



C.M.A.(MD)No.5 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 06.07.2022

Delivered On : 01.08.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.5 of 2019

The Managing Director

Tamil Nadu State Transport Corporation Limited,

Ranithottam, Nagercoil Village,

Agastheeswaram Taluk,

Kanyakumari District.

.. Appellant / 3rd Respondent

Vs.

1.Santhakumari

2.Piratheesh

3.Nithish

.. Respondents 1 to 3 / Petitioners

4.S.Merlin

5.S.Mohan Nair

(R4 and R5 are the driver and instructor of the appellant

-Transport Corporation and that given up)

6.Peria Nadachi

.. Respondents 4 to 6/

Respondents 1, 2 and 4



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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.38 of 2015, dated 24.01.2018, on the file of the Motor Accident Claims Tribunal / Ist Additional Sub Court, Nagercoil.

For Appellant : Mr.P.Prabhakaran
For Respondent No.1 : Mr.P.T.Ramesh Raja
For Respondent Nos.2&3 : No appearance
For Respondent Nos.4 &5 : Given up vide EB

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.38 of 2015, dated 24.01.2018, on the file of the Motor Accident Claims Tribunal / Ist Additional Sub Court, Nagercoil. The appellant herein is the third respondent, the respondents 1 to 3 herein are the claimants and the respondents 4 to 6 herein are the respondents 1, 2 and 4 in the original claim petition.

2. Brief substance of the petition in M.C.O.P.No.38 of 2015 is as follows :-

On 20.02.2014, at about 8.45 am., the deceased-Rajakrishnan was riding his two wheeler, bearing Registration No.TN-74-AA-0090 along the



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Aasaripallam – Nagercoil road, near Gancardia School, a bus bearing Registration No.TN-74-N-0942 was driven by its driver in a rash and negligent manner, dashed against the deceased. He sustained injuries, he was admitted in the Government Hospital, Aasaripallam. Then he was admitted in Nagercoil Muthu Neuro Centre, and then, he was admitted in Kerala KIMS Hospital and he died on 01.06.2014. The petitioners are the dependents of the deceased and they claimed a sum of Rs.63,45,000/- as compensation.

3. Brief substance of the counter filed by the third respondent in M.C.O.P.No.38 of 2015 is as follows:-

The bus driver was not responsible for the accident. The third respondent's bus driver drove the vehicle in a careful and cautious manner. It was the deceased, who rode the two wheeler in a rash and negligent manner and he dashed against the back side of the bus and had invited the accident. The deceased was not wearing helmet at the time of accident. The case was registered only after four months from the date of accident, the respondent is not liable to pay compensation.



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4. On the side of the petitioners, 2 witnesses were examined and 11 documents were marked. On the side of the respondents, no witness was examined and no document was marked. The Tribunal awarded a sum of Rs.11,90,860/- as compensation, after deducting 50% towards the contributory negligence of the deceased.

5. Against the order, the appellant preferred this appeal this appeal on the following grounds :

The Tribunal has failed to fix the liability on the rider of the two wheeler, who came from the back side of the appellant bus in a rash and negligent manner and caused accident. The Tribunal has erred in fixing the total compensation of Rs.23,81,720/- and fixed 50% liability on the appellant and to pay a sum of Rs.11,90,860/-, which is excessive. The tribunal has fixed the monthly income at Rs.6,500/-, which is high. The tribunal has added 25% towards future prospects and applied multiplier 14. The Tribunal awarded Rs.12,75,720/- towards medical expenses, without considering the fact that most of the bills were created for the case. The Tribunal has awarded Rs.1,00,000/- towards loss of love and affection, Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, Rs.10,000/- towards transport



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expenses, Rs.15,000/- towards extra nourishment. Rs.1,000/- towards loss of dress materials, which are all excessive.

6. On the side of the appellant, it is stated that the rider of the two wheeler hit the bus from behind. The deceased was not having driving licence, he is not wearing helmet. FIR was not registered till the death of the deceased. Ex.P11 reveals that the deceased was not having driving licence to drive the two wheeler, he was having licence only to drive the Light Motor Vehicle. The Tribunal has fixed only 50% on contributory negligence. The Tribunal has failed to fix the entire negligence on the deceased.

7. On the side of the appellant, it is further stated that the deceased died only due to head injuries. If the deceased was wearing helmet, the deceased might have survived. Monthly income fixed by the Tribunal is very high and the award under various heads is excessive.

8. On the side of the respondents /claimants, it is stated that the Tribunal has fixed 50% contributory negligence, the appellant failed to examine any witnesses and failed to mark any documents. P.W.2 - eye



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witness was examined on the side of the claimants. The bus suddenly stopped without giving any signal. The two wheeler was following the bus, when the bus suddenly stopped without signal, the two wheeler hit on the bus. The appellant failed to prove either the negligence or the contributory negligence on the part of the deceased. The Tribunal has made an observation that a training vehicle cannot be driven in a rash manner, which is wrong. Irregularity in a licence is not the reason for the accident. A judgment of the Hon'ble Supreme Court, reported in **2008-12-SCC-436 [Sudhir Kumar Rana V. Surinder Singh and others]** is cited, wherein, it is stated as follows:-

“9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.”



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9. Non availability of a licence cannot be presumed as the reason for the accident. The rash and negligent driving ought to have been proved independently. Contributory negligence on the part of the deceased was not proved by the Corporation.

10. On the side of the appellant, it is stated that the accident was not a head on collusion. If the rider of the two wheeler was keeping sufficient space, while following the bus, there could not be a possibility of an accident. P.W.2 was not a pillion rider, he was the father of the deceased, he was not an independent witness. Admittedly the two wheeler hit the back side of the bus and that the liability fixed by the Tribunal is not correct.

11. The contention of the claimants is that the bus suddenly stopped without any signal and that the two wheeler hit on the back side of the bus. P.W.1 and P.W.2 are examined to prove the negligence. Ex.P1-FIR was not filed on the side of the claimants. Admittedly, the two wheeler hit the bus from behind. The deceased was not having valid driving licence to drive the two wheeler at the time of accident. It is true that the appellant failed to examine any witness and failed to mark any documents, but, the onus to prove the liability is on the claimants. It is clear from the records



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that the two wheeler hit the bus from behind and that the deceased was not wearing helmet and that he was not having valid driving licence at the time of accident. FIR was registered four months after the date of the accident. The bus being a training vehicle and there is possibility of applying sudden brake, while giving training to the drivers of the bus.

12. Considering all the above facts, it is decided that the deceased has contributed to the accident. So, the contributory negligence is fixed at 60% on the part of the deceased. The Tribunal has awarded a sum of Rs. 12,75,720/- towards medical expenses. The appellant is questioning the genuineness of the medical bills, but, he has not adduced any evidence to that effect. Hence, it is decided that the amount awarded by the Tribunal towards medical expenses is reasonable.

13. The Tribunal fixed the notional monthly income as Rs.6,500/-, which is reasonable. The age of the deceased at the time of accident is 42 years, hence, the Tribunal has added 25% (Rs.1625/-) towards future prospects, which is reasonable. The claimants and the fourth respondent were the dependents of the deceased. After deducing 1/3rd for his own expenses, after applying multiplier '14', the Tribunal has fixed the loss



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of income as Rs.9,10,000/- ($\text{Rs.}5416.66 \times 12 \times 14 = \text{Rs.}9,10,000/-$), which is reasonable.

14. The Tribunal has awarded loss of estate at Rs.15,000/-, loss of consortium at Rs.40,000/-, Funeral expenses at Rs.15,000/-, Transport Expenses at Rs.10,000/-, Extra nourishment at Rs.15,000/-, Damages to cloth article at Rs.1,000/-, loss of love and affection at Rs.1,00,000/-, which are not reasonable. As per the dictum of the Hon'ble Supreme Court in ***Pranay Sethi's case***, the claimants are entitled only to Rs.70,000/- towards conventional charges. The total compensation is calculated as Rs.22,55,720/- and the same is rounded off to Rs.22,56,000/-.

15. After deducting 60% towards contributory negligence on the part of the deceased, the claimants are entitled to Rs.9,02,400/- ($\text{Rs.}22,56,000/- \times 40 / 100 = \text{Rs.}9,02,400/-$) as compensation.

16. The Tribunal has come to the conclusion that the fourth respondent is not entitled for any compensation, since the fourth respondent was set exparte. A verification of the records reveals that the address of the fourth respondent and that of the claimants are the same and the



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presumption of the Tribunal that the fourth respondent was not the dependent on the income of the deceased is wrong.

17. Hence, it is decided that the mother of the deceased is also entitled for compensation and it is decided that the mother of the deceased viz., Peria Nadachi, is entitled to Rs.2,00,000/- with proportionate interest. The respondents 2 and 3 / claimants 2 & 3 are entitled to Rs.2,00,000/- each with proportionate interest and the wife of the deceased is entitled to Rs.3,02,400/- with proportionate interest and cost.

18. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.11,90,860/- to Rs.9,02,400/-.

(ii) The appellant - Transport Corporation, is directed to deposit the entire compensation of Rs.9,02,400/- (if not already deposited) together with proportionate interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made by the Transport Corporation, the respondents 1 to 3 and 6 / claimants are permitted to withdraw their share amount as apportioned by this Court with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them.

01.08.2022

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 /

Ist Additional Sub Court,

Nagercoil.

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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