



C.M.A.(MD)No.756 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 04.07.2022

Delivered On : 10.08.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.756 of 2019
and CMP(MD)No.9838 of 2019

The Managing Director,

Tamil Nadu State Transport Corporation (Coimbatore) Limited,

37, Mettupalayam Road,

Coimbatore – 641 043.

.. Appellant /1st Respondent

Vs.

1. Palanisamy

2. Mahalakshmi

3.Sarasu @ Saraswathi

.. Respondents 1 to 3/ Petitioners

(2nd and 3rd respondents are not a necessary
parties and that given up)

4.Velusamy

5.The Manager,

M/s.Bajaj Alliance Insurance Co. Limited,

Karur, Branch No.126, V.P.Tower,

Opposite to Chennai Silks, Covai Road,

Karur – 2.

.. Respondent 4&5 / Respondent 2 & 3



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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.12 of 2017, dated 07.08.2018, on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Karur.

For Appellant : Mr.P.Prabhakaran
For Respondent Nos. 1 to 3 : Mr.K.Suresh
For Respondent No.4 : Mr.K.Suresh Kumar
For Respondent No.5 : Mr.J.S.Murali

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No.12 of 2017, dated 07.08.2018, on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Karur. The appellant herein is the first respondent and the respondents 1 to 3 herein are the claimants and the respondents 4 and 5 herein are the respondents 2 and 3 in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No.12 of 2017 , is as follows:

On 08.05.2010, at about 10.45 pm., the deceased-Murugesan sustained injuries in a road accident and he was taken in an Ambulance bearing Registration No.TN-47-W-7575, at that time, a bus bearing registration No.TN-33-N-2396 was



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driven by its driver in a rash and negligent manner, dashed against the Ambulance.

The driver of the ambulance- Prakash died on the spot. The traveller, viz., Chellammal died in the van itself. The deceased- Murugesan sustained injuries and he died on 09.05.2010. The deceased was aged about 23 years, at the time of accident, he was an agriculturist and was earning Rs.1,00,000/- per year, he worked in a Textile Unit as a Supervisor and was earning Rs.8,000/- per month and Rs.16,000/- per year as Bonus. The claimants are his dependents and they claimed a sum of Rs.15,00,000/- as compensation.

3. Brief substance of the counter filed by the first respondent, in M.C.O.P.No.12 of 2017, is as follows:

The manner of accident is denied. The bus was driven by its driver in a slow and cautious manner, but, it was the ambulance driver, who came in a rash and negligent manner and caused the accident and hence, the respondent is not liable to pay compensation. In “Dinamalar” news paper, dated 10.05.2010, it was mentioned that the ambulance tried to overtake the vehicle and met with an accident, which clearly reveals that the accident took place only due to the rash and negligent driving of the Ambulance driver. The ambulance van owner and insurer are necessary parties. The claimants has to prove that R.C, and F.C. are valid. The age, income, avocation of the deceased are all denied. The claim is excessive.



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4. Brief substance of the counter filed by the second respondent in M.C.O.P.No.12 of 2017, is as follows:

The ambulance driver is not responsible for the accident. The accident happened only due to the rash and negligent driving of the bus driver. F.I.R was registered only against the bus driver. The respondent is unnecessary party to the case. The age, income and profession of the deceased are to be proved. The vehicle was properly insured with the third respondent. The driver of the vehicle was having valid driving licence. This respondent is not liable to pay compensation.

5. Brief substance of the counter filed by the third respondent in M.C.O.P.No.12 of 2017, is as follows:

The manner of the accident as narrated in the petition is wrong. It is true that on 08.05.2010, the deceased-Murugesan sustained injuries in some other accident. This accident has happened only due to the rash and negligent of the bus driver. F.I.R was registered against the bus driver. The second respondent – Ambulance driver is not responsible for the accident. The age, income, profession of the deceased are to be proved. The claim is excessive.



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6. Three claim petitions were filed, claiming compensation, arising out of the same accident, M.C.O.P.Nos.10 of 2017, 11 of 2017 and 12 of 2017, a joint trial was conducted and a common judgment was pronounced.

7. In all the three cases, on the side of the claimants, 7 witnesses were examined and 26 documents were marked. On the side of the first and third respondents, 2 witnesses were examined and 5 documents were marked. On the side of the second respondent, no witness was examined and no document was marked. After considering both sides, the Tribunal awarded a sum of Rs.14,00,800/- to be paid by the Transport Corporation in M.C.O.P. No.12 of 2017.

8. Against the order, the appellant / Transport Corporation has filed this appeal on the following grounds:-

The Tribunal is wrong in fixing the entire liability on the driver of the Bus. The Tribunal failed to fix the liability on the ambulance driver, who came in a rash and negligent manner at the right side of the road and dashed against the front right corner of the stationed bus. The Tribunal fixed the monthly income at Rs.9,000/- and added 40% future prospects and applied multiplier '18', which are all excessive. The Tribunal awarded Rs.25,000/- towards loss of love and affection, Rs.5,000/- towards transport expenses, Rs.10,000/- towards funeral expenses, which are all excessive.



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9. On the side of the appellant, it is stated that it was the ambulance driver, while overtaking the vehicle, dashed against the upcoming bus and invited the accident. On the side of the respondents 1 to 3 / claimants, it is stated that the accident happened only due to the rash and negligent driving of the bus driver.

10. On the side of the respondents 1 to 3 / claimants, it is stated that out of the batch of cases, the appeal was filed against only one of the case. There is no appeal in the other connected cases and that the appellant can not questioned the liability and that the appellant can question only the quantum.

11. Eye witness was examined as P.W.6. FIR was registered only against the bus driver. It is the duty of all other vehicles to pay way for the ambulance. Charge sheet was filed only against the bus driver and hence, negligence is fixed on the driver of the bus.

12. On the side of the appellant, it is stated that the Tribunal is wrong in fixing the income at Rs.9,000/- pm. Multiplier applied is wrong. It is stated that an award of Rs.25,000/- towards loss of love and affection, Rs.5,000/- towards transport expenses, Rs.10,000/- towards funeral expenses are excessive.



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WEB COPY 13. On the side of the respondents 1 to 3/ claimants, it is stated that the deceased was an agriculturist and he was earning Rs.1,00,000/- per year and he was earning Rs.5,000/- per month through finance business. Salary certificate of the deceased was marked as Ex.P25 and that the salary certificate was not questioned by the appellant.

14. On the side of the respondents 1 to 3 / claimants, it is stated that the quantum of compensation has to be enhanced. It is further stated that this Court has fixed the monthly income at Rs.10,000/- per month in an earlier case reported in **2022-1-TNMAC -734 [Branch Manager, United India Insurance Co.Ltd., V. Palaniammal]**.

15. On the side of the respondents 1 to 3 / claimants, it is stated that the Hon'ble Supreme Court has fixed income at Rs.15,000/- per month in an case, reported in **2014-2-TNMAC-6 (SC) [V.Mekala V. M.Malathi]**.

16. The salary certificate of the deceased was marked as Ex.P25. P.W.6 has deposed about the employment of the deceased. The Tribunal has fixed the notional income at Rs.9,000/- per month, which is reasonable. The age of the



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deceased was 23 years and hence, the Tribunal added 40% towards future prospects and applied multiplier '18', which are all reasonable.

17. The Tribunal has awarded Rs.25,000/- towards loss of love and affection, Rs.5,000/- towards transport expenses, Rs.10,000/- towards funeral expenses, which are all reasonable. Hence, it is decided that the award amount fixed by the Tribunal is reasonable.

19. There is no reason sufficient enough to interfere in the orders of the Tribunal. Hence, this Appeal is dismissed.

(i) The appellant - Transport Corporation, is directed to deposit the entire compensation of **Rs.14,00,800/-** (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, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) On such deposit being made by the appellant - Transport Corporation, the first respondent / major claimant is permitted to withdraw the entire award amount with proportionate interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimant is not entitled



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for interest for the default period, if there is any. No costs. Consequently, connected

Miscellaneous Petition is closed.

10.08.2022

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 -

Special Sub Court,

Tirunelveli

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
C.M.A.(MD)No.756 of 2019

10.08.2022