

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	24.02.2021
Date of Judgment	14.06.2021

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CORAM:**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A(MD)No.347 of 2013andMP(MD)No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation,
Pallavan Salai,
Chennai-600 002.

: Appellant/Respondent

Vs.

- 1.Tmt.Vahitha Rahman
- 2.Minor Rehunabanu
- 3.Minor Nasrin Banu
- 4.Minor Riswana Banu

(R2 to R4 are minors represented
by their mother Tmt.Vahitha Rahman)

- 5.Tmt.Saliya Beevi

: Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 25.04.2012 made in MCOP No.100 of 2012 on the file of Motor Accident Claims Tribunal (Fast Tract Court), Pudukkottai.

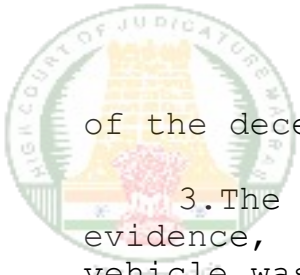
For Appellant : Mr.P.Prabhakaran

For Respondents : Mr.P.Ganapathi Subramanian

JUDGMENT

Challenge made in this appeal is to the award, dated 25.04.2012 made in MCOP No.100 of 2012 on the file of Motor Accident Claims Tribunal (Fast Tract Court), Pudukkottai.

2.The short facts of the case is that on 12.05.2004 at about 9.00 am, when the deceased Abdul Jabbar was travelling in the Bus TN-01-N-3797, near Old Airport opposite to Blue Gate on G.S.T Road at Meenambakkam, the Bus driver drove the bus in a rash negligent manner and applied sudden brake, as a result of which, he fell down and sustained grievous injuries and succumbed to the injuries in the Hospital, on 13.05.2004. The legal heirs of the deceased filed a claim petition seeking compensation of Rs.15,00,000/- for the death



of the deceased.

3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.8,41,000/- together with interest @ 7.5% p.a. Aggrieved by the award of the tribunal, the appellant Transport Corporation is before this court.

4.Heard both sides and perused the materials available on record.

5.The learned counsel appearing for the appellant submitted that at the time of accident, the deceased travelled in the foot board of the bus and only due to the negligence on the part of the deceased, the accident occurred and hence, the negligence on the part of the driver of the bus does not arise and prays that the appellant Transport Corporation is not liable to pay the compensation to the claimants.

6.On the other hand, the learned counsel appearing for the respondents/claimants argued that at the time of accident, the driver of the bus drove it in a rash and negligent manner and applied sudden brake, as a result of which, the deceased was thrown out from the bus and sustained injuries and later, he died in the hospital and the tribunal, after proper consideration of the materials available on records, passed fair award and prays for dismissal of the Civil Miscellaneous Appeal.

7.In this case FIR was registered by the Conductor of the Appellant Transport Corporation Bus TN-01-N-3797. On perusal of the FIR, it is stated that at the time of accident, number of persons travelling in the foot board and one person fell down and sustained injuries. In this case, PW2 is the eye witness to the occurrence, who saw the occurrence. He stated that at the time of accident, the deceased was also travelling in the bus and at that time, the deceased stood on the back side of the bus and when the driver of the bus applied sudden brake, he fell down from the bus and sustained injuries and then, he was taken to the hospital and after some days, he died in the hospital. But during his cross examination, he has stated as follows:-

“சம்பவத்தில் இந்த அப்துல் ஜப்பார் எந்த இடத்தில் அமர்ந்திருந்தார் என்று தெரியாது. டிரைவர் சடன்பிரேக் போட்டார். இரண்டு நபர்கள் பஸ்ஸிக்குள் கீழே விழுந்து எழுந்தார்கள். அதன் பிறகு ஒருவர் வெளியில் விழுந்துவிட்டார் என்று தான் அனைவரும் சென்று பார்த்தோம்.”

8.From the cross examination of PW2, it reveals that he did not know whether the deceased was sitting in the back side of the bus or not. Further, during his cross examination, PW2 stated that two persons fell down inside the bus and one person fell down outside of



the bus. But he has not specifically stated that at the time of accident, the deceased only fell down outside of the bus and sustained injury. There are contradictions in the evidence of PW2. Hence, this court finds that PW2 has no chance to see the occurrence.

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9. On perusal of the evidence of PW1, it is seen that in spite of his warning of the Conductor and the Driver of the bus, the deceased travelled in the foot-board and invited the accident himself. On careful perusal of the evidence of PW1, it reveals that at the time of accident, the deceased travelled in the foot board of the bus. In this case, the driver of the bus has categorically stated that he and the Conductor have given warning to the deceased to come inside the bus and in spite of warning, the deceased has not come inside the bus and travelling in the foot board, thereby invited the accident.

10. It is pertinent to note here that the driver or the conductor of the bus had not chosen to give the complaint stating that the accident took place only due to travelling of the deceased in the foot board. Further, the driver or the conductor of the bus had not sent any petition opposing registration of the criminal case. Hence, this court held that the accident occurred due to the negligence on the part of the driver of the bus as well as the deceased, who travelled in the foot board of the bus. Therefore, this court fixed the negligence at 80% on the part of the driver of the bus and 20% fixed on the part of the deceased, who travelled in the foot board of the bus.

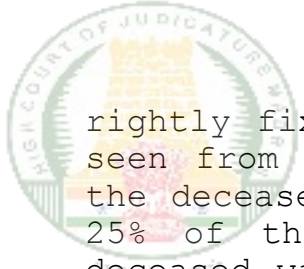
11. The respondents/claimants have claimed that the deceased was working as Tobacco Packer in Nizam Tobacco Company at Pudukkottai and was earning Rs.3,500/- per month and at the time of accident, his age was 33 years and to that effect on the side of the claimants, the Pay Certificate (Ex.P8) was produced. It is not in dispute that the deceased was working as "Tobacco Packer" in Nizam Tobacco Company at Pudukkottai and was earning Rs.3,500/- per month.

12. It is seen from the records that as per the Pay Certificate, the age of the deceased was 33 years and as per the postmortem certificate, the age of the deceased was 45 years.

13. It is settled law that in the absence of proof for claiming age of the deceased, to determine the age of the deceased, postmortem report can be taken into account. In the instant case on hand, on perusal of Ex.P5 Postmortem Certificate, the age of the deceased was shown as 45 years. Hence, this court is of the considered view that the tribunal without any basis, has fixed the age of the deceased as 38 and by considering the postmortem certificate, it is held that at the time of accident, the age of the deceased was 45 years.

<https://hcservices.ecourts.gov.in/hcservices/>

14. In so far as the quantum of compensation, the tribunal has



rightly fixed the monthly income of the deceased at Rs.3,500/-, as seen from Pay Certificate (Ex.P8). It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 25% of the established income should be the warrant where the deceased was between the age of 40 to 50. In the instant case, the tribunal has added 50% towards future prospects, which is not correct. Hence, this court is of the considered view that 25% has to be added towards future prospects to calculate the income of the deceased, as per the decision of the Hon'ble Supreme Court reported in **2017(6) CTC 493 (National Insurance Company Limited vs. Pranay Sethi and others)**. By doing so, the monthly loss of income of the deceased is calculated at Rs.4,375/- (Rs.3,500/- + Rs.875/-). After deducting 1/4th towards his personal and living expenses, the monthly income is arrived at Rs.3,281/- (Rs.4,375/- Less Rs.1,094/-). By applying proper multiplier 14, this court awards **Rs.5,51,208/-** (Rs.3,281/- x 12 x 14) towards loss of income. In addition to that, as per the decisions in **Pranay Sethi's case** and **Magma General Insurance's case**, this Court awards Rs.2,00,000/- towards loss of consortium to the claimants 1 to 5; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, totalling **Rs.7,81,208/-** together with interest @ 7.5% p.a. As this court fixed the negligence at the ratio of 80% on the side of the driver of the bus and 20% on the part of the deceased, the claimants would be entitled to Rs.6,24,966/- rounded off to Rs.6,25,000/-.

15. In the result, this Civil Miscellaneous Appeal is partly allowed. The negligence is fixed at 80% on the part of the bus Driver and 20% on the part of the deceased. The appellant Transport Corporation is directed to deposit the modified amount of Rs.6,25,000/- together with interest at the rate of 7.5% p.a from the date of claim petition till the date of deposit, less the amount already deposited. On such deposit, the claimants are entitled to get their share as per the apportionment of the tribunal. Insofar as the share of the minor claimants is concerned, the Tribunal is directed to deposit their share in any one of the Nationalised Bank, in a fixed deposit scheme initially for a period of three years renewable thereafter, till they attain majority. The 1st claimant/being the mother and guardian of minors is permitted to withdraw the accrued interest once in three months directly from the Bank for the welfare of the minors. The excess amount if any, shall be refunded to the appellant Transport Corporation. No costs. Consequently, connected Miscellaneous Petition is closed.

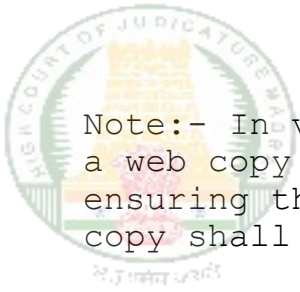
Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)



Note:- In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but ensuring that the copy of the order that is presented is the correct copy shall be the responsibility of the advocate/litigant concerned.

To,

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- 1.The Motor Accident Claims Tribunal/(FTC)
The Additional District and Sessions Judge,
Pudukkottai.

Copy to:-

The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.347 of 2013
14.06.2021

RD(11.08.2021) 5P 4C