



C.M.A.No.2375 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

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

**C.M.A. No.2375 of 2022**  
**and C.M.P.No.18489 of 2022**

The Managing Director,  
Tamil Nadu State Transport  
Corporation Ltd., Salem  
No.12, Ramakrishna Road,  
Salem District 636 007.

.. Appellant

Vs.

1.Geetha  
2.Prasanth  
3.Minor Shreesharan  
(rep. By his next friend/mother, 1<sup>st</sup> respondent)  
4.Anbarasu  
5.Raja

.. Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.07.2022, made in M.C.O.P. No.572 of 2020, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem.



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For Appellant : Mr.D.Nitin

For RR1 to 3 : Mr.R.Navaneetha Krishnan

### **J U D G M E N T**

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

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation against the judgment and decree dated 08.07.2022, made in M.C.O.P. No.572 of 2020, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem.

2.The appellant is the 2<sup>nd</sup> respondent in M.C.O.P. No.572 of 2020, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem. The respondents 1 to 3/claimants filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of Ramesh who died in the accident that took place on 04.10.2019 against the appellant and 4<sup>th</sup> respondent as owner and driver of the TNSTC Bus. The 5<sup>th</sup> respondent, father of the deceased Ramesh is impleaded as 3<sup>rd</sup> respondent in the claim petition.



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3. According to the respondents 1 to 3, on the date of accident, at about 5.10 a.m., when the deceased Ramesh was riding a Honda Shine Bike bearing Registration No.TN-90-A-3810 from Attayampatti to Salem on the extreme left side of Kodalampatty to Annathanapatti road, near Bharathi Hospital, the 4<sup>th</sup> respondent/driver of the Bus bearing Registration No.TN-30-N-0623 owned by the appellant-Transport Corporation drove the same in a rash and negligent manner without following any traffic rules in the wrong side at high speed, without blowing horn and hit on the Honda Shine Bike and caused the accident. In the accident, the said Ramesh sustained head injuries, apart from multiple fractures and died on 10.10.2019 in VIMS Hospital, Seeragapadi, Salem. The accident occurred only due to rash and negligent driving by the 4<sup>th</sup> respondent/driver of the Bus owned by the appellant-Transport Corporation and hence, the respondents 1 to 3 filed the said claim petition against the 4<sup>th</sup> respondent and appellant-Transport Corporation as driver and owner of the Bus respectively.



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4.The appellant-Transport Corporation filed counter statement in the claim petition and denied all the averments made by the respondents 1 to 3 in the claim petition, including the manner of accident. According to the appellant, on the date of accident their Bus was taken at 5.15 hours and driven in Route No.12 from Salem old bus stand to Parapatty. At about 5.20 hours, while nearing Annathanapatti Bharathi Hospital, on seeing the Honda Shine Bike driven by the deceased in the right side, the 4<sup>th</sup> respondent/driver of the Bus stopped the Bus. The deceased Ramesh without seeing the Bus, came and dashed on the right side of the Bus and fell down. The accident occurred only due to rash and negligent riding of Honda Shine Bike by the deceased Ramesh. In any event, the claim petition is bad for non-joinder of owner and insurer of the Honda Shine Bike driven by the deceased. The amounts claimed by the respondents 1 to 3 are exorbitant and prayed for dismissal of the claim petition.



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5.The 5<sup>th</sup> respondent remained exparte before the Tribunal.

6.Before the Tribunal, 1<sup>st</sup> respondent examined herself as P.W.1, one Sathish, eye-witness to the accident was examined as P.W.2 and one Sathishkumar, employer of the deceased as P.W.3 and marked 13 documents as Exs.P1 to P13. Two documents were marked as Exs.X1 and X2. The appellant examined one Sithaiyan as R.W.1, but did not produce any documentary evidence.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 4<sup>th</sup> respondent/driver of the Bus owned by the appellant-Transport Corporation and directed the appellant-Transport Corporation to pay a sum of Rs.43,13,028/- as compensation to the respondents 1 to 3 and 5.



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8. Against the said award dated 08.07.2022, made in M.C.O.P. No.572 of 2020, the appellant – Transport Corporation has come out with the present appeal.

9. The learned counsel appearing for the appellant-Transport Corporation reiterated the averments made in the counter statement and contended that the accident occurred only due to rash and negligent riding of Honda Shine Bike by the deceased Ramesh. The Tribunal ought to have considered the contents of counter statement filed by the appellant to prove their case, instead of holding that the appellant did not let in any evidence and fixing negligence on the part of the 4<sup>th</sup> respondent/driver of the Bus. It is well settled that FIR is not the basis for fixing negligence for the accident. The Tribunal has to independently consider the evidence placed before it and come to a conclusion with regard to negligence. The deceased Ramesh being a Government employee aged 50



years at the time of accident, the 1<sup>st</sup> respondent, his wife is entitled for full pension only for a period of 7 years. The Tribunal erred in granting 25% enhancement towards future prospects and awarding compensation towards loss of dependency, by applying the multiplier '13'. The amounts awarded by the Tribunal towards loss of love and affection, loss of consortium, medical expenses and funeral expenses are excessive and prayed for dismissal of the claim petition.

10.The learned counsel appearing for the respondents 1 to 3 made submissions in support of the award passed by the Tribunal and submitted that the total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant-Transport Corporation as well as the respondents 1 to 3 and perused the entire materials available on record.



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12. From the materials on record, it is seen that it is the case of the respondents 1 to 3 that while the deceased Ramesh was riding Honda Shine Bike on the extreme left side of Kodalampatti – Annadhanapatti road, near Bharathi Hospital, the 4<sup>th</sup> respondent/driver of the Bus owned by the appellant-Transport Corporation drove the same from opposite direction without following the traffic rules in a rash and negligent manner and hit against the Honda Shine Bike driven by the deceased and caused the accident. In the accident, the said Ramesh sustained head injuries and multiple fractures and died in the Hospital on 10.10.2019, inspite of treatment. To substantiate their stand, the 1<sup>st</sup> respondent examined herself as P.W.1 and examined one Sathish, eye-witness to the accident as P.W.2 and marked FIR registered against the driver of the Bus as Ex.P1. On the other hand, it is the case of the appellant-Transport Corporation that while the 4<sup>th</sup> respondent/driver of the Bus was driving the Bus at a moderate speed, on seeing the deceased Ramesh coming in a rash and negligent manner on the right side of the road, stopped the Bus. The



deceased Ramesh, without noticing the Bus, hit on the right side of the Bus and invited the accident. To substantiate their contention, the appellant-Transport Corporation has not examined either the driver of the Bus or any other independent eye-witnesses. The Tribunal considering the fact that FIR was registered against the driver of the Bus, in the absence of any contra evidence to the evidence of P.W.2, considering the evidence of P.W.2, eye-witness to the accident, held that the accident occurred only due to the rash and negligent driving by the 4<sup>th</sup> respondent/driver of the Bus. In view of all the above materials, there is no error in the finding of the Tribunal warranting interference by this Court.

13.As far as the quantum of compensation is concerned, the respondents 1 to 3 claimed that at the time of accident, the deceased Ramesh was aged 49 years, working as a Special Sub-Inspector of Police in Attayampatty Police Station and was earning a sum of Rs.55,000/- per month. The respondents 1 to 3 have marked the pay slip of the deceased Ramesh as Ex.X2. The Tribunal



considering Ex.X2, rightly fixed the net income of the deceased at Rs.27,747/-

per month and granting 25% enhancement towards future prospects, applying multiplier '13', awarded compensation towards loss of dependency, after deducting 1/4<sup>th</sup> towards personal expenses of the deceased. In the judgment of the Hon'ble Apex Court reported in **(2022) 5 SCC 107 [R.Valli and others Vs. Tamil Nadu State Transport Corporation Ltd.]**, following the judgment reported in **2017 (2) TNMAC 609 (SC) [National Insurance Company Limited Vs. Pranay Sethi and others]**, it is held that method of determination of compensation by applying two multipliers is erroneous and contrary to the judgments of the Hon'ble Apex Court reported in **2017 (2) TNMAC 609 (SC)** and **2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another]**. The contention of the learned counsel appearing for the appellant that the 1<sup>st</sup> respondent is entitled for full pension for 7 years and hence, split multiplier of 7+6 should be applied instead of granting compensation towards loss of dependency by applying multiplier '13' is not acceptable in view of the judgment of the Hon'ble Apex Court



reported in **(2022) 5 SCC 107**, cited supra. The Hon'ble Apex Court in the said judgment held that multiplier applicable is based on the age of the deceased.

Hence, the amounts awarded by the Tribunal towards loss of dependency is in order. The Tribunal has failed to award any amount towards loss of estate and has excessively granted a sum of Rs.25,000/- towards funeral expenses. Similarly, the Tribunal has awarded meagre sum of Rs.20,000/- each to the respondents 1 to 3 and 5 towards loss of love and affection. In view of the same, the total compensation awarded by the Tribunal under different heads are not excessive, warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.43,13,028/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Transport Corporation is directed to deposit the award amount along with interest and costs, less the amount already deposited, within a period of twelve weeks from the date of receipt of a copy of this



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judgment, to the credit of M.C.O.P. No.572 of 2020. On such deposit, the respondents 1, 2 and 5 are permitted to withdraw their respective share of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 3<sup>rd</sup> respondent is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1<sup>st</sup> respondent, mother of the minor 3<sup>rd</sup> respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 3<sup>rd</sup> respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.M., J)  
08.11.2022

Index : Yes/No  
Speaking Order : Yes/No  
(gsa)

To

1.The District Judge,

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Commercial Court,  
Special District Court (FAC),  
(Motor Accident Claims Tribunal)  
Salem.

2.The Section Officer,  
V.R Section,  
High Court, Madras.



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**V.M.VELUMANI, J.  
and  
SUNDER MOHAN, J.**

(gsa)

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