



C.M.A.(MD)No.800 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 10.08.2022

Delivered On : 06.09.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.800 of 2019
and C.M.P.(MD)No.10407 of 2019

The Managing Director

Tamil Nadu State Transport

Corporation Limited (Thirunelveli),

Thirunelveli rep. by its

General Manager,

Nagercoil, Agasteeswaram Taluk,

Kanyakumari District.

.. Appellant /2nd Respondent

Vs.

1.Ganesan

2.Kasthuri

.. Respondents 1 &2/ Petitioners

3.G.Mesiah Dhanam

(R3 is the driver of the appellant and
that given up)

4.The Branch Manager,

United India Insurance Company Limited,

having the office at Xavier Building,

P.W.D. Raod, Nagercoil, Agasteeswaram Taluk,

Kanyakumari District.

.. Respondent 3 &4/ Respondent 1 & 3



C.M.A.(MD)No.800 of 2019

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.138 of 2017, dated 28.01.2019, on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Nagercoil.

For Appellant : Mr.P.Prabakaran
For Respondents : Mr.B.Brijesh Kishore for R1 & R2
: Mr.C.Jawahar Ravindran for R4
: R3 – given up

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in in M.C.O.P.No.138 of 2017, dated 28.01.2019, on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Nagercoil. The appellant herein is the second respondent and the respondents 1 and 2 herein are the claimants and the respondents 3 and 4 herein are the respondents 1 and 3 in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No.138 of 2017, is as follows:

On 03.11.2013, at about 8.50 pm., when the deceased – Jothy was riding his two wheeler bearing Registration No.TN-74-AE-6997, in a slow speed observing



C.M.A.(MD)No.800 of 2019

the traffic Rules, along the Kanyakumari – Nagercoil main road, a bus bearing Registration No.TN-74-N-1351, was driven by its driver in a rash and negligent, came from the opposite direction, dashed against the petitioner and he died on the spot. The driver of the bus lodged a false complaint regarding the accident and the case was registered against the deceased. The deceased was a painter, he was earning Rs.800/- per day and was working under Nathan painting concern. The claimants are his dependents and they claimed a sum of Rs.20,00,000/- as compensation.

3. Brief substance of the counter filed by the second respondent, in M.C.O.P.No.138 of 2017, is as follows:

The manner of accident as narrated in the petition is wrong. The first respondent drove the bus in a careful and cautious manner. It was the motorcyclist, who came from the opposite direction in a rash and negligent manner, dashed against the Bus. FIR was registered against the motorcyclist. The motorcyclist was not wearing helmet. This respondent is not liable to pay compensation. The age, profession, income are all denied. The amount claimed is excessive.

4. Brief substance of the counter filed by the third respondent, in M.C.O.P.No.138 of 2017, is as follows:



C.M.A.(MD)No.800 of 2019

WEB COPY

The income particulars of the deceased are not correct. The accident has taken place only due to the rash and negligent driving of the first respondent's bus. The third respondent is not at all liable to pay compensation. The accident was not intimated to the respondent. Rate of interest claimed is high. The accident has happened only due to the negligent of the first respondent. The petition against this respondent to be dismissed.

5. On the side of the claimants, 2 witnesses were examined and 21 documents were marked. On the side of the respondents, 1 witness was examined and no document was marked. After considering both sides, the Tribunal awarded a sum of Rs.15,96,112/- as compensation.

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

The Tribunal has failed to fix the entire negligence on the deceased, who rode the two wheeler, in a rash and negligent manner. The Tribunal has failed to consider that the FIR was only against the deceased. The Tribunal has fixed the monthly income as Rs.11,355/- and has added 40% towards future prospects, and applied multiplier '16', which are all very high. The Tribunal has awarded



C.M.A.(MD)No.800 of 2019

Rs.50,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs. 40,000/- towards loss of consortium, which are all excessive.

7. On the side of the appellant, it is stated that FIR was registered against the deceased and the entire negligence was not on the driver of the bus. The Tribunal has failed to fix atleast contributory negligence. The deceased was not wearing helmet at the time of accident, he was the sole cause for the accident.

8. On the side of the respondents 1 and 2 / claimants, it is stated that two vehicles involved in the accident. It was the bus, which dashed against the two wheeler. The complaint was lodged by the driver of the bus. He lodged a complaint as if the accident has happened due to the rash and negligent driving of the deceased. Subsequently, the father of the deceased gave various complaintS to the police officials. Ex.P11 to Ex.P16 were filed to prove the same. Eye witness was examined as P.W.2. The bus driver was responsible for the accident.

9. It is seen that F.I.R. was lodged by the driver of the bus. The deceased died on the spot and his father was not able to lodge a complaint in time. It is seen that subsequent to the accident, the father of the deceased tried to lodge a complaint (Ex.P11 - Ex.P16) against the bus driver. P.W.2 has deposed that the accident has



C.M.A.(MD)No.800 of 2019

occurred only due to the rash and negligent driving of the bus driver. Hence, it is decided that the accident has happened only due to the rash and negligent driving of the first respondent bus driver. The allegation on the side of the appellant is that the deceased was not wearing helmet and the same was not denied by the claimants. In the above circumstances, 10% contributory negligence is fixed on the deceased.

10. On the side of the appellant, it is stated that the Tribunal has fixed the monthly income as Rs.11,300/-, which is excessive. On the side of the respondents 1 and 2 / claimants, it is stated that the deceased was working as painter and was earning Rs.800/- per day. The accident has happened in the year 2013. There is no proof regarding the monthly income of the deceased. Hence, the income is fixed as Rs.9,000/- per month.

11. The deceased was a Bachelor and after deducting 50% towards his own expenses, the deceased might have contributed Rs.4,500/- to his family. The Tribunal fixed the age of the deceased as 32 years and after adding 40% towards future prospects, the monthly income is calculated as Rs.6,300/-. Multiplier '16' is applicable and the loss of income is calculated at Rs.12,09,600/- (Rs.6,300/- X 12 X 16 = Rs.12,09,600/-).



C.M.A.(MD)No.800 of 2019

12. The Tribunal has awarded Rs.15,000/- towards loss of estate, Rs. 40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses, which are all reasonable.

13. The compensation is calculated as follows:-

Loss of income	:	Rs.12,09,600/-
Loss of estate	:	Rs. 15,000/-
Loss of consortium	:	Rs. 40,000/-
Funeral expenses	:	Rs. 15,000/-
Total compensation	:	Rs.12,79,600/-

After deducting 10% (Rs.1,27,960/-) towards contributory negligence, the claimants are entitled to Rs.11,51,640/- as compensation.

14. This Appeal is partly allowed. The compensation is reduced from Rs.15,96,112/- to Rs.11,51,640/-.

(i) The appellant is directed to deposit the entire compensation of Rs.11,51,640/- (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. Excess amount, if any, shall be refunded to the appellant.



C.M.A.(MD)No.800 of 2019

WEB COPY

(ii) On such deposit being made, the respondents 1 and 2 / 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. The Claimants are not entitled for interest for the default period, if there is any default. No costs. Consequently, connected Miscellaneous Petition is closed.

06.09.2022

Index : Yes/No

Internet : Yes/No

Ls

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

/ Principal Sub Court, Nagercoil.

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.



WEB COPY



C.M.A.(MD)No.800 of 2019



WEB COPY



C.M.A.(MD)No.800 of 2019

R. THARANI, J.

Ls

Pre-delivery Judgment made in
C.M.A.(MD)No.800 of 2019

06.09.2022