



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.1155 & 1391 of 2017

C.M.A.No.1155 of 2017

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

..Appellant/Respondent

Vs.

1. Nagarathinam
2. Sathya Jyothi (Minor)
Minor is represented by mother and next
friend Nagarathinam

..Respondents/Claimants

C.M.A.No.1391 of 2017

1. Nagarathinam
2. Sathya Jyothi (Minor)
Minor is represented by mother and next
friend Nagarathinam

..Appellants/Claimants

Vs.

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

..Respondent

Prayer in both Appeals: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Decretal order and Judgment passed in M.C.O.P.No.4886/2007 dated 31.07.2015 by the Motor Accident Claims Tribunal-Chief Judge, Court of Small Causes, Chennai.

For Appellants : M/s.K.Varadha Kamaraj
(in C.M.A.No.1391
of 2017)
(in C.M.A.No.1155 Mr.K.M.Moorthy
of 2017)

For Respondents : Mr.K.M.Moorthy
(in C.M.A.No.1391
of 2017)



(in C.M.A.No.1155 M/s.K.Varadhakamaraj
of 2017)

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

WEB COPY

C.M.A.No.1155 of 2017 has been filed by the Transport Corporation challenging the fixation of liability on their part.

2. C.M.A.No.1391 of 2017 has been filed by the claimants challenging the quantum of compensation awarded by the Claims Tribunal.

3 .The appellants in C.M.A.No.1391 of 2017 are the claimants in M.C.O.P.No.4886 of 2007 on the file of the Motor Accident Claims Tribunal, Court of Small Causes, Chennai. They filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of one Balamurugan, who died in the accident that took place on 12.09.2007.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus of the Transport Corporation and directed the Transport Corporation to pay a sum of Rs.3,05,000/- (Rupees Three Lakhs and Five Thousand only) as compensation to the claimantss.

5. Challenging the liability fastened on the Transport Corporation, the Transport Corporation has filed C.M.A.No.1155 of 2017. Not being satisfied with the amounts awarded by the Tribunal, the claimants have come out with the appeal in C.M.A.No. 1391 of 2017 seeking enhancement of compensation.

6. For the sake of convenience, the parties herein are referred to as claimants and Transport Corporation.

7. According to the learned counsel for the Transport Corporation, the accident occurred not due to the negligence on the part of the driver of the bus, but only due to the negligence on the part of the rider of the two wheeler. He would further submit that the bus number was also not entered in the F.I.R. and therefore, the bus bearing Registration No.TN-01-N-3461 belonging to the Transport Corporation, is not responsible for the accident. It is further stated that the accident occurred at 8.45 A.M, but the F.I.R. was registered at 11.45 a.m., and therefore there was a delay of 3 hours. He further submitted that due to the reason that the deceased was thrown out from the bus and thereafter he was hit by motorcycle, due to which the decased sustained serious injuries and thereafter was taken to the hospital, where he died and



therefore in the present case, the rider of the Motorcycle also contributed for the accident, thus the owner as well as the Insurance Company of the motor cycle also should have been impleaded and liability ought have been fastened on them also, and therefore, he submitted that the fixation of the entire liability against the driver as well as the transport Corporation is not correct, the same is liable to be set aside.

8. The learned counsel for the claimants submitted that, P.W.2- eye witness had spoken about the accident, who deposed that the accident had occurred due to the negligence on the part of the driver of the bus bearing Registration No.TN-01-N-3461, who drove in a high speed in a rash and negligent manner, and thus taking into consideration of all these aspects liability was fixed against the Transport Corporation.

9. A perusal of the order passed by the Court below would go to show that the Court below had taken into consideration the deposition of eye witnesses-P.W.2 who deposed that the bus of the respondent bearing Registration No. TN.-01-N-3461 was driven in a rash and negligent manner, when the driver applied brake suddenly, the deceased was thrown out of the bus, and sustained serious injuries and the driver of the bus did not stop. Further, R.W.1- driver of the bus, in his cross examination submitted that he was summoned by the police on 15.09.2007 and the bus was subjected to Brake Inspector's inspection and his name was mentioned in Ex.P7-M.V.I. Report. In Ex.P1-F.I.R., it has been stated the accident had occurred due to negligence on the part of the bus driver who drove the vehicle in a high speed in a rash and negligent manner. Taking all these into consideration, the Tribunal held that the accident occurred due to rash and negligent driving on the part of the driver of the bus and therefore, the Tribunal has fastened the entire liability on the Transport Corporation. When the Tribunal has categorically held that the accident occurred due to the rash and negligence on the part of the driver, fixation of liability against the owner of the two wheeler does not arise.

10. From the submission of the learned counsel for the Transport Corporation, I do not find any negligence on the part of the rider of the two wheeler so as to fasten the liability on the part of the rider of the two wheeler. Therefore, I do not find any substance in the submission made by the learned counsel for the Transport Corporation. Hence, there is no infirmity in the order passed by the Tribunal, with respect to fixation of liability on the part of the Transport Corporation.

11.As far as compensation awarded by the Tribunal is concerned, the Court below fixed notional income of the deceased @ Rs.15,000/- per annum, but it has applied the multiplier of 15



as per the schedule and fixed a sum of Rs.2,25,000/- towards loss of dependency.

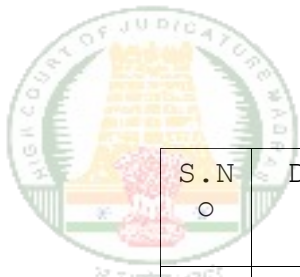
12. The learned counsel for the claimants submitted that taking into consideration the increase in the cost of living, the said amount may be enhanced. In support of the contention, he placed reliance on the Judgment of the Hon'ble Supreme Court in the case of Kishan Gopal & another Vs Lala & others reported in 2013 (2) TN MAC 358 (SC), wherein, considering the contribution of deceased to the family and also taking note of increase in the cost of living, a sum of Rs.30,000/- per Annum was fixed and therefore the learned counsel for the claimants prays that the same may be applied to the present case also. He would further submit that the compensation awarded towards other heads are also very low and prays for enhancement of the same.

13. In the present case, admittedly the deceased has completed 10th standard and while determining the notional income, the Court should have taken into consideration the studies and other talents of the deceased who was only 14 years at the time of accident. In the Judgment of the Hon'ble Apex Court stated supra, it was held that the Rupee value has come down drastically from the year 1994, when the notional income of the non earning member prior to the date of accident was fixed at Rs.15,000/- per annum and therefore by following the said Judgment, this Court is inclined to fix notional income at Rs.30,000/- per Annum. Accordingly, a sum of Rs. 30,000/- is fixed as notional income and by applying multiplier 15, the loss of income of the deceased would be a sum of Rs.4,50,000/- (Rs.30,000x15).

14. The Tribunal awarded a sum of Rs.75,000/- towards Love and affection and the same stands confirmed. A sum of Rs.4,000/- was awarded towards funeral expenses and this Court is inclined to enhance the same to Rs.15,000/- and sum of Rs.1,000/- awarded towards damage to cloth and articles stands confirmed.

15. Therefore, the compensation awarded by the Tribunal is enhanced from Rs.3,05,000/- to Rs.5,41,000/-. Thus, the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of Dependency	3,05,000/-	4,50,000/-
2.	Love and affection	75,000/-	75,000/-



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
4.	Funeral expenses	4,000/-	15,000/-
5.	Damage to clothing and articles	1,000/-	1,000/-
	Total	Rs.3,05,000/-	Rs.5,41,000/-

16.Out of the total enhanced award amount, the first claimant/mother is entitled to a sum of Rs.3,01,000/- and the second claimant/sister is entitled to a sum of Rs.2,40,000/-

17. In the result, this Civil Miscellaneous Appeal in C.M.A.No.1391 of 2017 is allowed and C.M.A.No.1155 of 2017 is dismissed.

18. The compensation awarded by the Tribunal at Rs.3,05,000/- is hereby enhanced from Rs.3,01,000/- to Rs.5,41,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit (excluding the period from 28.11.2011 to 08.03.2015). The Transport Corporation is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of ten weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.4886 of 2007 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai. On such deposit, the first claimant is permitted to withdraw her share of the award amount now determined by this Court, as per the aforesaid apportionment, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the second claimant is directed to be deposited in any one of the Nationalized Banks, till she attain majority. On such deposit, the 1st claimant, being the mother of the minor claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. The claimant is directed to pay necessary Court fee, if any on the enhanced compensation. No costs.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar



To

1. The Motor Accident Claims Tribunal-Chief Judge,
Court of Small Causes, Chennai.

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

3. The Section Officer,
VR Section,
High Court,
Madras.

+2 Ccs to Mr.K. Moorthy, Advocate sr 22428, 22427

+1 CC to Mr.K. Varadha Kamaraj, Advocate sr 22596.

C.M.A.Nos.1155 and 1391 of 2017

NR(CO)
SP(01/09/2021)