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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.NO.2300 OF 2021

AND

C.M.P.NO.12757 OF 2021

Tamil Nadu State Transport Corporation,
Kumbakonam, Rep by its Managing Director,
having the office at Railway Station Road,
Kumbakonam Town and District Munisifi.

..Appellant/Respondent 3

vs.

1. Mary Verginiea

2. Minor. Arul Vincent,
(Minor Rep by his Mother Mary Verginiea)

3. Jebasthiraj

4. Anthoniammal

...Respondents 1 to 4/Petitioners

5. Abisheik

6. The National Insurance Company Ltd,
Thiruvarur Rep by the Branch Manager,
having the office at Thanjavur Road,
Thiruvarur Town, Taluk, Munisifi & District.

...Respondents 5 & 6/Respondents 1 & 2

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.12.2020 made in M.C.O.P.No. 51 of 2018 on the file of the Motor accident Claims Tribunal, Additional District Judge, Fast Track Mahila Court, Nagapattinam.



For Appellant : Mr.D.Venkatachalam

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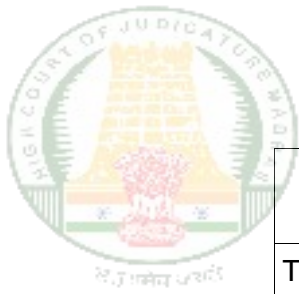
JUDGMENT

This Appeal has been filed by the Transport Corporation challenging the Award dated 22.12.2020 passed by the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Mahila Court, Nagapattinam in M.C.O.P.No. 51 of 2018, directing the Appellant/Transport Corporation to pay the Claimant a sum of Rs.6,81,037/- as compensation for the death of the deceased, who succumbed to the injuries sustained in an accident which occurred on 13.01.2018 involving the bus owned by the appellant/Transport Corporation.

2. Before the Tribunal, the Respondents/Claimants claimed a sum of Rs 25,00,000/- as compensation for the injuries sustained by him. In support of their claim, the Claimants marked Exs.P1 to P8 before the Tribunal and PW1 and PW2 were examined as witnesses. On the side of the Appellant, Ex.R1 was marked and no witnesses were examined.

3. On consideration of the oral and documentary evidence available on record, the Tribunal, by fixing liability of 20%, 30% and 50% on the deceased, Insurance Company and Transport Corporation respectively has awarded a sum of Rs.10,89,660/- as compensation to the Claimants. Details of the compensation awarded by the Tribunal under the impugned Award, are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of dependency	11,67,075
Loss of love and affection to the children (40,000 x 2)	80,000.0
Loss of consortium (40,000 x 2)	80,000.0
Loss of Estate	10,000.00



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Heads	Amount awarded by the Tribunal (Rs.)
Transport charges	10,000.00
Funeral Expenses	15,000.00
Total	13,62,075
Less: Contributory negligence of 20% of the deceased	2,72,415
	<u>10,89,660</u>

4. Heard the learned counsel for the parties and perused the material documents available on record.

5. The Appellant has challenged the impugned award on the ground that as per the FIR, the deceased was a pillion rider who was travelling with two others including the driver Abishek, who was under the influence of alchohol and who rode the motor cycle in a rash and negligent manner and dashed against the Appellant Transport Corporation bus and caused the accident and therefore the Tribunal ought to have fixed the entire liability on the deceased and further Tribunal has fixed the monthly income of the deceased at Rs.7,980/- without any proof and the overall compensation awarded by the Tribunal is also very high and the same needs to be reduced.

6. Insofar as the first contention raised by the Appellant is concerned, P.W.2, who is an eyewitness to the accident has deposed in his evidence that on the date of accident i.e., on 13.01.2018 at about 4.00 P.M., while the deceased was travelling as a pillion rider in the two wheeler bearing Registration No.TN 50 AX 1884 and when the same was proceeding near Gopalamuthiram Check Post, Thillaivilagam bridge, from South to North, a passenger bus bearing Registration No.TN 49 N 1729 was driven by its driver in a rash and negligent manner from east to west and hit against the two wheeler due to which the two wheeler along with its passengers were thrown out. Further the deceased Santhanasamy sustained severe injuries and died on the spot itself. The Claims Tribunal considering the same and also considering Ex.P1-F.IR., wherein it is stated that the rider of the two wheeler in which the deceased was a pillion, under the influence of the alchohol



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drove the vehicle in a rash and negligent manner and dashed against the right side of the bus, has correctly fixed the liability of 20% on the deceased and 30% on the Insurance Company, in which the two wheeler was insured and 50% on the Transport Corporation. Further, the Tribunal also directed the Insurance Company to pay and recover the same from the owner of the two wheeler, the Fifth Respondent herein and therefore the fixation of liability by the Claims Tribunal is perfectly correct and the same does not warrant interference.

7. Insofar as the income fixed by the Tribunal is concerned, though no proof has been filed before the Tribunal, considering the cost of Inflation Index issued by the Central Board of Direct Tax which was discussed in the Judge of this Court in Andal and two others Vs. Avinav Kannan and New India Assurance Company Ltd., Chennai reported in 2019 (1) TNMAC 54 (DB), the Tribunal has fixed the notional income of the deceased as Rs.7,980/- which cannot be said to be excessive in view of the cost of living prevailing as on date.

8. Considering the fact that the claimants lost the deceased who is the sole bread winner of the family and also considering the cost of living the quantum of compensation awarded by the Tribunal to the Respondents/Claimants under various heads, totalling a sum of Rs.10,89,660/-, cannot be considered to be excessive, as alleged by the Appellant/Transport Corporation.

9. For the foregoing reasons, this Court does not find any merit in this Appeal and accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10. The Appellant/Transport Corporation as well as the Sixth Respondent Insurance Company is directed to deposit a sum of Rs. 6,81,037/- and Rs.4,08,623/- respectively, as ordered by the Claims Tribunal together with interest at 7.5% per annum from the date of the Claim Petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P.No. 51 of 2018 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Mahila Court, Nagapattinam, within a period of four months from the date of receipt of a copy of this judgment. The Insurance



Company is directed to recover the compensation deposited by it, from the fifth respondent, as ordered by the Tribunal. The claimants are entitled to the compensation as apportioned by the Tribunal. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Respondents/Claimants 1,3 and 4 through RTGS, within a period of two weeks. The share of the minor second Respondent/Claimant is directed to be deposited in any one of the Nationalised Bank till the minor attains majority and the first respondent/claimant is permitted to withdraw the interest once in three months.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

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To:

The Motor accident Claims Tribunal,
Additional District Judge, Fast Track Mahila Court,
Nagapattinam.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.40342

C.M.A.No.2300 of 2021

NK(CO)
RLP(23/11/2021)