



C.M.A.(MD)No.279 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.11.2022

Pronounced on : 23.12.2022

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.279 of 2022
and
C.M.P.(MD)Nos.2665 and 8053 of 2022

The Tamil Nadu State Transport Corporation,
through its The Managing Director,
Bye Pass Road,
Madurai.

...Appellant/Respondent

Vs.

1. Vanitha
2. Minor Hashini
3. Ramalakshmi
4. Kalaivanan

...Respondents/Petitioners

(Minor second respondent represented
through her mother and guardian the
first respondent)

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the order dated 24.02.2021 passed in M.C.O.P.No.



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1112 of 2017, on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tirunelveli.

For Appellant : Mr.K.Sudalaiyandi

For Respondents : Mr.T.Lenin Kumar

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1112 of 2017 dated 24.02.2021 on the file of the Motor Accident Claims Tribunal / Special Subordinate Court dealing with MCOP Cases, Tirunelveli.

2. The appellant/Transport Corporation, who was made liable to pay compensation of Rs.19,97,800/- with interest at 7.5% per annum and costs to the respondents/claimants for the death of one Santhosh, who died in an accident occurred on 30.08.2017, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.

3. The case of the respondents/claimants is that on 30.08.2017 at about 10.30 p.m., the deceased Santhosh was riding a motorcycle bearing Registration No.TN-58-AL-9766 from West to East on the left side of Melakkal-Madurai



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Main Road, that when the motorcycle was proceeding near Muniyandi Koil, a bus bearing Registration No.TN-58-N-0595, which came in the opposite direction in a rash and negligent manner, turned to the wrong side and hit against the motorcycle and as a result of which, the said Santhosh was thrown out of the motorcycle and fell down and sustained serious injuries, that the injured was immediately taken to the Government Rajaji Hospital, Madurai, but on the way to hospital, he succumbed to the injuries and that the accident was occurred only due to the rash and negligent driving of the bus driver and hence, a case was registered against the bus driver in Crime No.620 of 2017 for the offences under Sections 279 and 304A of IPC on the file of Nagamalai Pudukottai Police Station.

4. It is the further case of the respondents/claimants that the deceased was a driver by profession and that he was aged 23 years at the time of accident and was earning Rs.20,000/- per month.

5. Admittedly, the first respondent/first claimant is the wife, the second respondent/second claimant is the daughter, the third respondent/third claimant is the mother and the fourth respondent/fourth claimant is the father of the deceased Santhosh.



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6. The defence of the appellant/Transport Corporation is that the deceased was not wearing helmet at the time of accident and as such, the same amounts to contributory negligence, that on 30.08.2017, the bus driver drove the bus slowly on the left side of the road following all the rules and regulations, that the bike rider, while overtaking another bike, drove the same in a high speed and in a reckless manner as if he was drunk, that the bus driver, on seeing the motorcycle, went to the extreme left and stopped the bus and even then the bike rider came and hit the bus at the front middle of the bus, that he fell on the road and was injured, that the bus driver is no way responsible for the accident and that therefore, the appellant/Transport Corporation is not liable for the claim.

7. During enquiry, the respondents/claimants have examined the fourth respondent/fourth claimant Kalaivanan as P.W.1 and one Praveen Kumar as P.W.2 and exhibited 5 documents as Ex.P.1 to Ex.P.5. The appellant/Transport Corporation has examined its bus driver Tr.Bruslee as R.W.1 and adduced no documentary evidence.

8. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award dated 24.02.2021 holding that the bus driver was responsible



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for the accident, directed the appellant/Transport Corporation to pay compensation of Rs.19,97,800/- with interest at 7.5% per annum and costs.

Aggrieved by the said award, the appellant/Transport Corporation has come forward with the present appeal.

9. The learned counsel appearing for the appellant/Transport Corporation would contend that the Tribunal has failed to notice that the bus driver did not commit any negligence on his part, that the registration of the FIR against the bus driver is not a conclusive evidence to prove the entire negligence against him, that the Tribunal has failed to consider the fact that the deceased did not wear helmet at the time of accident, that the deceased ought to have bear 15% contributory negligence for not wearing helmet, that the deceased was in drunken way at the time of accident and that the Tribunal has also failed to consider that at the time of accident, the deceased was overtaking another bike in a high speed and reckless manner.

10. The learned counsel appearing for the appellant/Transport Corporation would further contend that the Tribunal, without any evidence, has excessively fixed the notional income at Rs.9,000/- per month, that the compensation fixed at Rs.19,27,800/- is highly excessive and that the amounts



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awarded under the heads of loss of consortium, funeral expenses and transport charges are highly excessive.

11. The points that arise for consideration are :

(i) Whether the Tribunal erred in rendering a finding that the bus driver alone was responsible for the accident, despite showing that the deceased, while overtaking another vehicle in a high speed and reckless manner, came and hit the bus and that due to non-wearing of helmet, he contributed to the accident?

(ii) Whether the Tribunal erred in fixing the compensation at Rs.19,27,800/-, despite showing that the respondents/claimants have not produced any iota of evidence to prove the income of the deceased and that the amounts awarded on other heads are also excessive?

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

Point Nos.(i), (ii) and (iii) :

12. The respondents/claimants in order to prove their case have examined P.W.2-Praveen Kumar alleged to be the occurrence witness and he would



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reiterate the version of the respondents/claimants in the claim petition. P.W.2 would say that he was proceeding in his motorcycle behind the deceased Santhosh and at the place near Muniyandi Koil, Melakkal-Madurai Main Road, the bus, which was driven with rash and negligence, dashed against the two wheeler and as a result of which, the said Santhosh has suffered serious injuries and succumbed to same, while taking to the hospital. He would deny the suggestion that the negligence of the deceased alone was responsible for the accident and that the bus driver was not at fault.

13. As already pointed out, the appellant/Transport Corporation has examined its bus driver Bruslee as R.W.1 and he would reiterate the contentions raised in the counter statement regarding the mode of accident. In cross-examination, he would admit that FIR came to be registered against him and that the charge sheet was filed and the same is pending before the learned Judicial Magistrate No.6, Madurai. Though R.W.1 has alleged that the deceased, while overtaking another two wheeler, came in a rash and negligent manner and dashed against the bus, he does not remember the registration number of the vehicle, which was overtaken by the deceased and that he would deny the suggestion that the accident was occurred only due to his negligence.



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14. Admittedly, FIR was registered against the R.W.1-bus driver and that after completing the investigation, the concerned police has laid the charge sheet against the R.W.1.

15. As rightly contended by the learned counsel appearing for the respondents/claimants, though P.W.2 was cross-examined with regard to the mode of accident, nothing was elicited by the other side in their favour and on considering the entire evidence available on record and the evidence of P.W.2 and R.W.1, the finding of the Tribunal that the bus driver alone was responsible for the accident, cannot be found fault with.

16. Now turning to the compensation, as already pointed out, it is the specific case of the respondents/claimants that the deceased was aged 26 years at the time of accident and was driver by profession and that he was earning Rs.20,000/- per month. No doubt, the respondents/claimants have produced and exhibited the driving license of the deceased as Ex.P.2 and whereunder, it is evident that the deceased was born on 03.02.1991. The Tribunal taking note of the postmortem certificate has fixed the age of the deceased as 26 years, but as per the particulars given in driving license, the age of the deceased is to be fixed



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as 27 years. But whatever it is, from 26 to 30 years, the appropriate multiplier would be 17.

17. The respondents/claimants have not produced any materials or evidence to prove the monthly income of the deceased. Hence, the Tribunal, while taking note of the driver profession, has fixed the monthly notional income at Rs.9,000/-. Though the appellant/Transport Corporation has alleged that the monthly income fixed at Rs.9,000/- is excessive, they have not elaborated anything further.

18. As per the legal dictum laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609***, the Tribunal has rightly added 40% of the income towards future prospects. The Tribunal, by relying on the decision of the Hon'ble Supreme Court in ***Smt.Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104***, taking note of the number of dependants, has rightly deducted 1/4th for personnel and living expenses of the deceased. The Tribunal has awarded Rs.40,000/- towards loss of consortium to the first respondent/first claimant wife, but admittedly, the



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Tribunal has neither awarded any amount towards loss of consortium for the other respondents/claimants nor the reasons for it.

19. 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 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.



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20. Considering the fact that the other respondents/claimants being the daughter and parents of the deceased are entitled to get Rs.40,000/- each towards loss of parental consortium and loss of filial consortium. In addition to the above, the Tribunal has also rightly awarded Rs.15,000/- for funeral expenses and Rs.15,000/- towards loss of estate under the conventional heads.

21. No doubt, the respondents/claimants have not challenged the quantum of compensation. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Surekha and others vs. Santosh and others*** (C.A.No.476 of 2020 dated 21.01.2020) wherein, the Hon'ble Apex Court has held as follows:-

“2. This appeal takes exception to the judgment and order dated 04.01.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No.2564 of 2016, whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs.49,85,376/- (Forty-Nine Lakh Eighty-Five Thousand Three Hundred Seventy-Six Only), however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.



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3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants.”

22. Considering the above, the respondents/claimants are entitled to get Rs.21,17,800/- and the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss of income	19,27,800	19,27,800	Confirmed
2.	Spousal consortium (first respondent)	40,000	40,000	Confirmed
3.	Loss of estate	15,000	15,000	Confirmed
4.	Funeral expenses	15,000	15,000	Confirmed
5.	Filial consortium (second respondent)	Nil	40,000	Granted
6.	Parental consortium (respondents 3 & 4)	Nil	80,000 (Rs.40,000/- x 2)	Granted
	Total	19,97,800	21,17,800	Enhanced by Rs.1,20,000/-



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23. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.19,97,800/- is hereby enhanced to **Rs.21,17,800/- (Rupees Twenty One Lakhs Seventeen Thousand and Eight Hundred only)** together with interest at 7.5% per annum and costs and out of the said compensation amount, the first respondent/first claimant is entitled to get **Rs.12,17,800/- (Rupees Twelve Lakhs Seventeen Thousand and Eight Hundred only)**, the second respondent/second claimant is entitled to get **Rs.5,00,000/- (Rupees Five Lakhs only)**, the third respondent/third claimant is entitled to get **Rs.3,00,000/- (Rupees Three Lakhs only)** and the fourth respondent/fourth claimant is entitled to get **Rs.1,00,000/- (Rupees one Lakh only)**. The appellant/Transport Corporation is directed to deposit the modified award amount with accrued interests and costs to the credit of M.C.O.P.No.1112 of 2017 on the file of Motor Accident Claims Tribunal / Special Subordinate Court, Tirunelveli, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondents/claimants are entitled to get their shares as per the apportionment fixed by this Court. The respondents 1, 3 and 4/claimants 1, 3 and 4 are permitted to withdraw their shares together with interest and the share of the minor second respondent/second claimant shall be



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deposited in any one of the Nationalised Banks till they attain majority. The first respondent, who is the mother of the minor claimant is permitted to withdraw the interest of minor once in three months directly from the Bank. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

23.12.2022

Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

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To

1. The Motor Accident Claims Tribunal (Special Sub Court),
Tirunelveli.

Pre-Delivery Order made in
C.M.A.(MD)No.279 of 2022
and
C.M.P.(MD)Nos.2665 and 8053 of 2022

23.12.2022