



C.M.A.No.2324 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2324 of 2017

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Cros. Obj. No.53 of 2022

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C.M.P.No.12422 of 2017

C.M.A.No.2324 of 2017

The Managing Director,
Andhrapradesh State Road
Transport Corporation,
Hyderabad

...Appellant

Vs

1.K.Balachandira

2.Thulasimani

3.Padma

4.Surekha

5.Vishnu

... Respondents

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C.M.A.No.2324 of 2017

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 18.12.2015 passed by the Hon'ble Special District Judge, Motor Accident Claims Tribunal, Krishnagiri in M.C.O.P.No.797 of 2013.

For Appellant : Mrs.G.V.Shoba

For Respondents : Mr.Mukund R. Paniyan

Cros. Obj. No.53 of 2022

1.K.Balachadira

2.Thulasimani

3.Padma

4.Surekha

5.Vishnu

... Cross Objectors

Vs

The Managing Director,
Andhrapradesh State
Transport Corporation,
Hyderabad

... Respondents

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Prayer: Cross Objection filed under Order 41 Rules 22 of CPC in C.M.A.No.2324 of 2017 on the file of this Hon'ble Court filed against the Judgement and Decree dated 18.12.2015 in M.C.O.P.No.797 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Cross Objectors : Mr.Mukund R. Paniyan

For Respondents : Mrs.G.V.Shoba

JUDGEMENT

The above Civil Miscellaneous Appeal and Cross Objection arise from the award passed by the Motor Accident Claims Tribunal, Krishnagiri in M.C.O.P.No.797 of 2013. The brief facts are as follows.

2. The cross objectors who are the claimants before the Tribunal are the parents and siblings of one Lingamurthy who died in a road accident on 10.04.2013. It is the case of the cross objectors that the said Lingamurthy was aged about 21 years and employed as a Mason,



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earning a sum of Rs.10,000/- per month. It was their further case that on 10.04.2013, in the afternoon the deceased had taken out his TVS Super XL moped from his village to drop his friend to the nearest village. Whiles, the appellant's bus driven by its driver in a rash and negligent manner dashed against the deceased, as a result the said Lingamurthy and the pillion rider had passed away. The cross objectors claimed a sum of Rs.15,00,000/- as compensation.

3. The appellant corporation had filed their counter inter alia contending that the accident was solely on account of the negligence of the deceased who had driven the vehicle in a rash and negligent manner. It was their case that on the said date at about 13.30 hours after the 7th mile, the conductor of the bus had signalled the bus to stop at the stage Hamsapuram. The driver of the bus applied the brake and the deceased who was coming from the opposite direction and attempting to overtake an auto had hit the front side of the appellant



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bus, as a result of which both he and the pillion rider fallen down and sustained fatal injuries. Therefore, the accident is only on account of the negligence of the deceased.

4. The appellant corporation would further contend that the owner and insurer of the moped was also necessary parties to the claim and since they have not been impleaded, the petition is bad for non-joinder of necessary parties. They had denied the age, occupation and monthly income of the deceased and had ultimately sought for the dismissal of the claim.

5. The Tribunal below taking into account the evidence of P.W.2 and Ex.A.1, FIR had come to the conclusion that the accident had occurred only on account of the negligence on the part of the driver of the appellant bus.



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6. As regards quantum, the Tribunal taking into account the fact that the Cross objectors have not been able to prove the monthly income of the deceased had adopted a notional income of Rs.8,000/-. Of this, 50% was kept aside for personal expenses of the deceased as he was a bachelor. Therefore, the contribution to the family was taken to be a sum of Rs.4,000/-. Since the deceased was aged about 21 years, a multiplier of 18 has been adopted and the compensation under the head of loss of Income is worked out to a sum of Rs.8,64,000/-. The Tribunal has awarded a sum of Rs.20,000/- each towards Transportation Charges and towards Funeral Expenses. Towards loss of Love and Affection to the cross objectors, a sum of Rs.50,000/- each has been awarded. Ultimately, the Tribunal has awarded a sum of Rs.11,54,000/- as a total compensation to the Cross Objectors.

7. The Transport Corporation has challenged the said award



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stating that the fixation of notional income of Rs.8,000/- was on the higher side. That apart, the amounts granted under the head of Funeral Expenses as well as Transportation Charges was on the higher side. The claimants on the other hand filed the Cross Objection seeking enhancement of the award passed by the Tribunal.

8. The learned counsel for the cross objectors would contend that the deceased was a Mason and the Tribunal ought to have fixed a notional income at Rs.10,000/-. They had also submitted that the Tribunal below has not granted any amount under the head of Future Prospects considering the fact that the deceased was aged just about 21 years at the time of his death. That apart, they would contend that no amount has been granted under the head of Loss of Estate.

9. Per contra, Ms.G.V.Shoba, learned counsel appearing for the



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appellant Transport Corporation would submit that the notional income arrived at by the Tribunal below was well in keeping with the various Judicial Pronouncements of the Courts. The learned counsel would submit that the Tribunal has awarded a huge sum of Rs.20,000/- towards Transportation and further sum of Rs.20,000/- towards Funeral Expenses, which is against the Judgement of the Hon'ble Supreme Court reported in **2017 (2) TNMAC 609 – National Insurance Company Vs. Pranay Sethi & others**. Therefore, she would submit that the amount has to be reduced.

10. Heard the learned counsels and perused the records.

11. Admittedly, the Cross Objectors have not been able to file any documents to show the income of the deceased. The Tribunal has adopted a sum of Rs.8,000/- as the notional income, which appears to be very reasonable. As pointed out by the cross objectors, the Tribunal



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has not considered the Future Prospects. Therefore, 50% has to be awarded under the said head considering the fact that the deceased was aged about 21 years. The notional income therefore worked out to a sum of **Rs.12,000/-**. Since the deceased was a bachelor, 50% has to adjusted towards his personal expenses. Therefore, the monthly contribution to the family would be a sum of **Rs.6,000/-**, to which the relevant multiplier of 18 has to be added. Therefore, the amount under the head of Loss of Income would be a sum of $\text{Rs.6,000/-} \times 12 \times 18 =$ **Rs.12,96,000/-**.

12. A sum of Rs.20,000/- has been awarded under the head of Transport charges, which has to be reduced to a sum of **Rs.5,000/-**. Further, no amounts have been granted under the head of Loss of Estate. Towards the above head, a sum of **Rs.15,000/-** should be granted and Funeral Expenses has to be reduced from Rs.20,000/- to **Rs.15,000/-**. Similarly, the amounts under the head of Loss of Love



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and Affection has to be reduced from Rs.2,50,000/- to **Rs.2,00,000/-**.

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Therefore, the total compensation payable now stands modified and enhanced to a sum of **Rs.15,31,000/-**.

13. The award of the Tribunal below is re-worked as follows:

<i>Heads</i>	<i>Award of the Tribunal</i>	<i>Award of the High Court</i>
Loss of Income	Rs.8,64,000/-	Rs.12,96,000/-
Transportation Charges	Rs.20,000/-	Rs.5,000/-
Funeral Expenses	Rs.20,000/-	Rs.15,000/-
Loss of Love and Affection	Rs.2,50,000/-	Rs.2,00,000/-
Loss of Estate	-----	Rs.15,000/-
Total	Rs.11,54,000/-	Rs.15,31,000/-

14. The Civil Miscellaneous Appeal is dismissed. The Cross Objection is partly allowed. The Transport Corporation is directed to deposit the enhanced award amount along with interest and costs, less the amount already deposited within a period of six weeks from the

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date of receipt of a copy of this Judgement, to the credit of M.C.O.P.No.797 of 2013. On such deposit, the claimants are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by filing necessary application before the Tribunal. The claimants shall show proof of payment of the Court fees for the enhanced award amount and only on such proof they shall be permitted to withdraw the amounts so deposited. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

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

To,

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The Special District Judge,
Motor Accident Claims Tribunal,
Krishnagiri

P.T.ASHA, J.,

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