



C.M.A.(MD)No.316 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 23.08.2022

Delivered On : 30.08.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.316 of 2022
and C.M.P.(MD)No. 6080 of 2022

The Managing Director,

Tamil Nadu State Transport

Corporation Kumbakonam Kottam,

Pudukkottai Zone, Thirumayam Road,

Pudukkottai Town & District.

.. Appellant / Respondent

Vs.

S.Karthik

.. Respondent/ Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No.203 of 2019, dated 16.06.2021, on the file of the Motor Accident Claims Tribunal – Principal District Court, Pudukkottai.

For Appellant : Mr.P.Prabhakaran

For Respondents 1 to 4 : Mr.M.Murugan

Respondent No.5 : Given up



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No.203 of 2019, dated 16.06.2021, on the file of the Motor Accident Claims Tribunal – Principal District Court, Pudukkottai. The appellant herein is the first respondent and the respondents 1 to 4 herein are the claimants and the fifth respondent herein is the second respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition, in M.C.O.P.No.203 of 2019, is as follows:

On 25.09.2018, when the deceased- Subramanian was riding his two wheeler, bearing Registration No.TN-55-AL-5057 along the Thirumayam to Pudukkottai road, near Veerappatty bus stop, a bus bearing Registration No.TN-55-N-0696 was driven by its driver in a rash and negligent manner, dashed against the right side of the deceased vehicle. He was given first aid in the Government Hospital, Thirumayam, then, he was shifted to Pudukkottai Muthu Meenatchi private Hospital and then he was shifted to Trichy Neuro one Hospital and was admitted as inpatient, inspite of treatment, he died on 02.10.2018. The deceased was doing two wheeler sales and service business and he was earning



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more than Rs.40,000/- per month. The claimants are his dependents and they claimed a sum of Rs.50,00,000/-as compensation.

3. Brief substance of the counter filed by the second respondent in M.C.O.P.No.203 of 2019, is as follows:

The manner of accident is denied. The age, income, period of treatment, medical bills are to be proved. At the time of accident, the bus was stationed at the bus stop for loading and unloading the passengers. At that time, the deceased drove the two wheeler in a rash and negligent manner, hit against the back side of the bus. It was the deceased, who invited the accident due to his own negligence. F.I.R. was registered only against the deceased. This respondent is not liable to pay compensation. The claim is excessive.

4. On the side of the claimants, 6 witnesses were examined and 23 documents were marked. On the side of the respondents, 1 witness was examined and 1 document was marked. 1 document was marked as Court document. After considering both sides, the Tribunal awarded a sum of Rs.25,44,739/- as compensation.



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WEB COPY 5. Against the award, the appellant has filed this appeal on the following grounds:-

The Tribunal is wrong in holding that the driver of the appellant was solely responsible for the accident. The Tribunal has failed to fix the entire negligence on the deceased, who rode the two wheeler in a rash and negligent manner, without keeping the sufficient safety distance, he hit against the back side body of the bus, while the appellant's bus was stopped at the bus stop to pick up the passengers. The Tribunal is wrong in fixing the liability on the bus driver. The Tribunal has erred in fixing the monthly income of the deceased at Rs. 13,700/-, which is too high. The Tribunal added 25% towards future prospects and deducted 1/4th income of the deceased towards persons expenses, which are all not reasonable. The Tribunal is wrong in awarding Rs.40,000/- towards filial consortium to the children and Rs.40,000/- towards consortium to the wife, which are excessive. The Tribunal has awarded Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, which are all too high.

6. On the side of the appellant, it is stated that at the time of accident, the bus was stopped at the bus stop, to pick up the passengers. It was the



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deceased, who hit the bus from behind. F.I.R was registered only against the deceased. Charge sheet was referred, after the death of the deceased.

7. On the side of the respondents 1 to 4/ claimants, it is stated that the negligent is on the part of the driver of the bus. It is wrong to state that the deceased hit the bus from behind. It was the driver of the bus, who gave complaint to the police and hence, F.I.R was registered against the deceased. It was the bus, which overtake the two wheeler and dashed against the right side of the two wheeler. P.W.2 has deposed that the bus over take the two wheeler and hit against the two wheeler on the right side portion. Admittedly, there is no damage in the rear side of the bus. There was no damage on the front side of the two wheeler. M.V.I. report confirmed the same. From the M.V.I. report, it is clear that there was scratch on the right side portion of the two wheeler and a damage on the right rear side of the silencer, which clearly reveals that it was the bus while overtaking the two wheeler, dashed on the right side of the two wheeler.

8. On the side of the respondents 1 to 4/ claimants, a judgment of the Hon'ble Supreme Court reported in **2019-3-MLJ-644 (SC) (Sunitha V. Rajasthan State Road Transport Corporation)** is cited, wherein, it is stated



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as follows:-

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“The evidence of eye witness / A.D.2 unequivocally states that the second respondent / bus driver was negligent in driving recklessly at high speed on wrong side of the road. Thus, resulting in accident which caused death of family member of appellants. Not open to High Court to discard this evidence.”

9. In the M.V.I. reports – Ex.P11 and Ex.P12, it is stated that there was scratch on the right side of the two wheeler and there was damage on the back side of the silencer was damaged. As per the M.V.I. reports, there is no damage on the rear side of the bus and there is no damage on the front portion of the two wheeler. P.W.2 is the eye-witness. It is seen that the deceased was having driving licence and the same was marked as Ex.P13. From the evidence of P.W.2 and Ex.P11 and Ex.P12, it is decided that the driver of the bus is responsible for the accident.

10. On the side of the appellant, it is stated that the Tribunal has fixed the monthly income excessively and the fixation of income as Rs.13,700/- is on the higher side and prayed the same to be reduced.



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WEB COPY 11. On the side of the appellant, it is further stated that though in column No.7 of the petition, it was mentioned that the deceased was a tax payer, no document was produced to prove the payment of income tax and the income to be reduced.

12. On the side of the respondents 1 to 4 /claimants, it is stated that the deceased was doing service and sale of two wheeler and he was earning Rs. 3,000/- to Rs.4,000/- for the sale of one vehicle and that he was earning more than Rs.40,000/- per month.

13. No records were filed to show that the deceased was a dealer of two wheeler or that he was running a service station for two wheelers. Hence, the notional income fixed by the Tribunal is reasonable. The deceased was aged about 41 years at the time of accident. The Tribunal added 25% towards future prospects and deducted 1/4th towards his own expenses and applied multiplier “14” and fixed the loss of income as Rs.211,57,750/-, which is reasonable.

14. The Tribunal has followed the judgment of the Hon'ble Supreme Court reported in **2018-ACJ-2782 (Magma General Insurance Co.Ltd., V. Nanu**



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Ram alias Chuhru Ram and others), and has awarded Rs.80,000/- as consortium to the wife of the deceased and Rs.15,000/- towards funeral expenses.

15. On the side of the respondents 1 to 4 / claimants, it is stated that as per the dictum of the Hon'ble Supreme Court reported in **2018-2-TNMAC-452 (SC) (Magma General Insurance Co.Ltd., V. Nanu Ram alias Chuhru Ram and others)**, consortium to be fixed as Rs.40,000/- per head and the consortium to be calculated as Rs.1,60,000/-.

16. On the side of the respondents 1 to 4 / claimants, it is further stated the notional income of the deceased ought to have been enhanced and the Court has to follow the just compensation principle.

17. The claimants have not chosen to file any appeal for enhancement of compensation and the claimants have failed to file any cross objection for the appeal. As per the dictum of the reported in **2018-2-TNMAC-452 (SC) (Magma General Insurance Co.Ltd., V. Nanu Ram alias Chuhru Ram and others)**, the dependents are entitled to Rs.40,000/- towards consortium. Hence, it is decided that the respondents 1 to 4 / claimants are entitled to Rs.40,000/- each towards consortium. The Tribunal has awarded only Rs.80,000/- towards consortium. It has to be enhanced to Rs.1,60,000/-.



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WEB COPY 18. On the basis of Ex.P16 to Ex.P19, the Tribunal has awarded Rs.2,74,789/- towards medical expenses. The Tribunal has awarded Rs.2,200/- towards ambulance charges, which are all reasonable. The compensation amount calculated as follows:-

Loss of income	:	Rs.21,57,750/-
Loss of estate	:	Rs. 15,000/-
Loss of funeral expenses	:	Rs. 15,000/-
Loss of consortium (Rs.40,000/- to each claimant)	:	Rs. 1,60,000/-
Medical expenses	:	Rs. 2,74,789/-
Ambulance charges	:	Rs. 2,200/-
Total compensation	:	Rs.26,24,739/-

The same is rounded off to **Rs.26,24,740/-**.

19. This appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed. The compensation is enhanced from Rs.25,44,739 to Rs.26,24,740/-.



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(i) The appellant herein / Transport Corporation is directed to deposit the compensation of **Rs.25,44,740/- with accrued interest at the rate of 7.5% from the date of petition till the date of deposit and with costs and for Rs. 80,000/- with interest at the rate of 7.5% from the date of this order till the date of deposit**, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited.

(ii) The first claimant is entitled to 40% with proportionate accrued interest, the second and third minor claimants are entitled to 25% of the award amount each with proportionate interest and the fourth claimant is entitled to 10% of the award amount with proportionate interest and costs.

(iii) The claimants are **directed to pay the court fee** for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

30.08.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal –
Principal District Court,
Pudukkottai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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