



C.M.A.(MD)No.642 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 08.11.2022

Delivered On : 21.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.642 of 2020

The Managing Director

Tamil Nadu State Transport Corporation

Madurai Limited, Madurai.

.. Appellant /2nd Respondent

Vs.

1.Maria Sumathi

2.Febsin Jenifer

3.Jenifer

.. Respondents 1 to 3/ Petitioners

4.Ananthakrishna Pillai

(R4 is the driver of the appellant and
that given up)

5.C.Selvin

6.Reliance General Insurance Company Limited,

Rep. by its Manager

Having office at Thahaplazha,

South By pass Road,

Vannarpet,

Tirunelveli District.

7.Christober

.. Respondent 4 to 7 / Respondent 1, 3 to 5



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.28 of 2015, dated 02.02.2019, on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Nagercoil.

For Appellant : Mr.P.Prabhakaran
For Respondent Nos. 1 to 3 : Mr.T.Selvakumaran
For Respondent No.6 : Mr.V.Sakthivel
Respondent Nos.5 & 7 : Dispensed with

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.28 of 2015, dated 02.02.2019, on the file of the Motor Accident Claims Tribunal - Principal Sub Court, Nagercoil. The appellant herein is the second respondent and the respondents 1 to 3 herein are the claimants and the respondents 5 to 7 herein are the respondents 1 and 3 to 5 in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in M.C.O.P.No.28 of 2015, is as follows:

On 07.10.2014, at about 12.30 pm., when the deceased – Jonofer and his friend- Bright Jinofer were riding a two wheeler bearing Registration No.TN-75-J-1245 along the Aattoor to Verkilambi road in a careful and cautious manner, a bus



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bearing Registration No.TN-57-N-1254 came from the opposite direction in a rash and negligent manner, dashed against the two wheeler. The deceased and his friend were thrown away and they sustained injuries. After getting first aid in the Government College and Hospital, Aasaripallam, the deceased was taken to Ananthapuri Hospital, Tiruvananthapuram and he died on his way to the Hospital. The deceased was aged about 21 year, he was studying 3rd year Engineering and he was a University rank holder. During his holidays and in the evening, the deceased used to do labour work and was earning Rs.5,000/- per month. The petitioners are his dependants and they claimed a sum of Rs.50,00,000/- as compensation.

3. A Brief substance of the counter filed by the second respondent adopted by the first respondent, in M.C.O.P.No.28 of 2015, is as follows:

The manner of accident, nature of injuries, details as to the damage to properties are all denied. The claim is excessive. There is no negligence or rashness on the part of the first respondent. The nature and manner of accident is untrue and false. The first respondent was driving the bus in a careful and cautious manner, observing the traffic rules. After stopping the bus in the Vettukuli junction stop, the first respondent moved the vehicle in a slow manner. It was the motorcyclist who came from the opposite direction in a rash and negligent manner, crossed the middle line of the road and hit the bus. The owner and insurer of the motorcycle are liable



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to pay compensation. The claim of 12% interest is excessive.

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4. A Brief substance of the counter filed by the fourth respondent, in M.C.O.P.No.28 of 2015, is as follows:

The third respondent being the owner of the vehicle has not informed the accident. The petitioner has to prove that the motorcycle was insured with this respondent. The deceased was the rider of the motorcycle. Only third parties are entitled to claim compensation from the fourth respondent. The petitioners cannot file a claim petition before this Tribunal. The petitioners have to prove that the deceased was having a valid and effective driving licence. The amount claimed is excessive. The rate of interest claimed by the petitioners is excessive. There is some collusion between the third respondent and the petitioners and hence, the petitioners failed to contest the case. The petition is to be dismissed.

5. 1 witness was examined and 14 documents were marked, on the side of the claimants. No witness was examined and no document was marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.18,84,400/- as compensation to be paid by the first and second respondents.



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

The Tribunal failed to fix the entire negligence on the rider of the motorcycle, who crossed the middle line of the road and drove the vehicle in a rash and negligent manner. The Tribunal wrongly fixed the entire responsibility on the bus driver. Without any specific proof, the Tribunal fixed the monthly income as Rs.12,000/-, which is high. In addition to that the Tribunal awarded 40% future prospects. The Tribunal failed to consider that even in the claim petition, the claimants have mentioned that the deceased was earning only Rs.5,000/- per month. The Tribunal wrongly fixed the age of the deceased as 21 years and adopted multiplier '18', which is high. The Tribunal is wrong in awarding Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, which are all excessive.

7. On the side of the appellant, it is stated that the Tribunal is wrong in fixing the entire negligence on the bus driver. On the side of the respondents, it is stated that the entire negligence was on the bus driver.

8. Copy of the F.I.R was marked as Ex.P1. Copy of the M.V.I. report was marked as Ex.P3, Ex.P4 and P9 and P10. Copy of the charge sheet was marked as



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Ex.P11. No witness was examined on the side of the appellant, to rebut the evidence

of P.W.1. Hence, it is decided that the bus driver was responsible for the accident.

9. On the side of the appellant, it is stated that the Tribunal has fixed the monthly income as Rs.12,000/-. The rider of the two wheeler was not having valid driving licence at the time of accident and he was not wearing helmet and the deceased sustained head injuries and prayed contributory negligence to be fixed on the deceased.

10. On the side of the respondents, it is stated that the deceased was doing part time job as a Labourer and he was earning Rs.5,000/- per month as a student, Rs.5,000/- cannot be taken as the entire income of the deceased. The deceased was studying third year Engineering and he was a gold medalist. S.S.L.C, mark sheet was marked Ex.P12. H.S.C mark sheet was marked as Ex.P13. B.E. Mark sheet was marked as Ex.P14.

11. The appellant has not taken any steps to prove that the deceased was not having valid driving licence. Though non-wearing the of helmet was mentioned in the counter, the claimants have not chosen to let in any evidence to prove that the deceased was wearing his helmet. A verification of the post mortem certificate -



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Ex.P2 and P8 reveals that the deceased sustained head injuries. Hence, it is decided that the rider of the motorcycle was also responsible for the accident and for the non-wearing of helmet, 10% contributory negligence is fixed on the deceased.

12. On the side of the appellant, it is stated that admitted salary of the deceased was only a Student and he was a non earning member and a sum of Rs.7,00,000/- as a lumpsum is to be fixed as loss of income. A judgment of the Hon'ble Supreme Court reported in **2013-2-TNMAC- 724 (Radhakrishna and another V. Gokul and others)**, is cited, wherein, the Hon'ble Apex Court has held as follows:-

“ Issue relating to award of compensation to parents of deceased, who was a student, not been dealt with by Apex Court in Sarla Verma and applying yardstick as adopted in Arvind Kumar Mishra and considering age of parents, held, ends of justice will be served by awarding a lump sum of Rs.7,00,000/- with interest from the date of claim petition. ”

13. On the side of the respondents / claimants, it is stated that this Court has fixed the income for an Engineering student as Rs.20,000/- per month. A judgment of this Court reported in **2018-2-TNMAC-81 (Balamanothari V. M/s. Sri Venkateswara College of Engineering)** is cited.



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WEB COPY 14. On the side of the respondents / claimants, it is further stated that for an accident took place in the year 2013, this Court has fixed the income for an engineering graduate as Rs.12,000/- per month, in a case in CMA.No.603 of 2022 (Jothilakshmi V. The Correspondent, PSR Engineering College), dated 06.09.2022.

15. On the side of the respondents / claimants, it is further stated that just compensation has to be awarded and that the compensation can be enhanced even beyond the claim amount. A judgment of the Hon'ble Supreme Court reported in **2003-ACJ-12 (Nagappa V. Gurudayal Singh and others)** is cited.

16. Considering the income stated in the claim petition is only for the part time job and considering the fact that the deceased was an Engineering student, considering the scope of earning of an engineer, it is decided that the income (Rs.12,000/-) fixed by the Tribunal is reasonable. Considering the age of the deceased, adding 40% towards future prospects is reasonable. Considering the age of the deceased, multiplier '18' is applicable. The Tribunal has awarded Rs.18,14,400/- towards loss of income, which is reasonable. 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.



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17. The claimants are entitled for compensation, after deducting 10% (Rs.1,88,400/-) towards the contributory negligence on the part of the deceased. The claimants are entitled to Rs.16,95,960/- (Rs.18,84,400/- (-) Rs.1,88,440/- = Rs.16,95,960/-) , as compensation.

18. This Appeal is partly allowed. The compensation is reduced from Rs.18,84,400/- to Rs.16,95,960/-.

(i) The appellant herein / Transport Corporation is directed to deposit the compensation of Rs.16,95,960/- with accrued interest at the rate of 7.5% from the date of petition till the date of deposit and costs within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited.

(ii) On such deposit being made, the Tribunal may permit the claimants to withdraw their shares as apportioned by the Tribunal 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. No Costs. **Excess amount, if any, shall be refunded to the Transport Corporation.**

21.12.2022

Index : Yes/No
Internet : Yes/No
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R. THARANI, J.

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To

- 1.The Principal Sub Judge,
Motor Accident Claims Tribunal ,
Nagercoil.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.642 of 2020

21.12.2022