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C.M.A. No. 357 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 357 of 2021

and C.M.P. No.3002 of 2021

The General Manager,
Tamil Nadu State Transport
Corporation Ltd.,
Trichirapalli.

... Appellant/ Respondent

Vs.

1. Ambika
2. Baskar
3. Devi
4. Vijayabalan
5. Minor Keerthika

... Respondents/ Petitioners

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 13.07.2020 made in M.C.O.P. No. 105 of 2019 on the file of the Additional District and Sessions Judge, Motor Accident Claims Tribunal, Ariyalur.

For Appellant : M/s. P. Rajathi
(for D. Raghu)

For RR 1 to 5 : M/s. T. Gobinath



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JUDGMENT

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This appeal has been filed by the Transport Corporation, challenging the award of compensation in M.C.O.P. No. 105 of 2019, dated 13.07.2020 on the file of the Additional District and Sessions Judge, Motor Accident Claims Tribunal, Ariyalur, wherein the Tribunal has awarded compensation for a sum of Rs.7,00,000/- along with interest @ 7.5% per annum from the date of claim petition till the date of realisation in favour of the claimants for the death of one Manimozhi.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. The case of the claimants is that on 27.01.2017, the deceased Manimozhi was travelling in the bus bearing Registration No. TN-45-N-3225 running from Kovai to Trichy, belonging to respondent - Transport Corporation, he was seated near the rear side steps of the bus. Driver of the bus has driven the same in a rash and negligent manner and while the bus reached near Sirugamani Arasi Malayali Kovil around 11:00P.M., the driver of the bus has applied a sudden brake, due to which, the deceased was



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thrown out of the bus, which resulted in causing severe injuries to the deceased and thereafter, the deceased succumbed to injuries in the hospital on the same day. A criminal case was also registered against the driver of the bus in Crime No.22 of 2017 U/s. 279, 304(A) of I.P.C. on the file of the Pettavaithalai Police Station. Due to loss of the deceased Manimozhi, the claimants have filed a claim petition seeking compensation for a sum of Rs.20,00,000/- under section 140 and 166 of the Motor Vehicle Act, 1988.

4. The respondent - Transport Corporation has filed a counter and contended that the deceased was originally seated near the rear side steps of the bus, at that time, he dropped his water bottle, which rolled towards the last row of the bus, in order to collect the water bottle, the deceased went back to the last row and while reaching, he lost his balance and fell down from the bus. The accident was not occurred due to the negligent act on the part of the driver of the bus, it was only happened due to the negligent act on the part of the deceased, if he had not went back to collect the water bottle, the accident could not have happened, hence, prays to dismiss the claim petition filed by the claimants.



5. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 to P.4 were marked, on the side of the respondents no witnesses were examined and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in point No.1, has held that both the rash and high speed driving of the driver and negligent act on the part of the conductor of the bus are responsible for the occurrence. In point No.2, the Tribunal has quantified and granted a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) as compensation to the claimants along with the interest @ 7.5% per annum from the date of claim petition till the date of realisation and directed the respondent - Transport Corporation to pay the awarded compensation to the claimants.

7. Aggrieved over the liability fixed on the transport corporation and directed to pay the compensation to the claimants, this appeal has been filed to set aside the compensation awarded infavour of the claimants.

8. The learned counsel appearing for the appellant - Transport



Corporation herein, has submitted that evidence adduced by the bus driver that, while the deceased was travelling in the bus, he suddenly went back to collect his water bottle, which rolled towards back side of the bus, at that time, he lost his balance and fell down from the bus, it is purely negligent act on the part of the deceased. The Tribunal has also given the finding that the deceased went back to collect the water bottle, however, the Tribunal has not fixed any contributory negligence on the part of the deceased, hence prays to set aside the award of the Tribunal.

9. Per contra, the learned counsel appearing for the claimants has submitted that there is no negligence on the part of the deceased, it is only due to sudden application of the brake by the driver of the bus, the deceased, who seated near the steps of the bus has fell down since, the bus was not having any door for protecting the passengers. Hence, the Transport Corporation is responsible for the passenger who succumbed to injuries on account of the negligent act on the part of its driver and conductor.

10. Head the submissions made on both sides and perused the materials placed on record:



11. Admittedly, in this case, the bus was not having any doors for the steps to protect the passengers, who were seated near the boarding area.

The F.I.R., marked as Ex.P.1, was lodged by one of the relative of the deceased stating that the deceased went back side of the bus to collect the water bottle and due to rash and negligent driving of the driver of the bus and application of sudden brake, the deceased has lost his balance and fell down from the bus. The evidence of P.W.2 - eye witness shows that the deceased was seated in the bus at the time of occurrence and due to rash and high speed driving by the driver of the bus and application of sudden brake, the deceased was thrown out of the bus and sustained grievous injuries.

12. The driver of the bus was examined as R.W.1 and he has stated that the deceased was seated at the third row from the rear side of the bus and he dropped his water bottle, which rolled and went to the rear side, hence, in order to collect the water bottle, the deceased went back and while he was reaching, he lost his balance and fell down from the bus. Whereas, the case of the claimants is that the deceased was seated at the time of accident and he has not gone back to collect the water bottle. Even, if it is admitted that the deceased went back to collect the dropped water bottle, it



is the duty of the conductor to look over the safety of his passengers, who are standing or moving inside the bus and he should have taken steps for their safety and the driver of the bus is also responsible for the safety of his passengers, he should have driven the bus cautiously inorder to avoid such occurrence. It is also the fact that there was no door covering the steps so as to protect the passengers, who are standing or moving inside the bus by preventing them from falling out from the bus, due to sudden application of brakes.

13. Admittedly, the deceased was inside the bus and he fell down from the running bus, this is sufficient to show that the Transport Corporation has not made any sufficient safety measures in protecting their passengers from falling from the running bus and on this ground, this Court is of the view that the Transport Corporation is liable to pay the compensation to the claimants. Accordingly, the finding of the Tribunal that the driver of the bus has driven the bus in a negligent manner is probable and the Transport Corporation is liable to pay the compensation to the claimants is confirmed.



14. With regard to the quantum of compensation, the Tribunal has fixed Rs.10,000/- per month as notional income for the deceased. But, it is the case of the claimant that the deceased was working as a security at Tiruppur and for this no proof or documentary evidence was submitted to prove his avocation. The deceased was admittedly aged about 64 years and the occurrence was in the year 2017, hence, this Court is of the view that the notional income fixed is on the lower side and the same is revised to Rs.12,000/- per month.

15. The Tribunal has rightly followed the dictum as laid down in *Sarla Verma and others Vs. Delhi Transport Corporation and others* reported in *[2009 ACJ 1298 SC : 2009 (6) SCC 121]*, the multiplier is fixed as '7' by considering the deceased is 64 years at the time of accident and as per *National Insurance Co. Ltd., vs. Pranay Sethi and other* reported in *[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]*, future prospectus is not applicable for the deceased. This Court finds no infirmity in it and hence, confirms the same. In this case, the claimants are five in number (i.e.,) wife, daughters and sons of the deceased, hence, deduction of one-fourth (1/4) from the monthly income of the deceased towards his personal and living



expenses would be proper. Hence, the compensation under loss of dependency is assessed as follows:

Annual income (Rs.12,000/- x 12)	= Rs.1,44,000/-
Yearly contribution to his family (deduction of 1/4)	= Rs.1,08,000/-
Applicable Multiplier	= 7
Total compensation (Rs.1,08,000/- x 7)	= Rs.7,56,000/-

16. The Tribunal has awarded Rs.40,000/- towards loss of consortium but as per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram*** reported in ***2018 ACJ 2018***, all the claimants are entitled for consortium. In this case, the claimants are the wife and children of the deceased, hence, this Court is inclined to grant the compensation under spouse consortium and parental consortium to the wife and children of the deceased Manimozhi, hence as per the Apex Court Judgment stated supra, this Court is inclined to modify the loss of consortium to Rs.40,000/- each to the wife and children of the deceased. Whereas the other heads are concerned, the compensation awarded by the Tribunal are just and the same are hereby confirmed.

17. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	6,30,000/-	7,56,000/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Funeral Expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	40,000/-	2,00,000/-	Enhanced
	Compensation Awarded	7,00,000/-	9,86,000/-	Enhanced

18. In the result, this Civil Miscellaneous Appeal is disposed off and the compensation awarded by the Tribunal at Rs.7,00,000/- is hereby enhanced to **Rs.9,86,000/- [Rupees Nine Lakh and Eighty Six Thousand only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The Appellant - Transport Corporation herein is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.105 of 2019 on the file of the Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Ariyalur. On such deposit, the claimants are permitted to withdraw the award amount now determined by this Court



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along with interest and costs, less the amount if any, already withdrawn.

The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants as per the apportionment fixed by the Tribunal. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

17.10.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Additional District and Session Judge,
Motor Accident Claims Tribunal,
Ariyalur.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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