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C.M.A. Nos.1656 of 2020 & 443 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**

and

THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.Nos.1656 of 2020 & 443 of 2021
and C.M.P.Nos.5818 of 2020 & 2805 of 2021

C.M.A.No.1656 of 2020

1.P.Suganthi

2.P.Sathyasri

3.Arputham

.. Appellants

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
CMBT, Koyambedu,
Chennai 600 107.

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.09.2019, made in M.C.O.P. No.8 of 2017, on the file of the Principal Special Sub Judge, Special Court under E.C. & NDPS Act, (Motor Accident Claims Tribunal) Chennai.



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For Appellants : Mrs.A.Subadra
for Ms.M.Malar

For Respondent : Mr.K.J.Sivakumar

C.M.A.No.443 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
CMBT, Koyambedu,
Chennai 600 107.

.. Appellant

Vs.

1.P.Suganthi
2.P.Sathyasri
3.Arputham

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.09.2019, made in M.C.O.P. No.8 of 2017, on the file of the Principal Special Sub Judge, Special Court under E.C. & NDPS Act, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Mrs.A.Subadra
for Ms.M.Malar



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COMMON JUDGMENT

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[Judgment of the Court was delivered by V.M.VELUMANI,J.]

These Civil Miscellaneous Appeals have been filed against the judgment and decree dated 27.09.2019, made in M.C.O.P. No.8 of 2017, on the file of the Principal Special Sub Judge, Special Court under E.C. & NDPS Act, (Motor Accident Claims Tribunal) Chennai.

2.Both the appeals arise out of same accident and same award and hence, disposed of by this common judgment.

3.The parties are referred to as per their ranks in the claim petition, for the sake of convenience.

4.The claimants filed M.C.O.P. No.8 of 2017, on the file of the Principal Special Sub Judge, Special Court under E.C. & NDPS Act, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.1,25,00,000/- as compensation for the death of one V.Prakasam who died in the accident that took place on 07.09.2016.



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5. According to the claimants, on the date of accident, at about 13.50 hrs., when the said Prakasam was travelling in a Motorcycle bearing Registration No.TN-07-BH-6096 as a pillion rider, from South towards North direction at ECR Road, in front of Mayajal Theatre, Kanathur, the driver of the Bus, bearing Registration No.TN-21-N-1432 owned by the respondent-Transport Corporation, drove the same in a rash and negligent manner endangering to the public safety and hit behind the Motorcycle in which the deceased travelled and caused the accident. In the accident, the said V.Prakasam sustained fatal injuries and died on the spot. The accident occurred only due to rash and negligent driving by the driver of the Bus owned by the respondent-Transport Corporation and hence, the claimants filed the said claim petition claiming compensation for the death of V.Prakasam, against the respondent, owner of the said Bus.

6. The respondent-Transport Corporation filed counter statement and denied all the averments made by the claimants. According to the respondent, the driver of their Bus drove the vehicle with due care and caution, observing



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all the traffic rules and he was not rash and negligent at the time of accident.

On the other hand, the accident occurred only due to the negligent riding by the rider of the Motorcycle in which deceased V.Prakasam travelled as a pillion rider. Hence, the respondent is not liable to pay any compensation to the claimants. The claim petition is bad for non-joinder of owner and insurer of the Motorcycle in which the deceased V.Prakasam travelled. In any event, the claimants also have to prove the age, avocation and income of the deceased to claim compensation and prayed for dismissal of the claim petition.

7.Before the Tribunal, the claimants examined 4 witnesses as P.W.1 to P.W.4 and marked 30 documents as Exs.P1 to P30. The respondent-Transport Corporation examined two witnesses as R.W.1 and R.W.2, but did not mark any document.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the negligence of both the



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rider of the Motorcycle in which the deceased traveled as a pillion rider as well as the driver of the Bus owned by the respondent-Transport Corporation and fixed 50% negligence on both the drivers. The Tribunal awarded a sum of Rs.19,25,000/- as compensation to the claimants and directed the respondent-Transport Corporation to pay a sum of Rs.9,62,500/-, being 50% of the compensation to the claimants.

9.Questioning the contributory negligence fixed on the part of the rider of the Motorcycle and also seeking enhancement of compensation, the claimants have filed C.M.A.No.1656 of 2020. Questioning the quantum of compensation awarded by the Tribunal, the respondent-Transport Corporation has filed C.M.A.No.443 of 2021.

10.The learned counsel appearing for the claimants contended that the accident has occurred only due to rash and negligent driving by driver of the Bus owned by the respondent-Transport Corporation. When the deceased V.Prakasam was travelling as a pillion rider in a Motorcycle driven by one



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Thirumoorthy, the driver of the Bus, drove the same in a rash and negligent manner and dashed on the Motorcycle and caused the accident. Due to the injuries sustained in the accident, the said V.Prakasam died on the spot. The Tribunal, without properly appreciating the oral and documentary evidence let in by the claimants, solely relying on evidence of R.W.1, Conductor of the Bus, erroneously fixed 50% negligence on the part of the rider of the Motorcycle. The claimants have let in evidence and proved that the accident occurred due to rash and negligent driving by driver of the Bus who dashed on the backside of the Motorcycle which was going in front of the Bus in the same direction. The Tribunal failed to see that FIR was registered against the driver of the Bus and charge sheet was also laid against the driver of the Bus. The learned counsel appearing for the claimants further submitted that the deceased was a Partner in two firms viz., Om Sakthi Brothers business and Thirumala Enterprises business along with one Ramesh, holding 50% share in each and was earning a sum of Rs.6,51,251/- per year. The claimants examined Ramesh, Partner of the deceased V.Prakasam as P.W.4 and marked the Partnership deeds and Income Tax Returns filed by the deceased



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V.Prakasam. The Tribunal, without properly appreciating the documents and without any valid reason, rejected the same. The notional income of Rs.15,000/- per month fixed by the Tribunal is meagre. The Tribunal failed to award any amount towards loss of estate and transport expenses and prayed for setting aside the 50% negligence fixed on the rider of the Motorcycle and for enhancement of the compensation.

11.Mr.K.J.Sivakumar, learned counsel appearing for the respondent-Transport Corporation submitted that the rider of the Motorcycle who came in the opposite direction talking with the pillion rider, without deciding whether to take right turn or U turn, came to his right hand side where there was no centre median. On seeing this, the driver of the Bus, to avoid the accident, turned to right and tried to stop the Bus. In spite of the same, the left side of the Bus dashed on the Motorcycle. The accident occurred only due to rash and negligent riding by rider of the Motorcycle. The Tribunal erroneously fixed only 50% negligence on the rider of the Motorcycle, instead of fixing the entire negligence on the rider of the Motorcycle. As far as the quantum of



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compensation is concerned, the claimants failed to prove the business and income of the deceased. The claimants filed only xerox copies of the documents to prove the business and income. The Tribunal rightly rejected the same and fixed the notional income of the deceased at Rs.15,000/- per month and granted compensation. The Tribunal, in addition to the amount granted for loss of dependency, excessively granted a sum of Rs.50,000/- each towards loss of consortium to the 1st claimant and loss of love and affection to the claimants 2 and 3 and prayed for setting aside the award of the Tribunal and dismissal of C.M.A.No.1656 of 2020, filed by the claimants.

12.Heard the learned counsel appearing for the claimants as well as the respondent-Transport Corporation and perused the materials available on record.

13.It is the case of the claimants that on 07.09.2016, while the deceased V.Prakasam was travelling as a pillion rider in the Motorcycle, the driver of the Bus owned by the respondent-Transport Corporation who was coming in



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the same direction, drove the Bus in a rash and negligent manner and dashed on the Motorcycle and caused the accident. In the accident, the said V.Prakasam sustained severe head injuries and died on the spot. To substantiate their contention, they examined P.W.1-wife of the deceased, P.W.2 - eye-witness to the accident and marked FIR which was registered against the driver of the Bus as Ex.P1. P.W.2 deposed that he was standing in the signal, at that time, the driver of the Bus drove the Bus in a negligent manner and dashed on the Motorcycle and caused the accident. In the FIR which was registered based on the complaint given by rider of the Motorcycle viz., Thirumoorthy, it has been stated that driver of the Bus who was coming in the opposite direction dashed on the Motorcycle. The claimants did not examine Thirumoorthy, rider of the Motorcycle, who is the best witness to prove the manner of the accident. The contents of FIR is not a sole criteria for fixing negligence, but it can be taken into consideration along with the materials placed before the Tribunal. In the present case, R.W.1, Conductor of the Bus who was sitting in the front of the Bus deposed that rider of the Motorcycle was coming in the opposite direction, talking to the deceased,



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unable to decide whether to take right turn or U turn, tried to cross the road where there was no centre median and thus, invited accident. This evidence of R.W.1 that the Motorcycle was coming in opposite direction is in consonance to the complaints given by rider of the Motorcycle and contents in the FIR. The Tribunal, considering all the materials placed before it, has rightly fixed 50% negligence on the rider of the Motorcycle & deceased and 50% on the part of the driver of the Bus. There is no error in the said finding of the Tribunal, warranting interference by this Court.

14.As far as the quantum of compensation is concerned, the claimants claimed that the deceased was a Partner in Om Sakthi Brothers business and Thirumala Enterprises business along with one Ramesh, holding 50% share and was earning a sum of Rs.6,51,251/- per year. To prove the said contention, the claimants filed Exs.P6, P8, P9, P10 and examined P.W.4 – Ramesh, partner of the deceased. The Tribunal rejected the evidence of P.W.4 and Exs.P6, P8, P9, P10, on the ground that they have filed only xerox copies of the said documents. A perusal of Ex.P6 reveals the income of the deceased



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for the years 2013-2014, 2014-2015 & 2015-2017. The average income for

the said 3 years comes to Rs.3,20,600/-. The Tribunal, without considering

the documents, which were filed by the deceased, erroneously rejected the same and fixed the notional income of the deceased at Rs.15,000/- per month.

In view of the same, we are fixing the annual income of the deceased at Rs.3,20,600/-. The deceased was aged 50 years at the time of accident. The

claimants are entitled to 15% enhancement towards future prospects. There

are only three claimants/dependants of the deceased. Instead of deducting

1/3rd towards personal expenses of the deceased, the Tribunal has erroneously

deducted 1/4th towards personal expenses. Hence, by fixing Rs.3,20,600/- as

annual income of the deceased, granting 15% enhancement towards future

prospects, deducting 1/3rd towards personal expenses of the deceased and

applying multiplier '13', the amounts granted by the Tribunal towards loss of

dependency is modified as Rs.31,95,313.3/- {[Rs.3,20,600/- + Rs.48,090/-

(15% of Rs.3,20,600/-)] x 13 x 2/3}, which is rounded off to Rs.31,95,310/-.

The amount of Rs.50,000/- each granted by the Tribunal towards loss of love

and affection to the claimants 2 and 3 who are the son and mother of the



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deceased are reduced to Rs.40,000/- each. The Tribunal has excessively awarded a sum of Rs.50,000/- towards loss of consortium to the 1st claimant/wife of the deceased and Rs.20,000/- towards funeral expenses to the claimants, but failed to award any amount towards loss of estate. As per the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]**, the 1st claimant/wife of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium and the claimants are entitled to a sum of Rs.15,000/- each towards loss of estate and funeral expenses. Hence, the amount awarded by the Tribunal towards loss of consortium and funeral expenses are reduced to Rs.40,000/- and Rs.15,000/- respectively. A sum of Rs.15,000/- is awarded towards loss of estate to the claimants. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	17,55,000/-	31,95,310/-	Enhanced
2.	Loss of consortium to 1 st claimant	50,000/-	40,000/-	Reduced



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3.	Loss of love and affection to claimants 2 and 3	1,00,000/-	80,000/-	Reduced
4.	Funeral expenses	20,000/-	15,000/-	Reduced
5.	Loss of estate	-	15,000/-	Granted
	Total	19,24,998/- rounded off to 19,25,000/-	33,45,310/-	
	50% of compensation (In view of contributory negligence)	9,62,500/-	16,72,655/-	Enhanced by Rs.7,10,155/-

15. In the result, C.M.A.No.443 of 2021 is partly allowed in respect of the heads loss of love and affection to claimants 2 & 3 and C.M.A.No.1656 of 2020 is partly allowed. The amounts awarded by the Tribunal at Rs.9,62,500/- is enhanced to Rs.16,72,655/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-Transport Corporation is directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.8 of 2017. On such deposit, the claimants are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment



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fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The claimants are directed to pay the necessary court fee on the enhanced award amount, as per the direction of this Court dated 15.09.2020, made in C.M.P.No.5818 of 2020 in C.M.A.SR.30703 of 2020. Consequently, connected Miscellaneous Petitions are closed. No costs.

(V.M.V., J) (S.S., J)
17.06.2022

gsa

To

- 1.The Principal Special Sub Judge,
Special Court under E.C. & NDPS Act,
(Motor Accident Claims Tribunal),
Chennai.
- 2.The Section Officer,
V.R Section,
High Court, Madras.



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**V.M.VELUMANI,J.
and
S.SOUNTHAR,J.**

(gsa)

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17.06.2022