



C.M.A(MD)No.1093 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23/12/2022

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THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A(MD)Nos.1093 & 543 of 2022

C.M.A(MD)No.1093 of 2022

1.M.Velankanni

2.M.Rathidevi

... Appellants/ Claimants.

Vs

The Managing Director,

Tamilnadu State Transport Corporation,

having his office at Bye Pass Road,

Dindigul District Collectorate Post,

Dindigul – 624001.

...Respondent/Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the fair order dated 0607.2021 made in M.C.O.P.No. 373 of 2018 on the file of the Motor Accidents Claims Tribunal/Principal District Court, Dindigul, insofar as quantum of the award amount is concerned and thereby, enhance the award amount.

For Appellants : Mr.P.R.Prithviraj

For Respondent : Mr.K.Sudalaiyandi



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C.M.A(MD)No.543 of 2022

The Managing Director,

Tamilnadu State Transport Corporation,

having his office at Bye Pass Road,

Dindigul District Collectorate Post,

Dindigul – 624001.

... Appellant/Respondent

Vs

1.M.Velankanni

2.M.Rathidevi

...Respondents/Petitioners

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree dated 06.07.2021 passed in M.C.O.P.No.373 of 2018 on the file of the Motor Accident Claims Tribunal (Principal District Court), Dindigul.

For Appellant : Mr.K.Sudalaiyandi

For Respondent : Mr.P.R.Prithviraj

COMMON JUDGMENT

Both the appeals arise out of the order passed in M.C.O.P.No.373 of 2018, on the file of the Motor Accidents Claims Tribunal (Principal District Court), Dindigul.



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2.CMA(MD)No.1093 of 2022 is filed by the claimant seeking enhancement of compensation and CMA(MD)No.543 of 2022 is filed by the Transport Corporation challenging the award of the Tribunal on the ground of negligence.

3. Since the appeals arises out of same accident, they were heard together and a common judgment is passed.

4.The brief facts necessary for the disposal of the appeals are as follows:-

On 18.10.2017, at about 11.00 a.m, when the deceased namely, Arunkumar @ Murugan was riding the Hero Honda Splendor Motorcycle along with his friend Ramkumar and while proceeding to Kannivadi, from Dharapuram to Trippur road, south to Velampatti bus stop, near Palanichamy garden, the bus belonging to the Transport Corporation, came in the opposite direction in a rash and negligent manner and hit the motorcycle. Due to the collusion, the deceased sustained serious injuries and died. The FIR was registered against the driver of the Transport Corporation. The deceased was aged about 23 years at the time of accident and was working in a Banian Company as Ironing Master with an earning of Rs.20,000/- per month. The



claimants, who are the sisters of the deceased, who died as a bachelor filed the claim petition seeking compensation of Rs.30 lakhs.

5.The Transport Corporation filed a counter, wherein, the Transport Corporation disputed the negligence and stated that the accident occurred only due to the negligence of the deceased and as the deceased was not wearing helmet at the time of accident, he succumbed to the injuries. The Transport Corporation consequently questioned the quantum of compensation.

6.The Tribunal on an assessment of the evidence on record held that the accident occurred only due to the rash and negligent driving of the Transport Corporation's driver and awarded the compensation of Rs.11,38,400/- along with interest at the rate of 7.5% per annum. Aggrieved by the said award, the above appeals have been filed.

7.The learned counsel for the Transport Corporation, who is the appellant in C.M.A.(MD)No.543 of 2022 submitted that the Tribunal had erred in its finding on negligence. As regards quantum of compensation, the learned counsel submitted that in the absence of any evidence to prove the income of the deceased, the Tribunal erred in fixing the notional income at



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Rs.7,000/- per month and further erred in adding 40% towards future prospects.

8.On the other hand, the learned counsel for the claimants, who are the appellants in CMA(MD).No.1093 of 2022 submitted that the deceased was aged about 23 years at the time of accident and working as an Ironing Master in a Textile Company and therefore, the income fixed by the Tribunal was very meagre and the same deserves to be enhanced.

9.I have considered the submissions of both the counsels and perused the materials available on record.

10.The accident had occurred on 18.10.2017, when the deceased's motorcycle was proceeding from Dharmapuram to Trippur By-pass Road, South to Velampatti bus stop near Palanichamy Garden keeping to the extreme right side of the road from North – South direction, at that time the Transport Corporation bus came from the opposite direction and hit against the deceased's vehicle, thereby, causing grievous injuries to the deceased, who died subsequently.



11.It is the case of the Transport Corporation that there was no negligence on the part of the driver of the bus and that it was the deceased's own negligence, which resulted in the accident. The Transport Corporation has examined the driver as R.W.1, and there is no other evidence except the oral evidence of R.W.1.

12.It is seen from the evidence filed on behalf of the claimants that the pillion rider namely, Ramkumar lodged a complaint against the Transport Corporation Bus and also deposed before the Tribunal as P.W.2. The pillion rider was the eye-witness to the accident and also a author of the FIR. The evidence of P.W.1 is cogent and the Transport Corporation has not elucidated anything in the cross examination to shake the evidence of P.W.1.

13. The evidence of R.W.1 in chief examination replicated the counter and in the cross examination, R.W.1 stated that he was suspended from service because of the accident. Though R.W.1 states that due to traffic diversion, the bus was diverted to another lane of the main road and that, on seeing the motorcycle, he slowed the vehicle and stopped the same to avoid the accident. No corroborative evidence like sketch etc., were filed by the Transport Corporation. For the reasons best known to the Transport Corporation, the rough sketch was not filed. Therefore, in the absence of any



other corroborative evidence, the evidence of R.W.1 cannot be accepted as gospel truth moreso, when his testimony is interested. For the said reasons, I am of the view that the findings of the Tribunal on the issue of negligence is unassailable.

14. On the quantum of compensation, the Tribunal has fixed the income at Rs.7,000/- in the absence of proof of income by the claimants.

15. The learned counsel for the claimants submitted that the undisputed fact is that the deceased was working in a Textile Company as a Ironing Master and this submission was also corroborated in the FIR by the pillion rider, who was a co-worker.

16. The learned counsel further submitted that the fixation of income at Rs.7,000/- was very meagre and prayed that the income may be fixed at Rs. 15,000/- though the claim of Rs.20,000/- was made in the claim petition.

17. In my opinion, the claim of Rs.15,000/- is also on the higher side as the accident occurred in the year 2017. It would be appropriate to fix the income at Rs.9,000/- per month. At the relevant time, the notional income was taken at Rs.9,000/- in number of judgments of this Hon'ble Court including



the Division Bench Judgments. Therefore, the monthly income of the deceased is fixed at Rs.9,000/- and if 40% is added towards future prospects, the income works out to Rs.12,600/- ($40/100 \times 9000 = 3600/- + 9000/-$) per month. 50% of the income is deducted towards personal expenses of the deceased, as he died a bachelor. Then the monthly income works out to Rs. 6,300/- per month. Considering that the age of the deceased was 23 years at the time of the accident, the appropriate multiplier would be 18 as per the judgement of the Hon'ble Supreme Court in **Sarala Verma's Case**. The compensation towards loss of dependency would then be Rs.13,60,800/- ($6300 \times 12 \times 18$).

18.The Trial Court awarded a sum of Rs.40,000/- under the head 'loss of consortium'. As per the judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs Pranay Sethi and others*, the claimants are entitled to Rs.44,000/- each ($Rs.44,000/- \div 2 = 88,000/-$) towards 'loss of consortium'. In my view, the award of the Tribunal towards other heads are reasonable and the same are confirmed.

19.It is seen that in the present case, the deceased was riding two wheeler without wearing the safety helmet. In the postmortem report, Ex.B.2 the cause of death is head injuries. Therefore, I am of the view that a



deduction of 10% should be made towards contributory negligence as it was a case of head on collusion and also that the deceased was not wearing safety helmet at the time of accident.

20. Accordingly, the award of the Tribunal in M.C.O.P.No.373 of 2018 is modified as follows:-

<i>Sl. No.</i>	<i>Particulars</i>	<i>Amount granted by the Tribunal</i>	<i>Amount granted by this Court</i>
1	Loss of dependency	Rs.10,58,400/-	Rs.13,60,800/-
2.	Loss of Estate	Rs.15,000/-	Rs. 15,000/-
3.	Loss of Consortium to the claimants(44,000 x2=88,000/-)	Rs.40,000 /-	Rs. 88,000 /-
4.	Funeral Expenses	Rs.15,000/-	Rs. 15,000/-
5.	Transport Expenses	Rs.10,000/-	Rs. 10,000/-
	Total Amount	Rs.11,38,400/-	Rs. 14,88,800/-
	After deducting 10% from the total compensation		Rs. 1,48,880/-
	Final Amount		Rs. 13,39,920/-

21.The quantum of compensation awarded by the Tribunal is enhanced from **Rs.11,38,400/-** to **Rs.13,39,920/- (Rupees Thirteen Lakhs Thirty Nine Thousand Nine Hundred and Twenty Only)** which shall carry interest at the rate of 7.5% per annum.



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22.In the light of the above discussion, the appeal filed by the Transport Corporation in CMA(MD)No.543 of 2022 is partly allowed and the appeal filed by the claimants in CMA(MD)No.1093 of 2022 is also partly allowed.

23.The Transport Corporation is directed to deposit the entire compensation of **Rs.13,39,920/- (Rupees Thirteen Lakhs Thirty Nine Thousand Nine Hundred and Twenty Only)** (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 to the credit of M.C.O.P.No.373 of 2018 on the file of the Motor Accidents Claims Tribunal/Principal District Court, Dindigul, within a period of eight weeks from the date of receipt of a copy of this order.

24.On such deposit being made by the Transport Corporation, the Claimants herein are at liberty to withdraw the same after following due process of law. There shall be no order as to costs.

23/12/2022

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The on the file of the Motor Accidents Claims Tribunal/
Principal District Court, Dindigul,
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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N.MALA, J

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