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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :18.01.2021

PRONOUNCED ON :22.01.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.966 OF 2017
AND
CROSS OBJECTION NO.7 OF 2020
AND
C.M.P.NO.4804 OF 2017
AND
C.M.P.NO.18912 OF 2019

C.M.A.No.966 of 2017:

The Managing Director,
Metropolitan Transport Corporation Ltd.,
(Chennai Division) Pallavan Salai,
Chennai 600 002.

.. Appellant/Respondent

/versus/

1.M.Shanthi

2.M.Salomi

3.M.Yamuna

4.M.Preethi

5.Minor M.Praveen
S/o Mariyannan,
Minor rep.by his mother and natural guradian
and next friend M.Shanthi

6.A.Therasa

.. Respondents/Claimants

Prayer in C.M.A.No.966 of 2017:

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 04.03.2016 passed in M.C.O.P.No.4317 of 2009 by the Special Sub Judge No.1, Motor Accident Claims Tribunal, Chennai.



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C.M.A.No.966 of 2017:

For Appellant :Mr.S.S.Swaminathan

For Respondents :Mr.R.Ponnusamy for
M/s.Anand and Suryas for R1 to R6

Cross Objection No.7 of 2020:

1.M.Shanthi
2.M.Solomi
3.M.Yamuna
4.M.Preethi
5.Minor M.Praveen
S/o Mariyannan,
Minor rep.by his mother and natural guradian
and next friend M.Shanthi the 1st cross appellant herein.

6.A.Therasa .. Cross Appellants

/versus/

The Managing Director,
Metropolitan Transport Corporation Ltd.,
(Chennai Division) Pallavan Salai,
Chennai 600 002.

.. Respondent

Prayer in Cross Objection No.7 of 2020:

Cross Objection has been filed under Order 41, Rule 22 of Civil Procedure Code praying to set aside the award passed in the above M.C.O.P.No.4317 of 2009 dated 04.03.2016 on the file of the Special Sub Court-1, to deal with MCOP cases, Chennai/Motor Accident Claims Tribunal, Chennai in so far as the same is against the claim of the appellant and award full and just compensation.

Cross Objection No.7 of 2020:

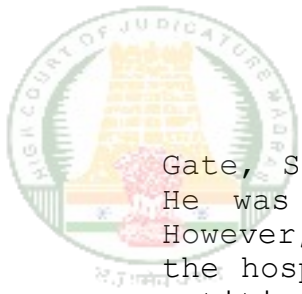
For Cross Appellants: Mr.R.Ponnusamy for
M/s.Anand and Surya

For Respondent : Mr.S.S.Swaminathan

COMMON JUDGMENT

(The case has been heard through video conferencing)

One Mariyannan, on 26.08.2009, while riding his two wheeler met with the road accident near Nokia Company Main Entrance



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Gate, Sriperumputhur on the Chennai to Bangalore Highways Road. He was taken to the hospital and treated for his injuries. However, he did not survive. He lost his breath on 13.09.2009 in the hospital. His wife, mother and four children preferred claim petition before the Motor Accident Claims Tribunal seeking compensation of Rs.40,00,000/- against the transport corporation alleging that the accident occurred due to the negligence of the transport corporation bus driver who without proper signal tried to overtake the two wheeler of the deceased and hit the two wheeler. The Tribunal on considering the evidence placed, awarded a sum of Rs.20,48,347/- payable to the claimants with interest at the rate of 7.5% p.a, from the date of numbering the claim petition i.e. 09.12.2009 till the date of realisation with costs.

2.The transport corporation has preferred appeal challenging the quantum of compensation on the ground that the accident occurred due to the negligence of the deceased motorcycle rider, who recklessly dashed behind the transport corporation bus, which was stationed near Nokia Gate for alighting and boarding the passengers. The Tribunal, without taking note of the negligence on the part of the deceased, had awarded exorbitant compensation under various heads.

3.The cross objection filed by the claimants on the ground that the Tribunal erred in not considering the salary certificate and identity card, which proves the income of the deceased was around Rs.20,500/- per month, being gainfully employed as an Electrician at Inkor Auto Tech India Private Limited, Irungattukottai, Sriperumputhur. Ignoring the salary slip the Tribunal has taken notional income of the deceased as Rs.6,500/- and has awarded a meagre sum of Rs.20,48,347/- as compensation.

4.The learned counsels appearing for the appellant/Transport Corporation and the respondents/claimants made their respective submissions with reference to the exhibits and evidence to substantiate their stand.

5.It is the case of fatal accident occurred on the highways. In the claim petition, it is stated that the bus while attempting to overtake the motorcycle driven by the deceased hit the two wheeler on the left side rear portion of the bus and consequently, the motorcycle rider dashed on the centre median stone which separate the highway road and the service lane, resulting in serious head injury and the accident victim later died on 13.09.2009. Contrarily, in the First Information Report given by the driver of the bus indicates that he stopped the bus at Nokia Cellphone Company bus stop and the passengers were alighting, he heard a noise bang behind the bus and when he got

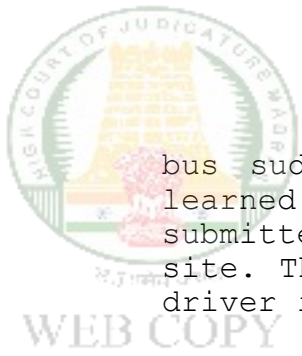


down, he saw the motorcyclist dashed against the rear left side of the bus and laying on the road. He called ambulance and shifted the motorcyclist to the hospital.

6. Before the Tribunal, the 1st claimant Shanthi was examined as PW-1 and one Rajapurushothaman as PW-2, who claims to have witnessed the accident. As per his deposition, on the fateful day, he was riding his car along the Chennai - Bangalore High Road near Nokia Gate Junction, Sriperumputhur. He saw the transport bus tracing the two wheeler coming behind and caused the accident. He has attributed negligence and recklessness against the bus driver. To contra his evidence, the driver of the bus was examined as RW-1, who has reiterated his version as found in the First Information Report marked as Ex.R1. The Tribunal has rejected the evidence of RW-1 and the content of the First Information Report [Ex.R1] on the ground that RW-1 is the interested witness. Whereas, it has accepted the evidence of PW-2 a person alleged to have been present and witness to the accident while driving the car along the said road.

7. The learned counsel appearing for the appellant/transport corporation submitted that if the driver of the vehicle (PW-2) is the interested witness equally PW-1 is also the interested witness and the presence of PW-2 is highly unreliable since he claims to have been present at the scene of occurrence, while driving his car. It is highly improbable for him to come and give evidence when he is not the first informant and his presence is not recorded anywhere. Further, the learned counsel also draw the attention of this Court to the sketch Ex.P8, which indicates, the rear left side of the bus has dashed the front right side bumper guard of the two wheeler. The learned counsel also submitted that unless and until the rider had rashly driven his vehicle, unnoticing the bus going ahead him, the accident could not happen. The learned counsel also draw the attention of this Court the sketch [Ex.P8] wherein there is signal at Nokia Gate Junction and the accident spot is hardly 100 yards next to the signal. The learned counsel for the appellant submitted that the Tribunal has ignored totally the content of the First Information Report Ex.P7 equivalent to Ex.P6 the sketch Ex.P8 and evidence of RW1.

8. Per contra, the learned counsel appearing for the claimants/respondents/cross appellants submitted that the First Information Report [Ex.P7] and the deposition of RW1 are self-serving evidence. Therefore, the Tribunal has rightly disbelieved the version of RW-1. In the cross examination of RW1 it has been elucidated that there was no bus stop. However, the driver has stopped the bus without proper indication to the vehicle drivers following him. Therefore, the two wheeler rider coming behind the bus was taken for surprise when the on going



bus suddenly turned to left. Referring the sketch Ex.P8, the learned counsel appearing for the claimants/respondents submitted that there is no bus shelter indicated at the accident site. Therefore, the negligence fixed by the tribunal on the bus driver is based on the evidence and need no interference.

9.Regarding the quantum of compensation, the learned counsel appearing for the appellant submitted that the award passed by the Tribunal without taking note of the negligence on the part of the motorcycle rider and fixing exorbitant compensation under the conventional and non-conventional heads has to be interfered.

10.Contrarily, the learned counsel appearing for the respondents/claimants submitted that the Tribunal inspite of producing the salary certificate marked Ex.P9 and identity card [Ex.P6] to prove that he was gainfully employed in Inkor Auto Tech India Private limited and drawing the salary of R.20,500/- per month, erred in rejecting the evidence on the ground that the author of the document has not been examined. Being a Social Welfare Legislation, strict proof of document is not required. When no contra evidence is let in by the respondents/claimants, the Tribunal ought to have taken the salary certificate as the income of the deceased and should have applied the proper multiplicand and multiplier for computing the loss of income.

11.The First Information Report [Ex.P7] and the copy of the sketch [Ex.P8] show that the two wheeler has dashed against the rear left side of the bus. The motorist lost his balance and fell on the median stone which separates the highways and the service lane. Few 100 yards before the accident spot, there is a signal. The accident has occurred near junction where the gate of Nokia Cell Phone Company is located. Being the national highways connecting Chennai and Bangalore, it is easy to understand that unless the rider of the motorcycle had driven his vehicle in an uncontrollable speed, hitting the bus from behind could not have occurred. Had the rider shown enough care and diligence, the accident could have averred.

12.While so, on considering the evidence of PW-2 as against the evidence of RW-1, this Court finds that the presence of RW-1 as the driver of the bus at the scene of occurrence is certain. Whereas the presence of PW-2, who claims to be the driver of the car cross the accident site incidently present at the time of occurrence, called the brother of the accident victim from the cell phone of the victim is only a probability and not certain. PW-2 admits that he did not go to the police station and he did not give the complaint. He did not know the accident victim earlier. PW-1-wife of the deceased has not whispered anything about the PW-2 calling over the cellphone and informing the accident. It is left unexplained how PW-2 came to the Court to



give evidence without summon. In any case without contributory negligence of the rider of the two wheeler, the accident could not have occurred. The Tribunal has totally failed to take into consideration about the nature of the accident, place of accident, sketch and the contradictory evidence of PW-2 and RW-1. The Tribunal erroneously exonerated the rider of the two wheeler totally who had hit the bus from behind negligently.

13. Further, this Court is also finds that the driving licence of the deceased has not been produced either before the Motor Vehicle Inspector or before the Court. There is no evidence to show that the deceased had a valid driving licence. Therefore, this Court holds that without contribution of the deceased, the road accident could not have occurred and therefore, 10% contribution is attributed and fixed on the deceased.

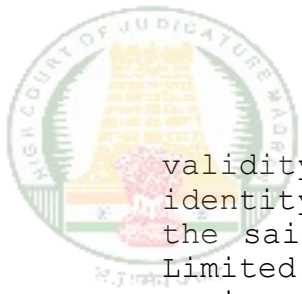
14. Quantum:-

The claimants in their cross objection heavily rely upon Ex.P9-salary certificate and Ex.P6-identity card of the deceased to emphasis that the deceased was employed as an Electrician in Inkor Autor Tech India Private limited and earning Rs.20,500/- as monthly salary. The Tribunal has not accepted these two documents, since these are not authenticated documents spoken by the author or any representative of the said Company. Since there is no other, corroborative evidence to believe the avocation and income of the deceased the Tribunal has rightly resorted to fix the notional income of the deceased as Rs.6,500/- and had added 30% for future prospects.

15. The learned counsel appearing for the claimants/respondents submitted that the Tribunal ought not to have rejected these two documents, when there is no contra evidence to disbelieve the genuineness of Ex.P6 and Ex.P9.

16. Per contra, the learned counsel appearing for the appellant/transport corporation submitted that in the absence of the proof in the manner known to law, the documents, which were admitted as evidence cannot be relied upon.

17. Drawing the attention of this Court that an unsigned computer print salary slip and identity card without relevant details such as the date of birth and the date of issue makes the genuineness of these documents doubtful. Moreso, when the claimants have not chosen to examine anybody from the said Company, this Court scrutinized the document identity card marked as Ex.P6 and the document Ex.P9-salary slips for the months of April 2009 and August 2009. Ex.P6 is the photo identity card issued to A.Mariannan. His designation is shown as Electrician at Maintenance Department. The date of issue or its



validity or the age of the person is not mentioned. This identity card does not indicate that at the time of accident, the said Mariannan was employed in Inkor AutoTech India Private Limited. Likewise, the salary slip marked as Ex.P9 is an unsigned computer printout which indicates that the gross salary of Mariannan for the month of April 2009 was 17,932/- and the gross salary of Mariannan for the month of August 2009 was Rs.20,482/-. The Basic pay and Provident Fund wages mentioned as Rs.6,510/-. In these salary slips the designation or the Department of Mariannan not mentioned.

18. One glaring doubt raised in the mind of this Court, on perusing the salary slips, is that, both for the month of April 2009 as well as August 2009, the salary slip number remains and shown as 200. The rubber stamp and facsimile of the signature alone affixed and no signature found in the salary slips. As pointed out by the Tribunal, to corroborate the document though the provident fund numbers mentioned in the salary slips, no document is produced to show that the claimant is a subscriber under the provident fund scheme or there exists a company by name Inkor Auto Tech India Private Limited or the fact that the Mariannan was employed in that company and he was drawing the gross salary around Rs.20,500/-. The facts could have been spoken only by authorised representative of the company. Failure to examine the authorised representative of the company would raise doubt in the mind of this Court about the genuineness of Exs.P6 and P9 to rely upon these documents, which could be prepared by anybody at any time. Based on such unreliable evidence, earning capacity of the person cannot be fixed.

19. As pointed, the salary slips not even mention the designation of the deceased. There is no other evidence to show that the deceased is a qualified electrician. The identity card Ex.P6 indicates Mariannan is an electrician and his identity Number is W161. Neither the said identity card number nor his designation is mentioned in the salary slips. Therefore, this Court finds no error in the Tribunal award fixing the notional income of the deceased at Rs.6,500/-, following the judgment rendered by the Hon'ble Supreme Court in Syed Sadiq and others v. Divisional Manager, United India Insurance company Limited reported in 2014 ACJ 627.

20. The claimants have produced medical bills for Rs.4,22,597/- marked as Ex.P2 issued by Sri Ramachandra Hospital. This Court finds from Ex.P2 the deceased had insurance coverage with Cholomandalam Ms General Insurance Company Limited. However, there is no evidence to show that the medical expenses have been reimbursed by the said Insurance Company. Therefore, the award of the medical expenses Rs.4,22,597/- is



confirmed.

21.Regarding the compensation awarded under the head of loss of consortium and loss of love and affection, it is on the higher side and contrary to the principle laid down in National Insurance Company v. Pranay Sethi and others reported in (2017 (2)TNMAC 609(SC)). Therefore, the award of the Tribunal is interfered and modified as below:-

Sl. No.	Particulars	Award passed by the Tribunal (Rs.)	Award passed by this Court (Rs.)	Enhanced/ Confirmed/ Reduced/ Awarded
1.	Loss of financial Dependency to the family	11,40,750-00	11,40,750-00 (6500+1950) x3/4x12x15)	Confirmed
2.	Loss of consortium to 1 st claimant	1,00,000-00	40,000-00	Reduced
3.	Loss of love and affection to claimants 2 to 5	3,00,000-00 (Rs.75000 x4)	80,000-00 (20000x4)	Reduced
4.	Loss of love and affection to 6 th claimant	50,000-00	20,000-00	Reduced
5.	Medical expenses	4,22,597-00	4,22,597-00	Confirmed
6.	Funeral and ritual expenses	25,000-00	15,000-00	Reduced
7.	Loss of estate	10,000-00	15,000-00	Enhanced
	Total	20,48,347-00	17,33,347-00 after deducting 10% (Rs.1,73,335/-) for the contributory negligence Rs.15,60,012-00 rounded off Rs.15,60,000-00	Reduced

22.The award of the Tribunal is modified from 20,48,347/- to Rs.15,60,000/- with interest at the rate of 7.5% p.a., from the date of petition till the date of realisation.

23.The award of this Court is apportioned as below:



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1 st claimant/wife	Rs.6,60,000-00
claimants 2,3 and 4/ daughters	Rs.1,50,000-00 each
5 th claimant/minor son	Rs.3,00,000-00
6 th claimant/mother	Rs.1,50,000-00

24.The appellant/Transport Corporation in C.M.A.No.966 of 2017 and respondent/transport corporation in Cross objection No.7 of 2020 is directed to deposit the modified award amount with interest, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit, respondents 1 to 4 and 6/claimants 1 to 4 and 6 in C.M.A.No.966 of 2017 are permitted to withdraw their respective share amount, as apportioned above, with proportionate interest, less the amount already withdrawn by them, if any, on filing appropriate petition before the Tribunal. The share amount of the minor 5th claimant/5th respondent in C.M.A.No.966 of 2017 shall be deposited into the Nationalised Bank till the minor attains majority. The interest accrued on the deposited amount of the minor 5th claimant/5th respondent shall be withdrawn by the 1st claimant-mother of the minor claimant/1st respondent once in every six months and the same shall be spent for the welfare of the children.

25. In the result, this Civil Miscellaneous Appeal is partly allowed and the Cross objection No.7 of 2020 is disposed of. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
Special Sub Court-I, Chennai

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.3772

+1cc to M/s.Anand and Suryas, Advocate, S.R.No.3449

C.M.A.No.966 of 2017 and
Cross Obj.No.7 of 2020 and
C.M.P.Nos.4804 of 2017
and 18912 of 2019

BS (CO)
CS/13/09/2021