



WEB COPY



C.M.A. No. 367 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 367 of 2021

1. Selvi
 2. Minor Udhaya
 3. Minor Vetri
- ... Appellants / Petitioners

Vs.

1. Mohan
 2. The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
No.12, Ramakrishna Road,
Salem - 7.
- ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 26.11.2020 passed in M.C.O.P. No. 1571 of 2019 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem.

For Appellant	:	Mr. T.S. Arthanareeswaran
For R1	:	Ex-parte
For R2	:	Mr. D. Raghu



JUDGMENT

WEB COPY

This Civil Miscellaneous appeal has been filed by the Transport Corporation challenging the award in the Judgment and Decree passed in M.C.O.P. No. 1571 of 2019, dated 26.11.2020 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem.

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

3. The case of the claimant is that on 30.07.2018 at about 2:45 PM, the deceased Arjunan, who is the husband of the first petitioner was riding a two wheeler bearing Registration No. TN-28-AB-8176 on the Omalur - Salem Main Road, while he reached near K.M. Rao Hospital, a bus bearing Registration No. TN-30-N-0550, which belongs to the second respondent, driven by its driver in rash and negligent manner came behind and dashed backside of the two wheeler of the deceased, which caused instantaneous death to the deceased. A criminal case was also registered against the driver of the bus in crime No.399 of 2018 u/s.279 and 304(A) of I.P.C. on the file of Palapatty Police Station. It is also stated that the



C.M.A. No. 367 of 2021

deceased was aged about 38 years and was working as a driller in a rig vehicle and was earning a sum of Rs.35,000/- per month, hence, the claimant who are the wife and children of the deceased has filed a claim petition seeking a compensation for a sum of Rs.25,00,000/- under section 166 of Motor Vehicles Act.

4. The first respondent is the owner of the two wheeler bearing Registration No. TN-28-AB-8176 has not contested the claim and remained Ex-parte. The second respondent - Transport Corporation filed a counter and contended that the accident was occurred only due to the negligent act on the part of the deceased and stated that, at the time of overtaking the bus, the deceased hit on the barricade, which was kept in the right side corner of the road to contain the traffic, so, the deceased fell down suddenly on the rear wheel of the bus and sustained injuries. Hence, the driver of the bus is not responsible for the accident, hence, prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs. P.1 to P.20 were marked and on the side of the second respondent, the driver of the bus was examined as R.W.1 and



Ex.R.1 was marked.

WEB COPY

6. Based on the evidence placed on record, the Tribunal in point Nos.1 and 2, has held that the negligent act on the part of the deceased herein is also contributed to the accident to the extent of 25% and fixed remaining 75% of contributed negligence on the part of the driver of the bus bearing Registration No.TN-30-N-0550. In point No.3, the Tribunal has quantified and fixed quantum of compensation, after deducting 25% for the contributed negligence on the part of the deceased for a sum of Rs.10,78,045/- along with the interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the contributory negligence held against the deceased herein and also for enhancement of compensation, the claimants have come forward with this appeal.

8. The learned counsel appearing for the claimants has submitted that the Tribunal has not properly appreciated the evidence of the eye witness, who has categorically stated that the deceased was not contributed



to the accident and the accident was occurred only due to the negligent driving by the driver of the second respondent bus and the Tribunal without any evidence placed on record has arrived to the conclusion that the deceased was also contributed to the negligence to the extent of 25% and prays to set aside the same. The learned counsel has also further submitted that the quantum of compensation granted by the Tribunal more particularly on fixing the monthly notional income of the deceased, which is on the lower side considering the employment of the deceased, hence, prays to enhance the compensation.

9. Per contra, the learned counsel appearing for the Transport Corporation has submitted that the Tribunal based on evidence placed on record and more particularly the witness of R.W.1- driver of the bus, the Tribunal has held that the deceased has also contributed to the accident, hence, there is no infirmity in the finding of the Tribunal. The learned counsel also submitted that the compensation awarded by the Tribunal is just as followed by this Court, hence, prays to confirm the same.

10. Heard the submissions made on both sides and perused the



materials placed on record:

WEB COPY

11. Admittedly, before the Tribunal, to prove the manner in which the accident has taken place, the claimants have examined P.W.2, who is the eye witness to the occurrence, stated that on 13.07.2018 at about 2:45 PM, he was standing outside of the Pothys showroom. At that time, the deceased was riding a TVS Sport motor cycle bearing Registration No.TN-28-AB-8176 by wearing helmet and while he reached near K.M. Rao Hospital near New Bus Stand, at that time, a bus belongs to the second respondent Transport Corporation driven by its driver in rash and negligent manner in high speed, hit on the two wheeler of the deceased and caused instantaneous death to the deceased, immediately the P.W.2 has arranged a ambulance and sent the deceased to a Medical College Hospital. In the cross examination, the P.W.2 has stated that at the time of accident, construction of flyover bridge was going on, hence there was a barricade kept near the accident place. It is also the fact that the complaint was given by the Village Administrative Officer of the concerned area. To disprove the evidence, the Transport Corporation examined R.W.1, who is the driver of the bus and he has stated that while he was driving the bus with due care and caution on the



left hand side of the Omalur to Salem Road and when he reached near Pothys show room, at about 14:45 hours, various vehicles were over-taken his bus and the traffic was also in smooth flow, at that time, the deceased tried to overtake the bus on the right hand side, due to over speed, he hit on the barricade, which was kept on the road to contain the traffic and fell down on the rear side wheel of the bus and sustained injuries, due to this he stopped the bus immediately and along with others in the place of occurrence arranged for an ambulance and sent the injured to the hospital. Thereafter, the police has also investigated the place and allowed the bus to be taken away from the spot.

12. In this case, a criminal case was also registered on the basis of the complaint given by the Village Administrative Officer, wherein he has specifically stated that the rider of the two wheeler had hit on the barricade, which was kept on the road and therefore fell down in the road, which resulted in run over by the bus on the rear side. Apart from Ex.P.1, the Ex.R.1, photograph taken at the place of occurrence was produced to show the scene of occurrence, the Tribunal after perusing the same, held that the deceased hit on the barricade and fell down, hence, he himself contributed to



the accident. On perusal of the deposition of R.W.1 and Ex.R.1-photograph, it corroborates the evidence of R.W.1 that the deceased has sustained injuries only after he himself hit on the barricade and invited the occurrence.

13. Further if the driver of the bus has driven with more cautious, he could have stopped the bus and avoided the occurrence and if the deceased has cautiously ridden the two wheeler he could not have hit on the barricade thereby could have avoided the accident. Hence, this Court is of the view that the deceased due to his own negligence hit on the barricade and fell down and due to the negligence of the driver of the bus has ran over the deceased and caused instantaneous death, hence, the Tribunal has rightly held and fixed the contributory negligence of 25% on the deceased and 75% on the driver of the bus and there is no infirmity in that finding, hence this Court confirms the same.

14. With regard to the quantum of compensation, before the Tribunal, Ex.P.17 - salary certificate, Ex.P.18 - copy of the attendance register, Ex.P.19 - salary register and Ex.P.20 - wage slip was adduced by



the claimants to prove the avocation and earning of the deceased. However, the Ex.P.17 is the salary certificate issued on 22.10.2020 i.e., after the death of the deceased. Whereas in Ex.P.18, the copy of the attendance register in which, the deceased name was found and recorded in M/s. S.L.V. Bore Wells and it shows that the deceased was regularly attended the work. The Ex.P.19 - salary register shows that the deceased has been regularly paid salary for a sum of Rs.15,000/- continuously for the period from May 2017 to March 2019. The Ex.P.20 - wage slip of the deceased has been issued in Form 21, whereas, it was issued in the month of April, May, June and July and it shows that the deceased was receiving Rs.35,000/- per month but it does not contain any information regarding deduction of EPF or any other relevant information.

15. Admittedly, the accident was taken place on 13.07.2018 and to prove the income and avocation of the deceased, the claimants have also examined P.W.3, who is the owner of the M/s. S.L.V. Bore Wells and the Tribunal has observed that this S.L.V. Bore Wells carried out their activities through out the State of Karnataka, whereas the documents were recorded as if, it is functioning in the State of Tamil Nadu. It is also held the employer



was not able to furnish any of the deduction regarding Provident Fund or any labour related registration to substantiate his claim that he is running a rig vehicle in the States of Tamil Nadu or Karnataka, hence, the Tribunal has rejected the documents produced by the claimants to prove the income and avocation of the deceased and fixed the notional income of the deceased as Rs.8,000/- per month.

16. Except the attendance register, all other documents have come into existence only later point of time and even the salary register marked as Ex.P.19 does not contain any registration number or name of the company. Admittedly, the documents produced shows that the office of the M/s. S.L.V. Bore Wells is functioning from Bangalore Taluk, whereas it does not contain any valid or authenticated documents issued by the Official except the self serving documents, hence, the rejection of the documents marked in Ex.P.17 to P.20 by the Tribunal is proper and this Court finds no infirmity in the same but considering the fact that the accident was taken place in the year 2018 and norms followed by this Court, the notional income fixed by the Tribunal is on the lower side and the same is modified to Rs.12,000/- per month.



17. The Tribunal has rightly followed the dictum as laid down in *National Insurance Co. Ltd., vs. Pranay Sethi and other* reported in *[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]* and fixed 40% as future prospectus and as per *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 '15' by considering the age of the deceased at the time of the accident, hence this Court finds no infirmity in the above fixing of future prospectus and multiplier adopted by the Tribunal and hence, confirms the same. Since, the claimants are three in number, after deducting one-third of his monthly income towards his personal and living expenses, the compensation under loss of dependency with modified monthly notional income of Rs.12,000/-is assessed as follows:

Annual income (Rs.12,000/- x 12)	= Rs.1,44,000/-
Future prospects @ 40%	= Rs.57,600/-
Yearly income of the deceased	= Rs.2,01,600/-
Yearly contribution to his family(after deducting 1/3)	= Rs.1,34,400/-
Applicable Multiplier	= 15
Total compensation (Rs.1,34,400/- x 15)	= Rs.20,16,000/-

18. The Tribunal has awarded Rs.40,000/- towards loss of consortium to the wife of the deceased, 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. Hence, this Court is inclined to grant spouse consortium and parental consortium of Rs.40,000/- each to the wife and children of the deceased Arjunan respectively, whereas the other heads such as funeral expenses and loss of estate are concerned, the Tribunal has awarded just compensation and this Court confirms the same.

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

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	10,08,045/- (after deducting 25% contributory negligence)	20,16,000/-	Enhanced
2.	loss of consortium	40,000/-	1,20,000/-	Enhanced
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	10,78,045/-	21,66,000/-	Enhanced
	Deducting 25% contributory negligence	---	5,41,500/-	
	Total Compensation	10,78,045/-	16,24,500/-	Enhanced



WEB COPY

20. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,78,045/- is hereby enhanced to **Rs.16,24,500/- [Rupees Sixteen Lakh Twenty Four Thousand and Five Hundred 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 second respondent - Transport Corporation 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.1571 of 2019 on the file of the Special District Judge, Motor Accidents Claims Tribunal, Salem. On such deposit, the appellants/claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be



C.M.A. No. 367 of 2021

no order as to costs in the present appeal.

WEB COPY

01.11.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special District Judge,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



WEB COPY



C.M.A. No. 367 of 2021

K. RAJASEKAR, J.

stn

C.M.A. No. 367 of 2021

01.11.2023