



C.M.A(MD)No.536 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 14.07.2022

Pronounced on : 12.08.2022

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THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.536 of 2022

Tamil Nadu State Transport Corporation
Karaikudi,
represented by its Managing Director

... Appellant

Vs

1.Muneeswari

2.Minor. Deepika

3.Minor.Sakthi

(Minor respondents 2 and 3 represented
through their mother, the 1st respondent)

... Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to allow this appeal, set aside the award made in M.C.O.P.No.62 of 2021 dated 06.12.2021 on the file of the Motor Accident Claims Tribunal / Additional District Court, Ramanathapuram.

For Appellants : Mr.P.Prabhakaran

For R1 to R3 : Mr.J.M.Hassanul Bazeer



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JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.62 of 2021, on the file of the Motor Accident Claims Tribunal / Additional District Court, Ramanathapuram. The appellant herein is the respondent. The respondents in the appeal are the claimants in the original claim petition.

2.Brief substance of the claim petition is as follows:

On 28.03.2021, the deceased Ravi was travelling in a bus bearing registration number TN 63 N 1984. The driver drove the vehicle in a rash and negligent manner and the deceased who was sitting on the last seat of the bus, was thrown away from the bus and he sustained serious injuries. He was taken to the Government Hospital, Ramanathapuram. Then he was admitted in the Government Hospital, Paramakudi, wherein he died. The petitioners are his brothers. They claim a sum of Rs.20 Lakhs as compensation.

3.Brief substance of the counter filed by the respondent is as follows:

The driver of the bus, drove the vehicle in a slow and cautious manner. After crossing the toll gate near Vattanvalasai toll gate, the deceased suddenly



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raised from the seat without the knowledge of the driver or the conductor and he suddenly jumped out of the running bus and he wantonly invited the accident. The driver of the bus gave first aid to the injured person and sent him to the hospital for treatment. The accident was caused due to the carelessness and negligence of the deceased who jumped out of the running bus. The First Information Report was registered only under Section 174 of Cr.P.C. After investigation, the police came to the conclusion that the accident has occurred only due to the careless act of the deceased and the further action was dropped. Since the driver of the respondent bus was not responsible for the accident, the petitioners are not entitled for any compensation. The claim is excessive and exaggerated one.

4.Two witnesses were examined and seven documents were marked on the side of the petitioner. Two witnesses were examined and one document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.17,35,000/- as compensation.

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



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The Tribunal has erred in holding that the driver of the bus was solely responsible for the accident. The Tribunal failed to fix the negligence on the deceased who jumped out of the running bus and the tribunal failed to consider that the First Information Report was closed by filing RCS. The Tribunal fixed the notional monthly income of the deceased as Rs.12,000/- and added 25% towards future prospects and applied multiplier 13 which is excessive. The Tribunal fixed the loss of dependency at Rs.15,60,000/- which is very excessive. The Tribunal awarded Rs.40,000/- towards loss of consortium, Rs.50,000/- each for two minors, towards loss of love and affection. Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate, Rs.5,000/- towards transport expenses which are all excessive.

6.On the side of the appellant, it is stated that the deceased participated in fire walk function that was held in the temple on the previous night and without proper sleep and rest, he travelled in the appellant's bus. After the bus crossed the speed breaker and crossed the toll gate, he suddenly wake up from the sleep and he jumped out of the bus without the knowledge of the conductor and the driver. There is no possibility of a bus being driven in a rash and negligent manner while crossing the toll gate. There is no



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negligence on the part of the driver of the bus. R.W.1 has deposed that the accident took place when the bus crossed the speed breaker near the toll gate. R.W.2 has also deposed that there are number of speed breakers at the place of accident.

7.On the side of the respondent it is stated that the manner of accident was not proved. The toll gate was not functioning. To avoid the speed breakers, the bus was taken to the extreme right and that was the reason for the accident. P.W.2 eye witness has deposed that the accident took place due to the rash and negligent driving of the bus driver. R.W.1 and R.W.2 have deposed that the place of occurrence is a toll gate and there were number of speed breakers in the particular area. The First Information Report was registered and a copy of the First Information Report was marked as Ex.P1.

8.On the side of the appellant, it was stated that the police found out that the deceased jumped out from the bus voluntarily and he has invited the accident and that the First Information Report was closed as mistake of fact .

9.It is seen that the bus was crossing the speed breaker at the time of accident. Even if, the bus was taken to the extreme right side, there is no



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possibility of a bus to avoid the speed breakers. Therefore, the contention of the respondent is not sustainable. In the First Information Report it is stated that after attending the festival at night, the deceased was travelling in the bus. There is possibility of the deceased to be in a sleepy mood. If the bus was crossing the speed breaker in a rash and negligent manner, there is a possibility of a person who travelled in the last row without holding hand bars in the bus, to have been thrown out from the bus. Hence, 50% of contributory negligence is fixed on the deceased.

10.On the side of the appellant, it is stated that no proof of income, was filed on the side of the respondents. Only an identity card was filed by the respondents and that Bank statement copies were not filed and that the identity card is not sufficient to fix the income and that the Trial Court wrongly fixed the income at Rs.12,000/-.

11.On the side of the respondent, it is stated that the deceased worked as a fisherman and the identity card was marked as Ex.P5. As per the decision of the Hon'ble Division Bench of this Court reported in **2019(1) TNMAC 54(DB)** in the case of **Andal and others Vs. Avinav Kannan and another**, the trial Court has fixed the monthly income at Rs.12,000/-.



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12. From Ex.P5, it is clear that the deceased was a fisherman. The accident took place only in the year 2021. Hence, the notional income fixed by the Tribunal is reasonable. The Tribunal added 25% towards future prospects which is reasonable. The age of the deceased as mentioned in the petition is 48 years. The Tribunal has fixed multiplier 13 which is reasonable. The Tribunal has awarded Rs.40,000/- towards loss of consortium and Rs.1,00,000/- (Rs.50,000/- each for two minors), towards loss of love and affection. As per the decision of the Hon'ble Supreme Court reported in **2018(4) RCR Civil 837**, in a case of **Magma General Insurance Co. Ltd., Vs Nanu Ram Alias Chuhru Ram**, the claimants are entitled to Rs.40,000/- each towards loss of love and affection. The Tribunal has awarded Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate, Rs.5,000/- towards transport expenses which are all reasonable. Hence the award amount is fixed as follows:

Loss of consortium and	-	Rs. 1,20,000/-
Loss of love and affection		
Loss of Dependency	-	Rs.15,60,000/-
Loss of Estate	-	Rs. 15,000/-



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Funeral Expenses	-	Rs. 15,000/-
Transportation	-	Rs. 5,000/-

Total	-	Rs.17,15,000/-

After deducting 50% towards contributory negligence on the part of the deceased, the respondents are entitled to Rs.8,57,500/- (1715000/2).

13.The Civil Miscellaneous Appeal is allowed in part. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.17,35,000/- to **Rs.8,57,500/-(Rupees Eight Lakhs Fifty Seven Thousand and Five Hundred only)** which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant- the Tamil Nadu State Transport Corporation is directed to deposit the entire compensation of Rs.8,57,500/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs to the credit of M.C.O.P.No.62 of 2021 dated 06.12.2021 on the file of the Motor Accident Claims Tribunal / Additional District Court, Ramanathapuram, within a period of eight weeks from the date of receipt of a copy of this order, less any amount if any, already deposited.



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(iii) On such deposit being made by the Transport Corporation, the first claimant is permitted to withdraw a sum of Rs.4,57,500/- (Rupees Four Lakhs Fifty Seve Thousand Five Hundred only), along with interest at the rate of 7.5% per annum. The appellant is entitled to refund of any excess amount if any, was deposited.

(iv) The claimants 2 and 3/ minors are entitled to Rs.2,00,000/- (Rupees Two Lakhs only) each, which is ordered to be deposited in any one of the nationalized bank until they attain majority and the first respondent herein / first claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

12.08.2022

Index: Yes / No

Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal / Additional District Court,
Ramanathapuram.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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R.THARANI, J.

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**Pre - Delivery Judgment made in
C.M.A(MD)No.536 of 2022**

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