



C.M.A(MD)No.780 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.10.2022

PRONOUNCED ON:02.12.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.780 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation,
Naduvanapatti,
Bye Pass Road,
Dindigul-4.

: Appellant / Respondent

Vs.

1.Parimaladevi
2.Minor.Namitha
3.Minor Prithika
(Minor respondents 2 and 3 are
represented through their mother
parimaladevei - 1st

4.Saraswathi
5.Pandi

: Respondents / Petitioners

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 03.01.2022, passed in M.C.O.P.No.340 of 2019, on the file of the Motor Accident Claims Tribunal (Principal District Court), Dindigul.



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For Appellant : Mr.K.Sudalayandi

For Respondents :Mr.T.Vadivelan

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.340 of 2019, on the file of the Motor Accident Claims Tribunal/Principal District Court, Dindigul.

2. The appellant/Tamil Nadu State Transport Corporation, who was made liable to pay compensation of Rs.19,70,000/- with interest at 7.5% p.a., to the claimants for the death of one Krishnakumar, who died in an accident occurred on 27.01.2019, challenged the liability mulcted on it and also quantum of compensation awarded at by the Tribunal.

3. The case of the claimants is that on 27.01.2019 at about 01.40p.m., the deceased was travelling as a passenger in the bus bearing Registration No.TN-57-N-2143 from Dindigul to Ammayanayakkanur, that when the bus was stopped at Kodai road Indian Oil Petrol Bunk stop, the passengers were getting in and out and lastly the deceased got down from the back door, that the conductor without noticing, had signalled the



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bus driver, who in turn had driven the bus rashly and negligently, that the said Krishna Kumar was thrown out from the bus and sustained serious injuries, that immediately he was taken to Government Hospital, S.Vadipatty and he died on reaching the hospital, that the accident was occurred only due to the rash and negligent driving of the bus driver and that a criminal case came to be registered in Cr.No.23 of 2019 for the offences under Sections 279 and 304(A) I.P.C., on the file of the Ammayanayakkanur Police Station. It is the further case of the claimants that the deceased was a lorry driver and was earning Rs.25,000/- per month.

4. The defence of the appellant/respondent is that on 27.01.2019, the respondent's bus driver was driving the bus bearing Registration No. TN-57-N-2143 from Dindigul to Madurai in a normal speed duly observing all traffic rules and regulations and the bus was proceeding near Ammayanayakanur, that the respondent bus had more number of passengers and the conductor was collecting ticket fares and that at that time, the deceased who travelled as a passenger, without any intimation to the conductor had tried to get down from the moving bus, that the other passengers, on seeing this, had raised loud noise to stop the bus,



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that before the bus was stopped, the deceased passenger had failed in getting down from the bus and fell down on the road, that he sustained grievous injuries and subsequently succumbed to the injuries and that the accident was occurred only due to the negligent act of the deceased passenger and the respondent driver was not at fault.

5. During trial, the claimants have examined the first claimant as P.W.1 and one Murugesan alleged to be the occurrence witness as P.W.2 and the Sub-Inspector of Police – Thiru.P.Sekar as P.W.3 and exhibited 11 documents as Exs.P.1 to P.11. The appellant/respondent has examined its driver Thiru.P.Babu as D.W.1 and adduced no documentary evidence.

6. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both sides, has passed the impugned award dated 03.01.2022 holding that the bus driver was responsible for the accident, directed the appellant/Transport Corporation to pay a sum of Rs.19,70,000/- as compensation with interest at 7.5% per annum and costs. Aggrieved by the said award, the appellant Transport Corporation has come forwards with the present Civil Miscellaneous Appeal.



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7. The points that arise for consideration are

(1) Whether the Tribunal erred in mulcting liability on the bus driver despite showing that the deceased passenger, without intimation to the conductor had tried to get down from the moving bus and failed in that attempt, fell down on the road and sustained injuries and that the accident was occurred only due to the negligence act on the part of the deceased passenger?

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

Points 1 and 2:

8. As already pointed out, the claimants had examined P.W.2 Murugesan alleged to be the occurrence witness. P.W.2 would reiterate the contentions of the claimants raised in the claim petition regarding the manner of the accident. During cross-examination of P.W.2, it was suggested by other side that the deceased Krishna Kumar has not at all travelled in the respondent's bus and that he died in some other accident. P.W.2 would specifically deny the above said suggestion. It is pertinent to note that the appellant Transport corporation has not taken such a defence in the counter statement that the deceased has not at all travelled in the bus. But on the other hand, as already pointed out, they have taken



9. As already pointed out, F.I.R., came to be registered only against us driver. Considering the evidence of P.W.2, R.W.1 and other



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evidence available, the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the bus driver, cannot be found fault with. The appellant has not produced any material or evidence sufficient enough to hold that the deceased was also responsible for the accident or that he contributed to the accident.

10. Now turning to the compensation, the learned Counsel for the appellant – Transport Corporation would submit that the Tribunal, in the absence of any evidence, has fixed the monthly income at Rs.12,000/- p.m., excessively and also awarded excessive amounts under other heads. Admittedly, the claimants have produced the driving licence of the deceased Krishna Kumar and whereunder it is evident that he was possessing licence to drive the heavy vehicles with badge endorsement. The appellant has disputed neither the genuineness nor the contents of Ex.P.4 licence. The Tribunal, by relying on Ex.P.4 has rightly fixed the monthly income of the deceased at Rs.12,000/- p.m., and by considering the date of birth given in Ex.P.4 has fixed the age of the deceased as 41 years at the time of accident. As per the dictum laid down by the Hon'ble Supreme Court in *National Insurance Company Ltd., Vs. Pranay Sethi and others* reported in **2017(2) TNMAC 609**, the Tribunal has rightly



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added 25% of the income as future prospects. Considering the number of dependents, the Tribunal has rightly deducted 25% of the income towards personal and living expenses of the deceased. As per the dictum laid down by the Hon'ble Supreme court in ***Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and another*** reported in ***2009(5) LW 561***, the Tribunal has rightly adopted the multiplier of 14 and arrived at Rs.18,19,000/- as compensation for loss of dependency. Regarding the loss of consortium, the Tribunal has awarded Rs.40,000/- to the first claimant being the wife of the deceased, but failed to award any amount for other claimants towards loss of consortium.

11. Our Hon'ble Supreme Court in ***Pranay Sethi's*** case has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, Hon'ble Supreme Court in ***Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others*** reported in ***(2018) 18 SCC 130***, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. Honourable Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental



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consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, Hon'ble Apex Court in ***The New India Assurance Company Ltd. Vs. Smt.Somwati and others***, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in ***Pranay Sethi's*** case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

12. Considering the above, the other claimants being the children and parents of the deceased, they are all entitled to get compensation at Rs.40,000/- each for the loss of parental consortium and filial consortium respectively. The Tribunal has also awarded Rs.15,000/- for loss of estate and Rs.15,000/- towards funeral expenses under the conventional heads. Though the claimants have not filed any cross-appeal, as per the decision of the Hon'ble Supreme Court in ***Surekha and Others Vs. Santosh and Others*** (C.A.No.476 of 2020, dated 21.01.2020) this Court is inclined to enhance the compensation from Rs.19,70,000/-to Rs. 21,20,000/-, under the following heads:



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Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	Loss of dependency	18,90,000	18,90,000	confirmed
2	Loss of estate	15,000	15,000	confirmed
3	Loss of consortium	40,000	2,00,000 (Rs.40,000/- x5)	enhanced
4	Funeral expenses	15,000	15,000	confirmed
5	Transport expenses	10,000	-----	---
	Total	Rs. 19,70,000/-	Rs. 21,20,000/-	Enhanced by a sum of Rs.1,50,000

17. In the result, the Civil Miscellaneous Appeal is dismissed. The compensation awarded by the Tribunal to the claimants is enhanced from Rs. 19,70,000/- to Rs.21,20,000/- along with interest at 7.5%pa., and costs. The appellant/State Transport Corporation is directed to deposit the entire award amount along with accrued interest and costs, from the date of petition till the date of payment to the credit of above said M.C.O.P.No.340 of 2019, on the file of the Motor Accident Claims Tribunal / Principal District Court, Dindigul, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit, the first



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respondent/claimant is entitled to withdraw Rs.9,00,000/- along with proportionate interest and costs and the respondents 4 and 5/claimants are entitled to withdraw Rs.2,00,000/- and Rs.70,000/- respectively along with proportionate interest and costs on due application before the Tribunal and the respondents 2 and 3 / minor claimants are entitled to get Rs.4,75,000/- each, along with proportionate interest and costs and the respondents 2 and 3 are being minor, their share shall be deposited in any Nationalized Bank till they attain majority and till then, the first respondent/claimant – mother and natural guardian of the minor children is entitled to withdraw the interest once in six months directly from the Bank, for the maintenance of the minors. The parties are directed to bear their own costs. The respondents/claimants are directed to pay the balance Court fees for the enhanced amount, as per the existing Rules.

02.12.2022

Index : Yes : No

Internet : Yes : No

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To

1.The Motor Accident Claims Tribunal /
The Principal District Court, Dindigul.

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

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