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C.M.A.Nos.1894, 1895 & 1897 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.Nos.1894, 1895 & 1897 of 2020

and

Cros.Obj.Nos.87 & 88 of 2021 and 4 of 2022

and

C.M.P.Nos.14041, 14042 & 14046 of 2020

The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd,
No.12, Ramakrishna Road, Salem-7.
Regional Office : Bharathipuram, Dharmapuri. ... Appellant in all CMAs

Vs

Vediyappan ... Respondent in all CMAs

Vediyappan ... Cross Objector in all Cross
Objections

Vs

The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd,
No.12, Ramakrishna Road, Salem-7.
Regional Office : Bharathipuram, Dharmapuri. ... Respondent in all Cross
Objections



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Prayer in all CMAs: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 26.03.2019 made in M.C.O.P.Nos.878, 879 & 880 of 2018 on the file of the Motor Accident Claims Tribunal/ Additional District and Sessions Judge, Krishnagiri.

Prayer in all Cross objections: Cross Objections filed under Order 41 Rule 22 of C.P.C., against the judgment and decree dated 26.03.2019 in M.C.O.P.Nos.878, 879 & 880 of 2018 on the file of the Motor Accidents claims Tribunal Additional District Court, Krishnagiri.

For Appellant in all CMAs
& Respondent in all
Cross Objections : Mr.D.Raghu

For Respondent in all CMAs
& Cross Objector in all Cross
Objections : Mr.Mukund R.Pandiyan

COMMON JUDGEMENT

Three claim petitions had been filed by the petitioner, Vedyappan claiming compensation for the death of his wife Ambika (M.C.O.P.No.878 of 2018), his daughter minor, Maha (M.C.O.P.No.879 of 2018) and the injury sustained by the said Vedyappan (M.C.O.P.No.880 of 2018) in a single accident on 14.02.2016.



2. The case of the petitioner in all the applications was that the petitioner, his wife and minor child were travelling in a motorcycle bearing Registration No.TN-24-P-4187 at about 05.00 p.m. They were proceeding from their house at Kalvehalli to Bangalore. The petitioner was driving the motorcycle and his wife and minor daughter were seated behind. When they were proceeding on the Krishnagiri to Bangalore N.H. Road, a bus which was proceeding in the same direction in front of the said motorcycle had suddenly applied its brake without any fore warning. As a result of above, the petitioner hit the rear of the bus and in the said accident, his wife Ambika has sustained fatal injuries to her head and other vital organs. Therefore, the claimant had sought for compensation of a sum of Rs.25,00,000/- in M.C.O.P.N.878 of 2018, Rs.10,00,000/- in M.C.O.P.No.879 of 2018 and Rs.10,00,000/- in M.C.O.P.No.880 of 2018.

3.The Tribunal had held that the accident had occurred on account of the negligence on the part of the driver of the respondent-Transport Corporation and awarded a sum of Rs.18,84,400/- in M.C.O.P.No.878 of 2018, Rs.5,40,000/- in M.C.O.P.No.879 of 2018 and Rs.1,53,480/- in M.C.O.P.No.880 of 2018 as compensation.



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4.Challenging the said Award passed in the three claim applications, the Transport Corporation has filed the above Civil Miscellaneous Appeals in C.M.A.Nos.1894, 1895 and 1897 of 2020 respectively. The petitioner, in turn, filed Cross Objections in Cros.Obj.Nos.87 and 88 of 2021 & 4 of 2022 in respect of M.C.O.P.Nos.880, 879 and 878 of 2018 respectively.

5.The learned counsel for the Appellant-Transport Corporation would submit that the Appellant-Transport Corporation is challenging the award both on the ground of negligence as well as on the ground of quantum.

6.Heard the counsels on either side and perused the materials available on record.

7.Even as per the narration of the claimant, three persons had been travelling in a two wheeler and proceeding on a national highway. The Transport Corporation's bus was travelling in front of them. When the driver of the bus had applied sudden brake, the petitioner in M.C.O.P.No.880 of 2018, who was riding the two wheeler and coming behind the bus, dashed against the



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said bus. This would clearly show that the rider of the two wheeler had not maintained the mandatory distance between himself and the vehicle proceeding in front. Had he exercised those minimum precaution, the accident and the consequent death and injury could have been avoided. Therefore, the petitioner in M.C.O.P.No.880 of 2018 has definitely contributed to the accident and 10% can be deducted towards contributory negligence and the Transport Corporation will be liable to compensate only 90% of the award amounts in C.M.A.Nos.1894 and 1897 of 2020.

8.As regards the quantum of compensation, the compensation awarded for the death of the minor i.e., a consolidated sum of Rs.5,40,000/- is very much in order, considering the fact that the deceased was just 4 years old at the time of the accident. Therefore, Cross Objection No.88 of 2021 stands dismissed and C.M.A.No.1895 of 2020 is also dismissed. Accordingly, the judgment and decree dated 26.03.2019 in M.C.O.P.No.879 of 2018 on the file of the Motor Accidents claims Tribunal Additional District Court, Krishnagiri is confirmed.



9.The appeal in C.M.A.No.1897 of 2020 has been filed against the award passed in M.C.O.P.No.878 of 2018. Both the deceased Ambika, the wife of the petitioner and the petitioner are stated to be Coolies doing mason work. Therefore, a notional income of Rs.10,000/- can be fixed as against the sum of Rs.9,000/- fixed by the Tribunal in M.C.O.P.No.878 of 2018. At the time of accident, the deceased Ambika was aged about 24 years, therefore, future prospects of 40% has to be added to the notional income of Rs.10,000/-. The monthly income would be a sum of Rs.14,000/- and the annual income would be a sum of Rs.1,68,000/-. Since the husband is the only dependent, 50% has to be deducted towards personal expenses. Therefore, the amount available to the family would be a sum of Rs.84,000/- and appropriate multiplier to be adopted is 17. Therefore, the total amount under the head of loss of dependency would be a sum of Rs.14,28,000/-.

10.It is stated that the deceased Ambika was inpatient for about five days and a sum of Rs.10,000/- can be granted under the head of transportation and attender charges and a sum of Rs.5,000/- can also be granted under the head of extra nourishment. In all other aspects, the award passed by the Tribunal below is unaltered. In all a sum of Rs.15,13,000/- is awarded as compensation, which



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is re-worked as follow:

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<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of dependency	18,14,400	14,28,000 (reduced)
Transportation and attender charges		10,000
Extra nourishment		5,000
Loss of Consortium	40,000	40,000
Loss of Estate	15,000	15,000
Funeral expenses	15,000	15,000
Total	18,84,400	15,13,000

11. Accordingly, the appeal in C.M.A.No.1897 of 2020 is partly allowed and Cros.Obj.No.4 of 2022 is dismissed. Considering the fact that 10% contributory negligence is on the rider of the two wheeler, namely the petitioner, the Appellant-Transport Corporation is directed to deposit a sum of **Rs.13,61,700/-** constituting 90% of the award amount to the credit of M.C.O.P.Nos.878 of 2018 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit



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being made, the respondent is permitted to withdraw the award amount, along with interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn subject to the payment of Court fees.

12.The appeal in C.M.A.No.1894 of 2020 has been filed against the award in M.C.O.P.Nos.880 of 2018. The Tribunal below had taken into consideration of Ex.C1-Disability certificate, wherein, the medical board had fixed the disability of the petitioner at 25%. The petitioner had sustained the following injuries :-

- “1. Fracture and injuries of his mandible.
2. Loss of teeth.
3. Head injury.
4. Contusion on his left hand shoulder.”

13.Considering the fact that the injuries have not decreased the earning capacity of the petitioner, the Tribunal had calculated the compensation for disability by adopting the multiplier method. The Tribunal had adopted a sum of Rs.3,000 per percentage for calculating the compensation under this head. This can be increased to a sum of Rs.4,000/- per percentage. Therefore, the amount under the head of compensation for disability would stand enhanced to



a sum of Rs.1,00,000/-. Likewise, amount under the head of transportation charges, extra nourishment and attender charges at a sum of Rs.15,000/- stands enhanced to a sum of Rs.25,000/-. A sum of Rs.15,000/- has been granted under the head of pain and sufferings, which is enhanced to a sum of Rs.25,000/-. Considering the fact that the petitioner had been admitted for over two months in the hospital undergoing treatment, a sum of Rs.10,000/- can be safely taken as his monthly income and the loss of earning for three months would be Rs.10,000/- x 3 = Rs.30,000/-. In all other aspects, the award is unaltered. Therefore, the compensation stands enhanced to a sum of Rs.2,07,480/-, which is as follows:

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Compensation for disability (25 * 4000)	75,000	1,00,000 (enhanced)
Medical bills	27,480	27,480
Transportation charges, extra nourishment and attender charges	15,000	25,000 (enhanced)
Pain and sufferings	15,000	25,000 (enhanced)



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<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of earning during his treatment (10,000 x 3)	21,000	30,000 (enhanced)
Total	1,53,480	2,07,480

14. Accordingly, the appeal in C.M.A.No.1894 of 2020 is partly allowed and Cros.Obj.No.87 of 2021 is allowed. Considering the fact that 10% contributory negligence is on the rider of the two wheeler, namely the petitioner, the Appellant-Transport Corporation is directed to deposit a sum of **Rs.1,86,732/-** constituting 90% of the award amount to the credit of M.C.O.P.No.880 of 2018 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the award amount and costs as awarded by the Tribunal, less, the amount, if any already withdrawn. The claimant is directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the



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enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the claimant. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the appeals. Consequently, the connected miscellaneous petitions are closed.

Conclusion :

S. No.	C.M.A.No. & Result	Cross Objection No. & Result	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1.	C.M.A.No.1894 of 2020 – Partly Allowed	Cros.Obj.No.87 of 2021 - Allowed	1,53,480/-	1,86,732/-
2.	C.M.A.No.1895 of 2020 - Dismissed	Cros.Obj.No.88 of 2021 - Dismissed	5,40,000/-	5,40,000/-
3.	C.M.A.No.1897 of 2020 – Partly Allowed	Cros.Obj.No.4 of 2022 - Dismissed	18,84,400/-	13,61,700/-

17.08.2022

Index : Yes/No
Speaking order/non-speaking order
sp

To

- 1.The Motor Accident Claims Tribunal/ Additional District and Sessions Judge, Krishnagiri.
- 2.The Section Officer, V.R.Section, High Court, Madras.

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P.T.ASHA, J.,

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