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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.Nos.2570 & 3466 of 2021
and
C.M.P.No.19962 of 2021

C.M.A.No.2570 of 2021:

1.B.Amsa

2.P.B.Subashini

3.P.B.Sankari

4.P.B.Elavarasi .. Appellants

Vs.

1.The Managing Director,
Tamilnadu State Transport Corporation,
3/137, Salamedu, Vazhuthareddy Post,
Villupuram.

2.R.Srinivasan

3.The National Insurance Co. Ltd.,
No.165, Nethaji Road,
Manjakuppam,
Cuddalore. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of

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Motor Vehicles Act, 1988, against the judgment and decree dated 16.10.2020, made in M.C.O.P.No.1545 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

For Appellants : Ms.Ramya V.Rao
For R1 : Mr.S.S.Santhosakumar
For R3 : Ms.N.B.Surekha

C.M.A.No.3466 of 2021:

The National Insurance Company Limited,
No.165, Nethaji Road,
Manjakuppam,
Cuddalore – 1. .. Appellant

Vs.

1.Amsa

2.P.B.Subhashini

3.P.B.Shankari

4.P.B.Elavarasi

5.The Managing Director,
Tamilnadu State Transport Corporation,
No.3/137, Salamedu, Vazhuthareddy,
Villupuram.

6.R.Srinivasan .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.10.2020, made in M.C.O.P.No.1545 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

For Appellant : Ms.N.B.Surekha

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For RR 1 to 4 : Ms.Ramya V.Rao
For R5 : Mr.S.S.Santhosakumar

COMMON JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI, J.)

C.M.A.No.2570 of 2021 has been filed by the appellants-claimants seeking enhancement of compensation granted by the Tribunal in the award dated 16.10.2020, made in M.C.O.P.No.1545 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

2.C.M.A.No.3466 of 2021 has been filed by the appellant – Insurance Company against the award dated 16.10.2020, made in M.C.O.P.No.1545 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

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

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

5.The claimants filed M.C.O.P.No.1545 of 2017, claiming a sum of

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Rs.50,00,000/- as compensation for the death of one R.Boominathan, who died in the accident that took place on 21.08.2016.

6.According to the claimants, on 21.08.2016 at about 05.00 A.M., while the deceased R.Boominathan was travelling in the bus bearing Registration No.TN 32 N 3450 belonging to 1st respondent as duty Conductor on the Chennai – Trichy byepass Road at P.K.Agaram, the driver of the Tipper Lorry bearing Registration No.TN 39 AZ 5681, who was driving the same in front of the bus, suddenly stopped the Tipper Lorry without any indication. Due to the same, the bus dashed behind the Tipper Lorry and thus, the accident occurred. In the accident, the said R.Boominathan sustained grievous injuries and multiple fractures all over the body. Immediately after the accident, the said R.Boominathan was taken to Government Hospital, Srirangam and thereafter shifted to GVN Hosptial, Trichy for better treatment. Inspite of medical treatment, the said R.Boominathan succumbed to injuries on 23.08.2016. Hence, the claimants filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation against the respondents.

7.The 1st respondent – Transport Corporation filed counter statement

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and denied that the accident has occurred due to rash and negligent driving by the driver of the bus. According to 1st respondent, the accident has occurred only due to rash and negligent act of the driver of the Tipper Lorry belonging to 2nd respondent. The 1st respondent denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the claimants under different heads are highly excessive and prayed for dismissal of the claim petition as against the 1st respondent.

8.The 2nd respondent – owner of the Tipper Lorry remained exparte before the Tribunal.

9.The 3rd respondent – Insurance Company filed separate counter statement and denied all the averments made by the claimants in the claim petition. The 3rd respondent denied the manner of accident as alleged by the claimants in the claim petition. According to 3rd respondent, as per Final Report and Investigation Report, the driver of the bus only drove the same in a rash and negligent manner, dashed the same behind the Tipper Lorry and caused the accident. The accident has occurred only due to rash and negligent driving by the driver of the Bus belonging to 1st respondent

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and hence, the claimants have to claim compensation only from the 1st respondent instead of claiming compensation against the 3rd respondent. On the date of accident, the Tipper Lorry belonging to 2nd respondent was not insured with them and also the driver of the Tipper Lorry was not possessing valid driving license to drive the same. Hence, the 3rd respondent is not liable to indemnify the 2nd respondent for violation of permit and policy conditions. The 3rd respondent-Insurance Company denied the age, avocation and income of the deceased. The quantum of compensation claimed by the claimants is highly excessive and prayed for dismissal of the claim petition.

10.Before the Tribunal, the 1st claimant examined herself as P.W.1, one Ramachandran, eyewitness to the accident was examined as P.W.2 and 10 documents were marked as Exs.P1 to P10. The 3rd respondent-Insurance Company examined one Gopalakrishnan, Head Constable of Siruganur Police Station as R.W.1 and marked the final report as Ex.R1.

11.The Tribunal considering the pleadings, oral and documentary evidence, held both the driver of the Bus as well as the driver of the Tipper Lorry are equally responsible for the accident and fixed negligence on both

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the drivers in the ratio 50 : 50, awarded a sum of Rs.46,07,561/- as compensation to the claimants and directed the respondents 1 & 3 to pay each 50% of the compensation awarded.

12.Challenging 50% liability fastened on them as well as quantum of compensation granted by the Tribunal in the award dated 16.10.2020, made in M.C.O.P.No.1545 of 2017, the 3rd respondent-Insurance Company has come out with appeal in C.M.A.No.3466 of 2021.

13.Not being satisfied with the amounts awarded by the Tribunal in the award dated 16.10.2020, made in M.C.O.P.No.1545 of 2017, the claimants have come out with appeal in C.M.A.No.2570 of 2021.

14.The learned counsel appearing for the 3rd respondent – Insurance company contended that FIR was registered only against the driver of the bus belonging to 1st respondent and the Tribunal erroneously fixed 50% negligence on the driver of the Tipper Lorry belonging to 2nd respondent. R.W.1 / Head Constable of Siruganur Police Station deposed that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to 1st respondent and the Tribunal failed to accept the

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same. After investigation, the charge sheet was also filed against the driver of the bus. The Tribunal having rightly held that evidence of P.W.2 is false, erroneously fixed 50% negligence on the driver of the Tipper Lorry. The monthly income of the deceased fixed by the Tribunal at Rs.34,921/- is excessive. The deceased was aged 56 years at the time of accident and the Tribunal erroneously granted 50% enhancement towards future prospects. The amount awarded by the Tribunal towards loss of love and affection is excessive. The Tribunal did not deduct any amount towards income tax. The total compensation awarded by the Tribunal is excessive and prayed for fixing entire negligence on the part of the driver of the bus and allowing C.M.A.No.3466 of 2021 filed by them and dismissing C.M.A.No.2570 of 2021, filed by the claimants for enhancement of compensation.

15.The learned counsel appearing for the 1st respondent – Transport Corporation contended that the driver of the Tipper Lorry only drove the same in a rash and negligent manner, stopped the lorry without any signal in the middle of the road. At that time, the driver of the bus, who was proceeding behind the Tipper Lorry did not anticipate the same and tried to stop the bus. Inspite of best efforts taken by the driver of the bus, the bus

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dashed on the backside of the Tipper Lorry and thus the accident occurred. The driver of the Tipper Lorry has given false complaint against the driver of the bus, based on which FIR was registered against the driver of the bus. The Tribunal ought to have considered entire materials and fixed the negligence on the driver of the Tipper Lorry belonging to 2nd respondent. The notional income of the deceased fixed by the Tribunal at Rs.34,921/- per month is not meagre. The Tribunal considering entire materials on record, has awarded a sum of Rs.46,07,561/- as compensation to the claimants and the same is not meagre and prayed for dismissal of C.M.A.Nos.3466 & 2570 of 2021.

16.The learned counsel appearing for the claimants contended that at the time of accident, the deceased was working as Conductor in TNSTC and was earning a sum of Rs.45,000/- per month. But, the Tribunal erroneously fixed a meagre sum of Rs.34,921/- as monthly income of the deceased and awarded compensation. The claimants have spent more than Rs.1,00,000/- for medical treatment of the deceased. But, the Tribunal has awarded meagre amount of Rs.39,700/- towards medical expenses of the deceased. The amount awarded by the Tribunal towards loss of consortium is meagre and prayed for enhancement of compensation and for dismissal

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of C.M.A.No.3466 of 2021, filed by the 3rd respondent-Insurance Company.

17.Heard the learned counsel appearing for the claimants, learned counsel appearing for the 1st respondent – Transport Corporation as well as the learned counsel appearing for the 3rd respondent-Insurance Company and perused the entire materials on record.

18.From the materials on record, it is seen that is the case of the claimants that on 21.08.2016, while the deceased was travelling in the bus belonging to 1st respondent as duty Conductor on the Chennai – Trichy byepass road at P.K.Agaram, the driver of the Tipper Lorry, who was driving the same ahead of the bus, suddenly stopped the Tipper Lorry without any indication. Due to the same, the bus dashed behind the Tipper Lorry and thus, the accident occurred. In the accident, the said R.Boominathan sustained grievous injuries and succumbed to injuries on 23.08.2016. To substantiate their case, the 1st claimant examined herself as P.W.1, one Ramachandran, eyewitness to the accident was examined as P.W.2 and marked FIR as Ex.P1, which was registered against the driver of the bus belonging to 1st respondent. Further, is the case of the 1st

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respondent – Transport Corporation that the accident occurred only due to rash and negligent driving by the driver of the Tipper Lorry belonging to 2nd respondent. To prove the said contention, the 1st respondent did not examine the driver of the bus or any independent eyewitness. It is the case of the 3rd respondent – Insurance Company that accident has occurred only due to rash and negligent driving by the driver of the Bus belonging to 1st respondent. To prove the said contention, the 3rd respondent examined the Head Constable of the Siruganur Police Station as R.W.1 and marked the final report as R.W.1. It is the further case of the 3rd respondent that FIR was also registered against the driver of the Bus belonging to 1st respondent.

18(i). P.W.2 in his evidence has deposed that he came to give evidence only on the compulsion of P.W.1. Further, P.W.1 wife of the deceased is also not an eyewitness to the accident. The Tribunal considering the same, did not accept the evidence of both P.W.1 & P.W.2. The Tribunal considering the materials on record, held that the Tipper Lorry belonging to 2nd respondent was proceeding ahead of the Bus belonging to 1st respondent. The Tribunal further held that had the driver of the Tipper Lorry drove the same by following the Road Traffic Rules and

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also had the driver of the Bus drove the same by maintaining sufficient distance, the accident could have been avoided. Therefore, the Tribunal held that both the drivers were not vigilant enough while driving their vehicles and held both the drivers are equally responsible for the accident and fixed liability equally on the respondents 1 & 3. There is no error in the said finding of the Tribunal warranting interference by this Court.

19.As far as quantum of compensation is concerned, it is the case of the claimants that at the time of accident, the deceased was aged 55 years, working as Conductor in TNSTC and was earning a sum of Rs.45,000/- per month. To prove the same, the claimants produced the salary certificate of the deceased and marked the same as Ex.P8. As per Ex.P8, the deceased was earning a sum of Rs.34,921/- per month at the time of accident. The Tribunal considering Ex.P8 has fixed a sum of Rs.34,921/- as monthly income of the deceased and the same is in order. As per Ex.P6 / postmortem certificate, the deceased was aged 56 years at the time of accident and the Tribunal has erroneously granted 50% enhancement towards future prospects. The deceased was in a permanent job at the time of accident and as per the judgment of the Hon'ble Apex Court reported in ***2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs.***

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Pranay Sethi and others], the claimants are entitled to only 15% enhancement towards future prospects. The Tribunal 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]***, rightly applied multiplier '9'. There are four dependants of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased. The Tribunal has not deducted any amount towards income tax. Thus, the calculation for arriving annual income is as follows :-

Monthly salary of the deceased	...	Rs.34,921.00
ADD: 15% enhancement towards future prospects	...	Rs.5,238.15

		Rs.40,159.15

		(rounded off to Rs.40,159/-)
Annual income (40,159/- X 12)	...	Rs.4,81,908/-

Income Tax Slab for Assessment Year 2017-2018:

Upto Rs.2,50,000/-	-	Nil
From Rs.2,50,000/- to Rs.5,00,000/- (10%) [Rs.4,81,908/- - Rs.2,50,000/- = Rs.2,31,908/- =Rs.2,31,908/- X 10%]	-	Rs.23,190.80

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Rs.23,190.80

(rounded off to Rs.23,191/-)

Annual income after deducting income tax (Rs.4,81,908/- – Rs.23,191/-) - Rs.4,58,717/-

Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.30,96,339.75/- [Rounded off to Rs.30,96,340/-] (Rs.4,58,717/- X 9 X 3/4).

19(ii).The Tribunal has awarded a sum of Rs.2,50,000/- towards loss of love and affection to the claimants, who are the wife and daughters of the deceased for which they are not entitled to. Therefore, the amount awarded by the Tribunal towards loss of love and affection is modified as the claimants 2 to 4, who are the daughters of the deceased are entitled to a sum of Rs.40,000/- each towards loss of parental consortium. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

Thus, the compensation awarded by the Tribunal is modified as follows:

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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	42,42,861/-	30,96,340/-	Reduced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of parental consortium to claimants 2 to 4	2,50,000/-	1,20,000/- (Rs.40,000/- each)	Reduced
5.	Loss of consortium to 1st claimant	40,000/-	40,000/-	Confirmed
6.	Transportation	5,000/-	5,000/-	Confirmed
7.	Medical expenses	39,700/-	39,700/-	Confirmed
	Total	**Rs.46,07,561/-**	**Rs.33,31,040/-**	**Reduced by Rs.12,76,521/-**

20.In the result, C.M.A.No.2570 of 2021 filed by the claimants is dismissed and C.M.A.No.3466 of 2021 filed by the 3rd respondent-Insurance Company is partly allowed reducing the compensation awarded by the Tribunal at Rs.46,07,561/- to Rs.33,31,040/- together with interest at the rate of 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The respondents 1 & 3 are directed to deposit 50% of the award amount each (i.e., Rs.16,65,520/- each) now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of

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M.C.O.P.No.1545 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore. On such deposit, the claimants are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The 3rd respondent-Insurance Company as well as the 1st respondent – Transport Corporation are permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.1545 of 2017, if the entire award amount has already been deposited by them. Consequently, the connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.M., J)
04.11.2022

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To

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1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Cuddalore.

2.The Section Officer,
VR Section,
High Court,
Madras.

V.M.VELUMANI, J.

and

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SUNDER MOHAN, J.

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