



C.M.A. No.136 of 2022
& Cross Obj. No.80 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.No.136 of 2022
and C.M.P.Nos.988 & 14141 of 2022
and Cross Obj. No.80 of 2022

C.M.A.No.136 of 2022

M/s.Tamil Nadu State Transport Corporation
Coimbatore Division,
Rep. By its Managing Director,
Head Office at No.37,
Mettupalayam Road,
Coimbatore 641 043.

.. Appellant

Vs.

1.R.Malathy
2.A.Sivasamy
3.Sivaprakash

4.M/s.United India Insurance Co. Ltd.,
Trichengodu, Namakkal District.

.. Respondents



C.M.A. No.136 of 2022
& Cross Obj. No.80 of 2022

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.09.2017, made in M.C.O.P. No.603 of 2012, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Coimbatore.

For Appellant : Mr.K.J.Sivakumar

For R1 : Ms.P.Sobana Devi

For R4 : Mrs.R.Sree Vidhya

Cross Objection No.80 of 2022

R.Malathy

.. Cross Objector

Vs.

1.M/s.Tamil Nadu State Transport Corporation
Coimbatore Division,
Rep. By its Managing Director,
Head Office at No.37,
Mettupalayam Road,
Coimbatore 641 043.

2.A.Sivasamy

3.Sivaprakash

4.M/s.United India Insurance Co. Ltd.,
Trichengodu, Namakkal District.

.. Respondents



C.M.A. No.136 of 2022
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Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C., to set aside the award dated 07.09.2017, made in M.C.O.P. No.603 of 2012, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Coimbatore.

For Cross Objector : Ms.P.Sobana Devi

For R1 : Mr.K.J.Sivakumar

For R4 : Mrs.R.Sree Vidhya

COMMON JUDGMENT

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

C.M.A.No.136 of 2022 has been filed by the appellant-Transport Corporation against the judgment and decree dated 07.09.2017, made in M.C.O.P. No.603 of 2012, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Coimbatore. Cross Objection No.80 of 2022 has been filed by the appellant-claimant seeking enhancement of the compensation granted by the Tribunal in the said award.



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2.The 1st respondent filed M.C.O.P. No.603 of 2012, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Coimbatore, claiming a sum of Rs.25,00,000/- as compensation for the death of one Mahesh @ R.Subash Sundar, who died in the accident that took place on 04.04.2010.

3.According to the 1st respondent, on the date of accident, at about 3.45 p.m., the said Mahesh @ R.Subash Sundar was riding a Yamaha Motorcycle bearing Registration No.TN-33-F-1920 from Mettupalayam to Sathy road along with his friend one Senthil Kumar in pillion. While trying to overtake a Bus bearing Registration No.TN-33-N-1445 owned by the appellant-Transport Corporation driven by the 2nd respondent near Pazhathottam Pirivu, after following the traffic rules and after blowing horn signal to the Bus, the 2nd respondent/driver of the Bus suddenly turned the Bus to extreme right without obeying any traffic rules and without indicating any signal neither in lighting nor in hand signal. In the said impact, the Bus driven by the 2nd respondent suddenly collided against the Motorcycle driven by the said Mahesh @ R.Subash Sundar and thus, the accident occurred. In the



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accident, the said Mahesh @ R.Subash Sundar sustained fatal injuries and died on the spot. The accident occurred only due to rash and negligent driving by the 2nd respondent, driver of the Bus owned by the appellant-Transport Corporation and hence, the 1st respondent filed the said claim petition claiming compensation for the death of Mahesh @ R.Subash Sundar, against the appellant and 2nd respondent as owner and driver of the Bus and respondents 3 and 4 as owner and insurer of the Motorcycle respectively.

4.The respondents 2 and 3, driver of the Bus and owner of the Motorcycle, remained exparte before the Tribunal.

5.The appellant-Transport Corporation filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, on the date of accident, the 2nd respondent, driver of their Bus drove the same from Mettupalayam to Vachinampalayam, observing all the traffic rules and regulations. While nearing Vachinamapalayam Pirivu, when the 2nd respondent took right side curve after indicating signal, the deceased Mahesh



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@ R.Subash Sundar who rode the Motorcycle in a rash and negligent manner, came behind the Bus closely in an uncontrollable speed, dashed on the rear side edge portion of the Bus and fell down, causing the accident. The accident occurred only due to rash and negligent riding of Motorcycle by the deceased Mahesh @ R.Subash Sundar. Hence, the appellant is not liable to pay any compensation even under 'No fault liability'. FIR has been filed against the 2nd respondent with predetermined notion that the driver of the bigger vehicle was at fault. In any event, FIR is not substantial piece of evidence to come to a conclusion with regard to negligence. In the judgment reported in **2007 ACJ 1629 [National Insurance Company Ltd., Vs. Islavath Chinnamma and others]**, it has been held that the contents of FIR cannot be treated as a conclusive proof for negligence. This Court, in the judgment reported in **2009 ACJ 2411 [National Insurance Company Ltd., Vs. P.Murugan & Others]**, has held that merely because FIR was registered against a particular vehicle driver, the entire responsibility should not be fixed on the said vehicle driver. The rider of the Motorcycle did not possess valid driving license at the time of accident and the said Motorcycle did not possess valid RC/FC and M.V. Tax at



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the time of accident. In any event, the 1st respondent has to prove the age, avocation and income of the deceased and dependency of the 1st respondent, to claim compensation. The total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.The 4th respondent-Insurance Company filed counter statement and denied all the averments made by the 1st respondent. According to the 4th respondent, the compensation is claimed against the appellant and 2nd respondent and hence, the claim petition is liable to be dismissed against the 4th respondent. In any event, the 1st respondent has to prove the age, avocation and income of the deceased and dependency of the 1st respondent, to claim compensation. The total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent examined herself as P.W.1,



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examined one Senthil Kumar as P.W.2 and marked 5 documents as Exs.P1 to P5. The appellant and 4th respondent did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by 2nd respondent/driver of the Bus owned by the appellant-Transport Corporation and directed the appellant as well as the 2nd respondent to jointly and severally pay a sum of Rs.21,50,000/- as compensation to the 1st respondent.

9.Against the said award dated 07.09.2017, made in M.C.O.P. No.603 of 2012, the appellant-Transport Corporation has come out with C.M.A.No.136 of 2022.

10.Not being satisfied with the amounts awarded by the Tribunal, the 1st respondent has filed Cross Objection No.80 of 2022, seeking enhancement of compensation.



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11.The learned counsel appearing for the appellant-Transport Corporation contended that the Tribunal ought not to have considered the evidence of P.W.1, mother of the deceased, who is an interested witness, as she was not an eye-witness to the accident. The Tribunal erred in holding that mere registration of FIR against the driver of the Bus is sufficient to fix the negligence on the driver of the Bus. The 1st respondent failed to prove the age, avocation and income of the deceased Mahesh @ R.Subash Sundar by filing documents. In the absence of any evidence with regard to avocation and income, the monthly income of Rs.15,000/- fixed by the Tribunal and Rs.1,00,000/- granted towards loss of estate are on the higher side. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal and dismissal of Cross Objection No.80 of 2022, filed by the 1st respondent.

12.The learned counsel appearing for the 1st respondent/Cross Objector made submissions in support of the award of the Tribunal with regard to fixing negligence on the 2nd respondent/driver of the Bus. She further submitted that at



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the time of accident, the deceased Mahesh @ R.Subash Sundar was aged 26 years, working as a Software Engineer at IBM India Pvt. Ltd., Bangalore and was earning a sum of Rs.54,152/- per month. The Tribunal, without considering the same, fixed only a meagre sum of Rs.10,000/- per month as notional income of the deceased. The Tribunal ought not to have deducted 50% towards personal expenses of the deceased as he was the sole breadwinner of the family and his father predeceased him. The amounts awarded by the Tribunal towards loss of income, funeral expenses and loss of estate are meagre. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the same and dismissal of C.M.A.No.136 of 2022, filed by the appellant-Transport Corporation.

13.The learned counsel appearing for the 4th respondent-Insurance Company contended that the Tribunal dismissed the claim petition against the respondents 3 and 4 and no relief is sought against the 4th respondent in the present appeal as well as in the Cross-Objection and prayed for dismissal of the appeal as well as the Cross-Objection against the 4th respondent.



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14. Heard the learned counsel appearing for the appellant-Transport Corporation, the 1st respondent as well as the learned counsel appearing for the 4th respondent-Insurance Company and perused the entire materials available on record.

15. From the materials on record, it is seen that it is the case of the 1st respondent that on the date of accident, her son the deceased Mahesh @ R.Subash Sundar was riding the Motorcycle along with one Senthil Kumar/P.W.2 from Mettupalayam to Sathy Road. While nearing Pazhathottam Pirivu, when he tried to overtake the Bus owned by the appellant, the 2nd respondent, driver of the Bus who was driving the same in a rash and negligent manner without obeying the traffic rules, suddenly turned to extreme right without any indication. Due to the said rash and negligent driving by the 2nd respondent, the Bus hit the Motorcycle driven by the deceased Mahesh @ R.Subash Sundar and caused the accident. In the accident, the said Mahesh @ R.Subash Sundar died on the spot. To substantiate her claim, the 1st respondent



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examined herself as P.W.1 and examined one Senthil Kumar, the pillion rider who was sitting along with the deceased, as P.W.2 and marked FIR which was registered against the driver of the Bus/2nd respondent as Ex.P1. The 2nd respondent remained exparte before the Tribunal. It is the case of the appellant-Transport Corporation that accident occurred only due to the negligence of the deceased Mahesh @ R.Subash Sundar. According to the appellant, the 1st respondent was driving the Bus at moderate speed cautiously and he was not responsible for the accident. While the 2nd respondent was negotiating a cross at the right hand side, the rider of the Motorcycle drove the same at the high speed and dashed on the right rear side of the Bus and caused the accident. To prove the said contention, the appellant did not examine the 2nd respondent or any eye-witness to the accident. The appellant failed to substantiate their case either by examining the 2nd respondent or any eye-witness. The appellant admitted that FIR was registered against the 2nd respondent/driver of the Bus. They have not given any objection to the FIR registered against the driver of the Bus or gave a complaint against the rider of the Motorcycle/deceased Mahesh @ R.Subash Sundar. From the materials on record, it is seen that the



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1st respondent examined P.W.2, an eye-witness who was travelling as a pillion rider in the Motorcycle driven by the deceased Mahesh @ R.Subash Sundar and marked FIR and proved her case. In view of the same, the finding of the Tribunal that accident occurred only due to rash and negligent driving by the driver of the Bus does not warrant any interference by this Court.

16.As far as the quantum of compensation is concerned, it is the case of the 1st respondent that the deceased Mahesh @ R.Subash Sundar was aged 26 years, working as a Software Engineer in IBM India Private Limited, Bangalore and was earning a sum of Rs.54,152/- per month. The 1st respondent has not filed any document before the Tribunal to prove the qualification, avocation and income of the deceased. In the absence of any materials with regard to avocation and income, the Tribunal fixed the notional income of the deceased Mahesh @ R.Subash Sundar at Rs.10,000/- per month and granted 50% enhancement towards future prospects. Before this Court in the above appeal, the 1st respondent has filed C.M.P.No.14141 of 2022 to receive the additional documents viz., 1) Decree of Bachelor of Technology in Information



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Technology, 2) Pan Card, 3) Appointment order of IBM India Private Limited, Bangalore and 4) Pay Slip of the deceased Mahesh @ R.Subash Sundar for the month of January, 2010 to show that the deceased Mahesh @ R.Subash Sundar was a qualified Engineer, earning a sum of Rs.25,573.97/- as gross income and Rs.15,041.18/- as net income for the month of January, 2010. The said Pay Slip produced by the 1st respondent is a computerized xerox copy without any signature of any authorities concerned. The 1st respondent has not even filed any Bank Statement to show that every month certain amount was credited to the account of the deceased towards salary. Without examining the author of the document, the said xerox copy of the pay slip cannot be accepted. The accident is of the year 2010. The 1st respondent has also filed a document to show that the deceased Mahesh @ R.Subash Sundar has completed the Degree of Bachelor of Technology in Information Technology. In the absence of any materials with regard to income, considering the qualification and date of accident, the notional income of Rs.10,000/- per month fixed by the Tribunal is proper and the same is not excessive or meagre. The Tribunal erroneously granted 50% enhancement towards future prospects. As per the judgment of the



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Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]**, the 1st respondent is entitled to only 40% enhancement towards future prospects. The 1st respondent has not denied that her son died as a Bachelor. The 1st respondent is the widowed mother of the deceased Mahesh @ R.Subash Sundar and the only claimant. In view of the same, following the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another]**, the 1/3rd deducted by the Tribunal towards personal expenses of the deceased Mahesh @ R.Subash Sundar is not interfered with. Hence, fixing the monthly income at Rs.10,000/-, applying the multiplier '17', granting 40% enhancement towards future prospects and deducting 1/3rd towards personal expenses of the deceased, the amounts granted by the Tribunal towards loss of dependency is modified to Rs.19,04,000/- {[Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] x 12 x 17 x 2/3}. The Tribunal has awarded only a sum of Rs.10,000/- towards funeral expenses. The same is meagre and hence, enhanced to Rs.15,000/-. The sum of Rs.1,00,000/- excessively awarded towards loss of estate is modified and



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reduced to Rs.15,000/-. The Tribunal failed to award any amount towards loss of love and affection. The 1st respondent, being the mother of the deceased Mahesh @ R.Subash Sundar is entitled to a sum of Rs.40,000/- towards loss of love and affection. 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	20,40,000/-	19,04,000/-	Reduced
2.	Loss of love and affection	-	40,000/-	Granted
3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Loss of estate	1,00,000/-	15,000/-	Reduced
	Total	21,50,000/-	19,74,000/-	Reduced by Rs.1,76,000/-

17.In the result, C.M.A.No.136 of 2022 is partly allowed and Cross Objection No.80 of 2022 is partly allowed in respect of funeral expenses and loss of love and affection. The compensation awarded by the Tribunal at Rs.21,50,000/- is modified and reduced to Rs.19,74,000/- together with interest at the rate of 7.5% per annum from the date of petition i.e., on



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14.12.2010 to 02.04.2013 and from 10.02.2017 till the date of deposit. The appellant-Transport Corporation as well as the 2nd respondent are 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.603 of 2012. On such deposit, the 1st respondent is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant-Transport Corporation as well as the 2nd respondent are permitted to withdraw the excess amount, lying in the credit of M.C.O.P. No.603 of 2012, if the entire award amount has already been deposited by them. It is made clear that if the 1st respondent has already withdrawn the entire award amount, the appellant/Transport Corporation as well as the 2nd respondent are not entitled to recover the same from the 1st respondent. Consequently, connected Miscellaneous Petitions are closed. No costs.

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



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26.08.2022

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To

1.The IV Additional District Judge,
(Motor Accident Claims Tribunal),
Coimbatore.

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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