

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	19.01.2021
Date of Judgment	23.03.2021

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CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A (MD)No.1485 of 2016

and

CMP (MD)No.12407 of 2016

The General Manager,
Tamil Nadu State Transport Corporation,
Kumbakonam. : Appellant/Respondent

Vs.

1.Thirugnanasambandan
2.Subbulakshmi : Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 22.01.2016 made in MCOP No.831 of 2014 on the file of Motor Accident Claims Tribunal (Special District Court), Thanjavur.

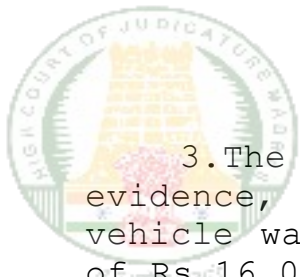
For Appellant : Mr.P.Prabhakaran

For Respondents : Mr.D.Veerasekaran

JUDGMENT

Challenge made in this appeal is to the award, dated 22.01.2016 made in MCOP No.831 of 2014 on the file of Motor Accident Claims Tribunal (Special District Court), Thanjavur.

2.The brief facts of the case are that on 24.12.2013 at about 9.45 am, the deceased Mugundan was travelling along with one Suresh in his Pulsar Bike TN-49-AF-8742 from Vallam Periyar Polytechnic in Thanjavur to Vallam main Road and when they were proceeding near Pillaiyarpatti towards west to east, the Transport Corporation Bus TN-49-N-1785 came from the opposite direction in a rash and negligent manner and dashed against the two wheeler. Due to it, the deceased Mugundan was thrown away and sustained grievous head injuries and died on the spot. The claimants, being the parents of the deceased sought compensation of Rs.20,00,000/- on the ground that the driver of the offending vehicle was responsible for the accident.



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.16,03,000/- together with interest @ 9% p.a. Challenging the award of the tribunal, the Transport Company as appellant is before this court.

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

5.In this case, the dispute is in respect of liability and negligence. The learned counsel appearing for the appellant Transport Corporation submitted that the deceased drove his vehicle in a rash and negligent manner and dashed against the Transport Corporation bus and FIR was registered against the deceased and the complaint was given by the pillion rider of the bike, but the pillion rider was not examined before the court. However, the tribunal without proper reasons fastened the entire liability on the driver of the bus and further, the deceased drove the vehicle without wearing helmet and he himself dashed against the bus and hence, the deceased was solely responsible for the accident and hence, they are not liable to pay compensation to the claimants.

6.Further, the learned counsel appearing for the appellant submitted that for arriving loss of income for the deceased, the correct future prospects is 40%, but the tribunal wrongly added 50% towards future prospects and hence, the amount towards future prospects may be reduced to 40% instead of 50%.

7.On the other hand, the learned counsel appearing for the respondents/claimants submitted that the tribunal, on proper consideration of the materials available on record, both oral and documentary, had passed reasonable award, which requires no interference of this court and prays for dismissal of the Civil Miscellaneous Appeal.

8.As far the negligence aspect, in this case, in respect of the accident, FIR was registered as against the deceased. FIR is not a conclusive proof. PW2 deposed that he saw the occurrence and the accident occurred only due to the rash and negligent driving of the Transport Corporation Bus. The driver of the Transport Corporation Bus was examined as RW1. RW1 deposed that only due to the negligent driving of the deceased, the accident took place. On the side of the appellant/respondent, it is stated that at the time of accident, the deceased did not wear helmet. It was not stated in the petition that at the time of accident, the deceased wore helmet. PW2 has also not stated that at the time of



accident, the deceased worn helmet. Without wearing helmet, driving a vehicle amounts to violation of Motor Vehicle Rules and Insurance Policy. On perusal of the petition and evidence of PW1 and RW2, it reveals that at the time of the accident, the deceased did not wear helmet. It shows the negligence on the part of the deceased. On careful perusal of the evidence of PW2 and RW1, it reveals that the accident occurred due to the composite negligence on the part of the deceased as well as the driver of the Transport Corporation bus. Hence, it is held that the negligence can be fixed at 30% on the part of the deceased and 70% on the part of the Transport Corporation bus driver.

9.It is admitted that at the time of accident, the age of the deceased is 21 years and he is a bachelor. Hence, as per the **Pranay Sethi's** case, for arriving loss of income, 40% is to be added towards future prospects. But the tribunal has added 50% towards future prospects, which not correct. Based on the educational qualification, the tribunal has fixed the monthly income of the deceased at 9,000/- per month. By adding 40% towards future prospects, the monthly income of the deceased is calculated at Rs.12,600/-. Since, the deceased is a bachelor, 50% has to be deducted towards his personal and living expenses. By doing so, the income of the deceased is calculated at Rs.6,300/- per month. By applying proper multiplier 18, this Court awards **Rs.13,60,800/-** (**Rs.6,300/- x 12 x 18**) towards loss of dependency.

10.As per the decisions of the the Hon'ble Supreme court in the case of **Pranay Sethi and Magma General Insurance**, the claimants, being the parents of the deceased are entitled to Rs.40,000/- each towards loss of consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled to **Rs.14,70,800/-** together with interest @ 7.5% p.a.

11.Already, this court fixed 30% negligence on the part of the deceased and 70% on the part of the driver of the offending vehicle. With regard to interest, the claimants are entitled to interest @ 7.5% p.a for the modified award amount of Rs.10.29,560/- from the date of petition till the date of deposit.

12.In the result, this Civil Miscellaneous Appeal is partly allowed. The negligence is fixed at 70% on the part of the Transport Corporation Bus driver and 30% on the part of the deceased. The appellant Transport Corporation is directed to pay their share of **Rs.10,29,560/-** to the claimants, within a period of six weeks from the date of receipt of a copy of this judgment, with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. On such deposit the claimants are



formal petition before the tribunal. Excess amount if any available shall be returned to the Appellant Transport Corporation. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

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To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Thanjavur.

2.The Record Keeper-2 copies
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.P.PRABHAKARAN, Advocate (SR-12928[F] dated 23/03/2021)

+1 CC to Mr.D.VEERA SEKARAN, Advocate (SR-13747[F] dated 25/03/2021)

C.M.A (MD) No.1485 of 2016
23.03.2021

KM(26.05.2021) 4P 6C