



C.M.A(MD)Nos.727 and 1110 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.09.2022

PRONOUNCED ON: 14.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)Nos.727 and 1110 of 2021

and

C.M.P.(MD)No.6654 of 2021

C.M.A.(MD)No.727 of 2021:

M/s. Tamilnadu State Transport Corporation
Limited,

represented by its Managing Director,

No.2, Thirvananthapuram road,

Vannarapettai,

Tirunelveli.

: Appellant / Respondent

Vs.

1. Jeganathan

2. Maheshwari

: Respondents / Petitioners

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decretal order dated 07.11.2019 passed in M.C.O.P.No.1126 of 2018, by the Motor Accident Claims Tribunal (III Additional District Judge), Tirunelveli.



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For Appellant : Mr.R.Raja Mohan

For Respondents :Mr.T.Selvakumaran

C.M.A.(MD)No.1110 of 2021:

1. Jeganathan
2. Maheshwari : Appellant / Respondent

Vs.

M/s. Tamilnadu State Transport Corporation
Limited,
represented by its Managing Director,
No.2, Thirvananthapuram road,
Vannarapettai,
Tirunelveli. : Respondents / Petitioners

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decreetal order dated 07.11.2019 passed in M.C.O.P.No.1126 of 2018, by the Motor Accident Claims Tribunal (III Additional District Judge), Tirunelveli.

For Appellants : Mr.T.Selvakumaran

For Respondent :Mr.R.Raja Mohan



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COMMON JUDGMENT

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Both the Civil Miscellaneous Appeals are directed against the award passed in M.C.O.P.No.1126 of 2018, dated 07.11.2019, on the file of the Motor Accident Claims Tribunal/III Additional District Judge, Tirunelveli.

2. In C.M.A.(MD)No.727 of 2021, the appellant/Transport Corporation, who was made liable to pay compensation of Rs.21,26,000/- with interest at 7.5% per annum and costs to the claimants for the death of one Prakash, who died consequent to an accident occurred on 22.03.2018, challenged the liability mulcted on it and also the quantum of compensation awarded by the Tribunal.

3. In C.M.A.(MD)No.1110 of 2021, the claimants who were awarded with the compensation of Rs.21,26,000/- with interest at 7.5% per annum for the death of their son Prakash, who died in the accident occurred on 22.03.2018, challenged the quantum of compensation granted by the Tribunal and claimed enhancement of the award.



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4. The case of the claimants is that on 22.03.2018 at about 10.00a.m., when the deceased was riding a motorcycle, bearing Registration No.TN-69-F-9094 on the Palayamkottai South Bazar to Tirunelveli road near Centenary Hall, a bus bearing Registration No. TN-72-N-1065, which came from just behind the motorcycle in a rash and negligent manner and while overtaking, suddenly came to the left side and dashed against the motorcycle and as a result of which, the said Prakash was thrown out of the motorcycle, fell down on the road and at that time, the bus ran over the said Prakash, causing immediate death, that the accident was occurred only due to the rash and negligent driving of the bus driver and that therefore, a criminal case was registered against him in Cr.No.86 of 2018, on the file of the Tirunelveli Traffic Investigation Wing, under Sections 279 and 304(A) I.P.C.,

5. It is the further case of the claimants that the deceased was a Diploma holder in I.T.I., and was working as an Electrician in Shri Nachimar Engineering Construction, Namakkal and was drawing a monthly salary of Rs.18,000/- with other incentives, that the petitioners are the parents of the deceased, that the deceased was aged about 32



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years at the time of accident and that therefore, the respondent is liable to pay compensation of Rs.50,00,000/- with interest and costs.

6. The defence of the respondent/Transport Corporation is that the accident was occurred only due to the rash and negligent driving of the deceased, that the bus driver was not at fault, that the claim made in the petition is excessive and that therefore, the claimants are not entitled for the claim.

7. During trial, the claimants have examined the first claimant as P.W.1 and one Subramanian alleged to be an occurrence witness as P.W.2 and exhibited 6 documents as Exs.P.1 to P.6. The Transport Corporation has examined its driver as R.W.1 and adduced no documentary evidence.

8. The learned trial Judge, upon considering both oral and documentary evidences and on hearing the arguments of both sides, has passed the impugned judgment, dated 07.11.2019, holding that the bus driver was responsible for the accident, directing the appellant-Transport Corporation to pay a sum of Rs.21,26,000/- with interest at 7.5% per annum and costs to the claimants. Aggrieved by the award, the claimants



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as well as the Transport Corporation have come forward with the present appeals.

9. The points arise for consideration are

“(i) Whether the Tribunal erred in deciding that the bus driver was responsible for the accident, despite showing that the rash and negligent driving of the deceased was responsible for the accident and that the bus driver was not at fault?;

(ii) Whether the Tribunal erred in fixing the monthly income of the deceased at Rs.15,000/-, since the claimants have not adduced any evidence to prove the avocation and the income of the deceased?; and

(iii) Whether the quantum of compensation awarded by the Tribunal is just and proper and in accordance with law?”

Points (i) to (iii)

10. The learned Counsel for the appellant/Transport Corporation would submit that the deceased drove the motorcycle in a rash and negligent manner and hit on the bus while overtaking another vehicle proceeding in front by crossing the centre median line towards his right dashed against the bus, that the Tribunal ought to have fixed contributory



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negligence on the deceased, who drove the vehicle at over speed by violating the traffic rules and regulations, that the Tribunal ought to have deducted 15% of the award for not wearing of helmet, that the Tribunal had erred in fixing the monthly income at Rs.15,000/- which appears to be on the higher side, who was an electrician at the time of accident, that the Tribunal has also erred in awarding higher sum as salary by relying upon the evidence of P.W.2, who claimed to be the employer of the deceased, but no salary slip was produced to substantiate his oral evidence and that the award passed by the Tribunal by fastening the liability on the Transport Corporation and awarding the higher compensation is not sustainable in law and the same is liable to be interfered with.

11. The learned Counsel for the claimants would submit that the Tribunal, after considering the evidence on record, has rightly recorded a finding that the bus driver alone was responsible for the accident, but the Tribunal, without considering the evidence available that the deceased was working as Electrician in Shri Nachimar Engineering Construction for the past two years on a monthly salary of Rs.18,000/- besides perquisites has fixed the monthly income at Rs.15,000/-, that the Tribunal

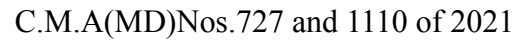


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ought to have fixed the monthly income at Rs.20,000/- and added 40% towards future prospects and ought to have awarded Rs.40,000/- each towards of loss of consortium for both the claimants and Rs.25,000/- towards funeral expenses.

12. The claimants, in order to prove their case, have examined P.W.2-Subramaniam as occurrence witness. P.W.2, in his chief examination, would reiterate the version of the claimants raised in the claim petition regarding the manner of the accident and in cross-examination, he would say that the deceased was working in his concern, that the deceased was travelling in his motorcycle at a distance of 40feet from his car, that the bus, after overtaking the car of P.W.2 and while turning, had dashed against the two wheeler driven by the deceased Prakash, and that the back tyres of the bus ran over the legs of the deceased Prakash. P.W.2 would deny the suggestions that the accident was occurred only due to the rash and negligent driving of the deceased Prakash and the bus driver was not at fault.

13. As already pointed out, the Transport Corporation has examined its driver Vemburaj as R.W.1 and R.W.1 would reiterate the



14. On considering the evidence of P.W.2 and R.W.1 and the way in which the accident was occurred, the Tribunal has rightly come to the conclusion that the accident was occurred only due to the rash and negligent driving of the bus driver and as such, the finding of the Tribunal cannot be found fault with.

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Nachimaar Engineering Construction, that the deceased Prakash was working for two years prior to the accident in his concern and that he was paying monthly salary of Rs.18,000/- and other incentives. Admittedly, neither the claimants nor P.W.2 has produced any documents to show that the deceased was working in Nachimaar Engineering Construction and was getting Rs.18,000/- as monthly salary. No doubt, the claimants have produced Ex.P.6 – Bank passbook to show that periodically salary amounts were remitted in the bank account of the deceased. But as rightly pointed out by the learned Counsel for the Transport Corporation, no such salary payments were remitted in the bank account of the deceased. It is further evident that cash deposits were made in some occasions and sometimes NEFT payments were made and that too for different amounts.

16. The claimants have produced the National Trade Certificate issued to the deceased under Ex.P.4 and the Wireman Competency Certificate issued by the Electrical Licensing Board under Ex.P.5. The Transport Corporation has disputed neither the genuineness nor the contents of the said documents. It is evident from Ex.P.4 that the deceased Prakash has completed the course of training and passed the



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prescribed test in the Trade of Electrician held in the month of January-2006. It is evident from Ex.P.5 that the Wireman Competency Certificate was issued to the deceased Prakash by the Electrical Licensing Board for the period between 18.01.2016 and 17.01.2020.

17. Considering the facts that the deceased was a Diploma Holder in ITI and the technical qualification possessed by him, the Tribunal has rightly fixed the monthly salary of the deceased at Rs.15,000/- As per the dictum laid by the Hon'ble Supreme Court in *National Insurance Company Ltd., Vs. Pranavasethi and others* reported in *2017(2) TNMAC 609*, the Tribunal has rightly added 40% of the salary as future prospects. As per the guidelines formulated in *Smt.Sarlar Verma and Others Vs. Delhi Transport Corporation and another* reported in *2009(5) LW 561*, the Tribunal has deducted 50% of the income towards personal and living expenses of the deceased and rightly applied multiplier "16" and arrived at Rs.20,16,000/- as compensation under the head of loss of dependency. The Tribunal has then awarded Rs.40,000/- each to the claimants towards filial consortium and Rs.15,000/- for loss of estate and Rs.15,000/- towards funeral expenses and totalling of Rs.21,26,000/-



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18. Considering the above, the quantum of compensation arrived by the Tribunal cannot said to be excessive or minimal and is very much reasonable. Neither the claimants nor the Transport Corporation has canvassed any reason or ground to impugn the award. Hence, this Court concludes that both the Civil Miscellaneous Appeals are devoid of merits and the same are liable to be dismissed and the above points are considered accordingly.

19. In the result, both the Civil Miscellaneous appeals are dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. No costs.

..... .11.2022

Index : Yes : No

Internet : Yes : No

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To

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

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



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)Nos.727 and 1110 of 2021

14.11.2022