



C.M.A(MD)No.779 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 29.09.2022

PRONOUNCED ON: 14.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.779 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation,
Virudhunagar. : Appellant / Respondent

Vs.

1.S.Sangilikalai
2.S.Pappa : Respondents / Petitioners

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 06.10.2021, passed in M.C.O.P.No.44 of 2019, on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge), Srivilliputtur.

For Appellant : Mr.K.Sudalayandi

For Respondents :Mr.M.Thirunavukkarasu



C.M.A(MD)No.779 of 2022

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JUDGMENT

The Civil Miscellaneous Appeal is directed against the award dated 06.10.2021, passed in M.C.O.P.No.44 of 2019, on the file of the Motor Accident Claims Tribunal/Additional District Judge, Srivilliputhur.

2. The appellant/Transport Corporation, who was made available to pay compensation of Rs.20,86,600/- along with interest at 7% p.a., and costs to the claimants for the death of one S.Chandrasekar, who died consequent to an accident occurred on 16.10.2018, challenged the liability mulcted on it and also the quantum of compensation awarded by the Tribunal.

3. The case of the claimants is that on 16.10.2018 at about 06.45p.m., when the deceased was returning from Agasampatty in Splender Plus Motorcycle bearing Registration No.TN-58-AV-6606 as pillion rider, which was driven by his friend Ashokkumar on the extreme left side of the road, a Government bus bearing Registration No.TN-67-N-0583, which came in the opposite direction in a rash and negligent



C.M.A(MD)No.779 of 2022

WEB COPY

manner and without sounding horn, had dashed against the two wheeler, that both the rider as well as the pillion rider had sustained serious injuries and were taken to Watrap Government Hospital, that after first-aid, the injured Chandrasekar was referred to Madurai Rajaji Government Hospital and despite treatment, he succumbed to the injuries on 23.10.2018 and that the rash and negligent driving of the bus driver was responsible for the accident and hence, a case has been registered against the bus driver in Cr.No.331 of 2018, under Sections 279, 337 and 304-A I.P.C., on the file of the Watrap Police Station. It is the further case of the claimants that the claimants are the parents of the deceased, that the deceased Chandrasekar was hale and healthy at the time of accident and that he was working as a Supervisor in Venkateshwara poultry near Hosur and was earning Rs.15,000/-per month.

4. The defence of the appellant/Transport corporation is that the bus, after dropping the passengers in Agasampatty bus stop, proceeded from South to North, that at that time, the two wheeler came in a rash and negligent manner from North to South and on seeing the two wheeler rider appeared to have been in drunken state and was not wearing helmet and was not following the road rules, the bus driver stopped the bus on



(i) Whether the Tribunal erred in mulcting the entire liability on Appellant/Transport Corporation, despite showing that the claimants failed to produce the driving licence of the rider of the two wheeler, that deceased pillion rider was not wearing helmet at the time of accident, that the rider as well as the pillion rider were in drunken mood and that both the rider and the pillion rider had contributed to the accident?

(ii) Whether the Tribunal erred in fixing the monthly income at Rs.13,000/-, despite the non-production of sufficient evidence to prove the avocation and income of the deceased?

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

Point Nos. 1 to 3:

7. The claimants in order to prove their case have examined P.W.2 – Suseela alleged to be the occurrence witness. Admittedly, P.W.2 is the sister of the deceased Chandrasekar. P.W.2 in her evidence would say that the deceased came to her home at Agasampatti in the morning of 16.10.2018, that they have visited Amachiar Amman temple and after taking bath, while they were returning to her house, the accident had occurred. She would further say that she was proceeding in a two



C.M.A(MD)No.779 of 2022

WEB COPY

wheeler driven by her husband, that another vehicle was driven by Ashokkumar with her brother Chandrasekar as pillion rider, that when they were proceeding in Thaniparai to Watrap road, opposite to Sundaravel Nadra grove and near Agasampatti burial ground, the Government bus bearing Registration No. TN-67-N-0583 came in a rash and negligent manner and without sounding horn, had dashed against the two wheeler driven by Ashokkumar, that both of them fell down and sustained serious injuries, that Chandrasekar was taken to Watrap Government Hospital and thereafter to the Government Rajajaji Hospital, Madurai for further treatment and that despite treatment, he succumbed injuries on 23.10.2018. Though P.W.2 was subjected to cross-examination by the appellant, nothing was elicited in their favour.

8. It is pertinent to note that all the suggestions put forth by the appellant side were specifically denied by P.W.2 during cross-examination. As already pointed out, the Transport Corporation has examined its driver Azhagumaheshselvan as R.W.1 and he would reiterate the contentions raised in the counter statement. In cross-examination, R.W.1 would say that F.I.R., was registered against him by Watrap police with respect to the above accident, that the police has filed



C.M.A(MD)No.779 of 2022

WEB COPY

the final report against him and the same is pending before the Criminal Court, that he has preferred a complaint to his superior officers and the police, that the deceased Ashokkumar and Chandrasekar were in drunken state at the time of accident, that he has not produced the copy of the complaint and that he has not not produced any documents to show that they were in drunken state.

9. Admittedly, F.I.R., was registered against the bus driver – R.W.1 and moreover, after completing the investigation, Watrap police has laid the charge sheet against R.W.1 and the case is pending before the jurisdictional Magistrate Court. No doubt, in Ex.P.3 – Accident register recorded at Watrap Government Hospital, it has been recorded by the Medical Officer that the said Chandrasekar was brought unconscious and breath smell of alcohol. But as rightly pointed out by the learned Counsel for the claimants, no such observation is found in the Accident Register recorded at the Madurai Government Rajaji Hospital. In Ex.P.7 – Postmortem certificate, it has been stated that stomach contains 100ml of brown colour fluid with nil specific smell and small intestine contains 20ml of bile stained fluid with nil specific smell.



C.M.A(MD)No.779 of 2022

WEB COPY

10. Though the appellant has taken such a plea, that they have not chosen to examine the Medical Officer, who examined the deceased Chandrasekar at Watrap hospital or at the Madurai Government Rajaji Hospital. There is absolutely no evidence to show that viscera was taken and sent for chemical analysis to ascertain as to whether the deceased consumed liquor or not. As already pointed out, the Medical Officer who conducted postmortem has not recorded that some characteristic smell was noted over from the stomach fluid or from the small intestine. Though the Medical Officer who examined the injured Chandrasekar at Watrap Government Hospital has noted that there was a breath of smell of alcohol, he has not recorded that the injured was under the influence of alcohol. There is also no evidence to show that the blood samples were taken from the injured so as to ascertain whether the injured Chandrasekar consumed alcohol and the percentage of alcohol in his blood.

11. Now coming to the other plea raised by the appellant/Transport Corporation for mulcting contributory negligence, it is necessary to refer the decision of the Hon'ble Supreme Court in Mohammed Siddique and



C.M.A(MD)No.779 of 2022

another Vs. National Insurance Company Ltd., and Others reported in AIR 2020 SC 520 and the relevant passages are extracted hereunder:

“12. It is seen from the material on record that the accident occurred at about 2:00 a.m. on 5.09.2008. Therefore, there was no possibility of heavy traffic on the road. The finding of fact by the Tribunal, as confirmed by the High Court, was that the motor cycle in which the deceased was travelling, was hit by the car from behind and that therefore it was clear that the accident was caused by the rash and negligent driving of the car. In fact, the High Court confirms in paragraph 4 of the impugned order that the motor cycle was hit by the car from behind. But it nevertheless holds that 3 persons on a motor cycle could have added to the imbalance. The relevant portion of paragraph 4 of the order of the High Court reads as follows:

“On careful assessment of the evidence led, this Court finds substance in the plea of the insurance company. While it is correct that the offending car had no business to strike from behind against the motorcycle moving ahead of it, even if the motor cycle was changing lane to allow another vehicle to overtake, the fact that a motor vehicle meant for only two persons to ride was carrying, besides the driver, two persons on the pillion would undoubtedly have added to the imbalance.”



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C.M.A(MD)No.779 of 2022

13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. [Section 128](#) of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motor cycle, not to carry more than one person on the motor cycle. [Section 194C](#) inserted by the [Amendment Act 32](#) of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the



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C.M.A(MD)No.779 of 2022

violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW-3 to the effect that 2 persons on the pillion added to the imbalance.

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.”



C.M.A(MD)No.779 of 2022

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12. In the above decision, the Hon'ble Apex Court has settled the position of law that for directing contributory negligence, there must be either a casual connection between the violation and accident or a casual connection between the violation and the impact of the accident upon victim. In the above decision case, considering the violation of Section 128 of the Motor Vehicles Act, the Hon'ble Supreme Court has held that the above violation is not a reason to conclude that there is contributory negligence.

13. The learned Counsel for the appellant would submit that the rider well as the pillion rider were not wearing helmet at the time of accident and that the rider was not possessing valid driving licence at the time of accident.

14. Section 129 of the Motor Vechiles Act deals with wearing of protective headgear and it mandates every person driving or riding motorcycle has to wear protective headgear. But at the same time, as rightly contended by the learned Counsel for the claimants, simply because there is a violation of Section 129 of M.V. Act, there is no



C.M.A(MD)No.779 of 2022

WEB COPY

presumption that there is contributory negligence on the part of the person, who was not wearing the helmet. Admittedly, in the case on hand, the appellant has not produced any evidence to show that the rider was not possessing valid driving licence. Moreover, the deceased Chandrasekar is only the pillion rider. The appellant/Transport Corporation has also not examined any witness on their side to prove that there was a contributory negligence on the part of the deceased. Considering the above, the finding of the Tribunal that the rash and negligent driving of the bus driver alone was responsible for the accident can not be found fault with.

15. Now turning to the quantum of compensation, according to the claimants, the deceased was a Diploma holder in Electrical and Electronic Engineering and was working as a Supervisor in Venkateshwara Poultry, near Hosur and was earning Rs.15,000/- per month. No doubt, as rightly pointed out by the learned Counsel for the appellant, the claimants have not produced any document or evidence to show the avocation and income of the deceased, but the claimants have produced the Transfer Certificate, Education Certificate, Course completion certificate, conduct certificate, mark sheet and NSS



C.M.A(MD)No.779 of 2022

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certificate under Exs.P.10 to P.21 respectively. It is evident from the said records that the deceased Chandrasekar had completed is Diploma course in Electrical and Electronic Engineering successfully and his conduct during the period from 2012-2013 to 2014 – 2015 was good. Though the claimants have not produced any evidence to prove the income of the deceased, the Tribunal, taking note of the minimum daily wages paid for agricultural worker or Masalchi was around Rs.350/- per day and also taking note of the age and qualification of the deceased, has rightly fixed the monthly income at Rs.13,000/-.

16. As per the decision of 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 income towards future prospects. Since the deceased was a bachelor, the Tribunal has rightly deducted 50% of the amount towards personal and living expenses of the deceased and has rightly applied the multiplier “18” and arrived at Rs.19,65,000/- as compensation under the head of loss of dependency. As per the judgment of the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd., Vs. Manu Ram alias Chuhru Ram and Others*** reported in ***(2018)18 SCC 130***, the Tribunal



C.M.A(MD)No.779 of 2022

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has awarded Rs.44,000/- each to the claimants for the loss of filial consortium and also awarded Rs.16,500/- for funeral expenses and Rs.16,500/- towards loss of estate under the conventional heads. The appellant/Transport Corporation has not canvassed any other reason or ground to impugn the award. Hence, this Court concludes that the above Civil Miscellaneous Appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are considered accordingly.

17. In the result, the Civil Miscellaneous Appeal is dismissed.

14.11.2022

Index : Yes : No

Internet : Yes : No

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To

1.The Motor Accident Claims Tribunal /
Additional District and Sessions Court, Srivilliputtur.

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



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C.M.A(MD)No.779 of 2022

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.779 of 2022

14.11.2022