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C.M.A. No.2751 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

AND

**THE HONOURABLE Ms.JUSTICE R.N.MANJULA**

C.M.A. No.2751 of 2021  
and C.M.P. No.15730 of 2021

The Managing Director,  
Tamil Nadu State Transport Corporation Ltd.,  
Railway Station New Road,  
Kumbakonam.

...

Appellant

/vs/

1. Hemamalini  
2. Chandra  
3. Selvaraj  
4. Packirisamy  
5. Muthukumarasamy

... Respondents

Civil Miscellaneous Petition is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 27.09.2019 made in M.C.O.P. No.217 of 2018 on the file of the Motor Accident Claims Tribunal / District Court, Karaikal by allowing the Civil Miscellaneous Appeal.



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|                     |     |                                 |
|---------------------|-----|---------------------------------|
| For Petitioner      | ... | Mr. P.Rajathi<br>for Mr.D.Raghu |
| For Respondents 1-3 | ... | Mr. Varadhakamaraj              |
| 4                   | ... | Notice Refused                  |
| 5                   | ... | No apperance                    |

## JUDGMENT

*(Judgment of the Court was made by R.Subramanian, J.)*

The Transport Corporation is on appeal aggrieved by the award of the Motor Accident Claims Tribunal (District Court), Karaikal in M.C.O.P. No.217 of 2018 granting a sum of Rs.27,56,272/- as compensation for the death of one Pandian @ Pandiarajan in a motor accident that occurred on 07.07.2018.

2. According to the claimants, the deceased Pandiarajan along with the other relatives have travelled to Thirunallar in a bus belonging to the Transport Corporation having Reg. No.TN-68-N-0484. When the bus stopped at Thirunallar to enable the passengers to alight, the deceased along with his sister came near the door step and at that time the fifth respondent / driver of the bus started the bus in a rash and negligent



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manner resulting the deceased and other passengers being thrown out of the bus. While the other passengers sustained injuries, the deceased suffered head injury and died on the way to the hospital. Upon complaint, a First Information Report was registered against the driver of the bus in Crime No.87/2018 for the offences under Section 279, 337 IPC, with the Traffic Police, Karaikal. Claiming that the deceased was a Welder and was earning Rs.600/- per day, the claimants sought for compensation of Rs.40,00,000/-.

3. The claim was resisted by the Transport Corporation contending that the accident did not occur in the manner suggested by the claimants and the accident had occurred when the deceased attempted to prevent his father getting down from the bus. The Transport Corporation claimed that the deceased had also contributed to the accident.

4. Before the Tribunal, the first claimant / wife of the deceased was examined as P.W.1 and the conductor of the bus was examined as R.W.1, a copy of the First Information Report was marked as Ex.P1, the post-



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mortem certificate of the deceased was marked as Ex.P5 and the voter identity card of the deceased was marked as Ex.P7. The Tribunal, upon consideration of the evidence on record, concluded that the accident had occurred due to the negligence of the driver of the bus. In coming to the said conclusion, the Tribunal had took into account the First Information Report filed against the driver of the bus. The Tribunal had also faulted the Transport Corporation for not having examined the driver of the bus while examining the conductor as R.W.1. The fact that no complaint was lodged by either the driver or the conductor was also taken in to account by the tribunal.

5. On the quantum of compensation, the Tribunal took the notional income at Rs.6,500/- per month and applied the Inflation Index as suggested by this Court in the case of *Andal and others Vs. Avinav Kannan and others* reported in **2019 (1) TN MAC 54 (DB)** and arrived at the notional monthly income at Rs.14,109/-. The Tribunal added 40% towards future prospects and after deducting 1/3<sup>rd</sup> towards personal expenditure arrived monthly dependency at Rs.13,168/-. Multiplier 17



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was applied and the total loss of dependency was fixed at Rs.26,87,272/-.

The Tribunal had also awarded compensation for the loss of consortium, loss of estate and funeral expenses at Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively and the total compensation was arrived at Rs.27,56,272/-.

6. Aggrieved, the Transport Corporation is on appeal.

7. We have heard Ms.P.Rajathi, learned counsel appearing for the Transport Corporation and Mr.Varadha Kamaraj, learned counsel appearing for the claimants.

8. Ms.P.Rajathi, learned counsel appearing for the Transport Corporation would contend that the Tribunal was not right in adopting the Inflation Index and adding 40% towards future prospects. She would also point out that the correctness of the judgment of Division Bench in *Andal and others Vs. Avinav Kannan and others (cited supra)* has been doubted and the same has been referred to a larger bench. She would also invite us



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to interfere with the findings of the Tribunal on the question of negligence based on the evidence of R.W.1.

9. Contending contra, Mr.Varatha Kamaraj,learned counsel appearing for the claimants would submit that de hors the modus adopted by the Tribunal in arriving at Rs.14,109/- as the notional income, the notional income fixed at Rs.14,109/- is reasonable since the accident had occurred in the year 2018. The learned counsel would therefore submit that without going into the correctness or otherwise of the judgment in *Andal and others Vs. Avinav Kannan and others (cited supra)*, the quantum fixed by the Tribunal can be affirmed on the ground that it is reasonable.

10. We are also inclined to agree with the submissions of the learned counsel for the claimants. As already pointed out, the accident had occurred in the year 2018 and even the minimum wages payable to the Office Assistants (Grade-IV employee) during the relevant period was more than Rs.17,000/-. Hence, the adoption of Rs.14,109/- as the notional income does not, in our opinion, called for interference. We have also taken into



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account the fact that the deceased was a skilled worker.

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11. As regards the question of negligence, the First Information Report was lodged immediately after the accident and it blames the driver of the bus for the accident. No doubt, the conductor of the bus was examined but no complaint has been lodged against the deceased or his companions either by the driver or conductor of the bus. The Transport Corporation has also not chosen to place the best evidence before Court by examining the driver. We therefore, do not see any reason to interfere with the conclusion of the Tribunal on negligence.

12. It is seen that the Transport Corporation has deposited 50% of the award amount along with the accrued interest pursuant to the interim order of this Court dated 23.09.2021. The Transport Corporation will have twelve weeks of time from the date of receipt of a copy of this order, to deposit the balance amount and on such deposit, the claimants are permitted to withdraw the same.



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**WEB COPY** 13. In view of the above, the Civil Miscellaneous Appeal stands dismissed and the award dated 27.09.2019 made in M.C.O.P. No.217 of 2018 on the file of the Motor Accident Claims Tribunal / District Court, Karaikal is confirmed. No costs. Connected miscellaneous petition is closed.

**(R.S.M., J.)**

**(R.N.M., J.)**

**14.12.2022**

Index: No  
Speaking order  
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To:

The Motor Accident Claims Tribunal / District Court,  
Karaikal.



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**R.SUBRAMANIAN, J.**

and

**R.N.MANJULA, J.**

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