by the Tribunal as compensation to the respondents along with interest and costs are confirmed. The appellant-Transport Corporation is directed to deposit a sum of Rs.3,64,000/- each being 65% of the amount awarded by the Tribunal, along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents are permitted to withdraw their respective share of the award amount, as per the



apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by filing necessary petitions before the Tribunal. The appellant-Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.Nos.367, 368 & 370 of 2010, if the entire amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petitions are closed.

17(ii).In the result, C.M.A.No.2307 of 2016 is partly allowed and Cross Objection No.112 of 2021 is partly allowed and the compensation awarded by the Tribunal at Rs.13,44,000/- is hereby enhanced to Rs.17,72,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Transport Corporation is directed to deposit a sum of Rs.11,51,800/- being 65% of the amount awarded by the Tribunal, along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by filing necessary petitions before the Tribunal. The appellant-Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.311 of 2011, if the entire amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

SD/-  
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

vkr

To

1.The Principal District Court,  
(Motor Accidents Claims Tribunal),  
Namakkal.



2.The Section Officer,  
V.R Section,  
High Court, Madras.

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+1cc to Mr.C.Kulanthaivel, Advocate Sr.299  
+1cc to Mr Ma.P.Thangavel, Advocate Sr.107  
+1cc to Mr.D.Venkatachalam, Advocate Sr.69422

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