



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.Nos.137 and 536 of 2017
and
C.M.P.No.944 of 2017

C.M.A.No.137 of 2017

Metropolitan Transport Corporation Limited,
(Chennai Division-I) Ltd.,
Rep. by its Managing Director,
Pallavan House, Anna Salai,
Chennai-2.

...Appellant / 1st Respondent

Vs

1.A.B.Shameemunissa

.. 1st Respondent / Petitioner

2.Dr.Vimal Chander.R.

.. 2nd Respondent / 2nd Respondent

3.Iffco Tokio General Insurance Co.Ltd.,
No.29, O.No.195, II Floor,
North Usman Road, T.Nagar,
Chennai-600 017.

...3rd Respondent / 3rd Respondent

C.M.A.No.536 of 2017

A.B.Shameemunisa

...Appellant / Petitioner

Vs

1.Metropolitan Transport Corporation Limited,
(Chennai Division-I) Ltd.,
Rep. by its Managing Director,
Pallavan House, Anna Salai,
Chennai-2.

2.Dr.Vimal Chander.R.



3.Iffco Tokio General Insurance Co.Ltd.,
No.29, O.No.195, II Floor,
North Usman Road, T.Nagar,
Chennai-600 017.

...Respondents / Respondents

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree made in M.C.O.P.No.259 of 2012 dated 30.06.2014 on the file of the Motor Accident Claims Tribunal, IV Court of Small Cause, Chennai.

For Appellant : Mr.Sivakumar Appellant in CMA.13/17
Mr.K.Varadhakamaraj Appellant in
CMA.536/17

For Respondents : Mr.K.Varadha Kamaraj for R1 in
CMA 137/17
Mr.Sivakumar For R1 in CMA 536/17
Mr.J.Michael Visuvasam for R3
(in both CMA'S)
Not ready in notice for R2
(in both CMA'S)

COMMON JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for the respondents 1 and 3.

2. The Transport Corporation has filed an appeal in C.M.A.No.137 of 2017 challenging the fixation of liability upon the Transport Corporation and also quantum. The claimant has filed an appeal in C.M.A.No.536 of 2017 against the award passed by the Motor Accident Claims Tribunal at Chennai seeking enhancement of compensation.

3. The facts of the case is that on 14.11.2011 at about 4.45 p.m., when the deceased was riding the motorcycle bearing registration No.TN 01 Z 8993, the Metropolitan Transport Corporation (MTC) bus bearing registration No.TN 01 N 5029 dashed against him. As a consequence, the motorcyclist lost control and hit the car and fell down on the left side of the road and the MTC bus ran over him, causing instant death. The claim petition filed seeking compensation of Rs.10,00,000/- for the loss of



life. The MTC bus, driver of the car and the insurer of the car were arrayed as respondents.

4. Before the Tribunal, the MTC bus driver who was examined as RW.1, attributed negligence on the part of the motorcycle who tried to pass through between the car and his bus, hit the bus and fell down. Whereas, the car driver who was examined as RW.3 deposed that he was proceeding from East to West on Periyar EVR Salai on a fatal day, when the motorcycle hit his car on the rear and fell down. The Inspector of police investigated the matter filed a final report, fixed the responsibility on the MTC driver for rash and negligent driving. Considering all these facts, the Tribunal has awarded a sum of Rs.7,33,000/- to be paid by the 1st respondent MTC bus.

5. Aggrieved by the quantum of award, the learned counsel for the claimant in support of the appeal C.M.A.No.536 of 2017 state that the Tribunal failed to take note of future prospects. The notional income fixed at Rs.6,000/- is very less, since the deceased was earning Rs.400/- per day as a painter at the time of accident. Further, the learned counsel would also state that 50% income has been deducted towards personal expenditure instead of 1/3rd.

6. In the appeal C.M.A.No.137 of 2017, filed by the Transport Corporation, the learned counsel contended that when two vehicles are involved, the contributory negligence on the part of both the drivers has to be apportioned between them and should be held liable only for their part of contribution. In this case, the evidence clearly indicates that the car was also involved in the accident and because the two wheeler hit the car he fell down on the road unexpectedly, caused the MTC bus to run over. Therefore, driver of the MTC bus alone cannot be held liable though the prosecution was launched against him. Further, the learned counsel would also state that the quantum of compensation awarded to the claimant is high. The notional income of Rs.6,000/- has been fixed without any evidence to prove the earning capacity of the deceased.

7. The learned counsel for the 3rd respondent would state that there is no fault on the part of the car driver who was going ahead 3 feet away from the bus when the two wheeler dashed the car and fell down.



8. On considering the rival submissions and on perusing the records, this Court finds that the final report is filed against the MTC driver for his rash and negligent driving. The sketch which was marked as Ex.R2 indicates that the car was going ahead followed by the bus and the two wheeler. All the three vehicles were moving towards same direction. The motorcyclist has tried to over take the bus and hit the bus before dashing the car on its rear. In the said circumstances, since the car driver who was unaware of the happening behind his car cannot be held responsible though without intervention of car, the fatal accident would not have happened.

9. Hence, the trial Court has rightly exonerated the 2nd and 3rd respondents namely the owner of the Car and its insurer based on evidence. As far as the compensation is concerned, as pointed out by the learned counsel for the appellant in CMA.536 of 2017, the Tribunal has not taken note of the future prospects of the deceased, though it has liberally fixed as notional income of Rs.6,000/- per month. Hence, there must be enhancement on this head. Accordingly, the award of compensation is enhanced as below:

Loss of dependency (Rs.6000+1200)X1/2X18X12)	Rs.7,77,600/-
Loss of Consortium (Mother)	Rs.40,000/-
Funeral Expenses	Rs.15,000/-
Total	Rs.8,32,600/-

10. In the result, the compensation of Rs.7,33,000/- awarded by the Tribunal to the claimant is enhanced to Rs.8,32,600/-. The Transport Corporation is directed to deposit the award amount as enhanced with interest at the rate of 7.5% p.a., from the date of petition till the date of deposit within a period of twelve weeks from the date of receipt of copy of the judgment. The learned counsel for the Transport Corporation states that the 50% award amount with accrued interest has already been deposited. If so, the balance shall be deposited as directed above. On such deposit, the claimant is



permitted to withdraw the award amount as enhanced less the amount already withdrawn.

11. With the above modification and direction, the C.M.A.No.536 of 2017 is partly allowed and the C.M.A.No.137 of 2017 is dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpl

To

The Motor Accident Claims Tribunal,
IV Court of Small Cause, Chennai.

Copy To

The Section Officer,
V.R.Section, High Court,
Madras-104.

+1cc to Mr.J.Micheal Visuvasam, Advocate, S.R.No.12649

+2cc to Mr.V.Mohan Choudary, Advocate, S.R.No.12596

C.M.A.Nos.137 and 536 of 2017
and

C.M.P.No.944 of 2017

GMR(CO)
SB(17/09/2021)