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C.M.A.Nos.386 & 387 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.06.2023

CORAM

**THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN**

**C.M.A.Nos.386 & 387 of 2015**

**and**

**MP.Nos.1 + 1 of 2015**

The Managing Director  
Metropolitan Transport  
Corporation Limited,  
Anna Salai, Chennai – 2.

... Appellant in both the CMAs

1.Manvizhi  
2.V.Balu

...Respondents in CMA.No.386/2015

..Vs..

1.B.Senthilvadivu  
2.S. Balamurugan

... Respondents in CMA.No.387/2015

**Common Prayer:** Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 06.03.2014 made in MCOP.No.628 & 629 of 2011 on the file of the Motor Accidents Claims Tribunal (II Additional District Court, Thiruvallur, Poonamallee)

For Appellant : Mr.K.S.Suresh

For Respondents : Mr.Ma.P.Thagavel



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## COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellants to set aside the impugned award dated 06.03.2014 passed in MCOP.No.629 of 2011 by the Motor Accident Claims Tribunal (II Additional District Court, Thiruvallur, Poonamallee)

2. The case of the claimants in MCOP.No.628 of 2011 is as follows:

(a) On 20.05.2011 at 12.30 a.m., when the deceased was travelling as a pillion rider in a Yamaha motor cycle bearing Regn.No.TN-57-AZ-5353 from east to west on MG road at the junction of Adyar LB Road, a bus belonging to the appellant/Transport Corporation, bearing Regn.No.TN-01-N-5437 driven by its driver in a rash and negligent manner dashed against the motor cycle and caused fatal injuries and after treatment, he died. Claiming compensation of a sum of Rs.15,00,000/-, the claimants have filed a petition in MCOP.No.628 of 2011 before the Motor Accidents Claims Tribunal.

The case of the claimants in MCOP.No.629 of 2011 is as follows:



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(b) On 20.05.2011 at 12.30 a.m., when the deceased was riding a

Yamaha motor cycle bearing Regn.No.TN-57-AZ-5353 from east to west on MG road at the junction of Adyar LB Road, a bus belonging to the appellant, bearing Regn.No.TN-01-N-5437 driven by its driver in a rash and negligent manner dashed against the motor cycle due to which the deceased sustained fatal injuries and after treatment, he died. Claiming compensation of a sum of Rs.15,00,000/-, the claimants have filed a petition in MCOP.No.629 of 2011 before the Motor Accidents Claims Tribunal.

3. Before the Tribunal, the claimants have examined four witnesses and marked PW1 and PW4 and also filed sixteen documents which were marked as Ex.P1 to Ex.P16. On the side of the Insurance Company, two witness were examined as RW1 and RW2. However, no document was marked.

4. The Tribunal considering the pleadings, oral and documentary evidences held that the accident occurred due to rash and negligent driving by both the driver of the bus and rider of the motor cycle and hence there is



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contributory negligence on the part of the rider of motor cycle namely B.

Ramkumar fixing 20% of negligence on him and 80% negligence on the driver of the bus, directing the appellant/ Transport Corporation to pay sum of Rs.9,25,720/- which being 80% of total compensation of Rs.11,57,150/- with 7.5 % interest per annum in MCOP.No.628 of 2011. Similarly, it directed the appellant/Transport Corporation to pay sum of Rs.11,34,067/- which being 80% of total compensation of Rs.14,17,584/- with 7.5 % interest per annum in MCOP.No.629 of 2011.

5. Aggrieved against the said award dated 06.03.2014 made in M.C.O.P.Nos..628 & 629 of 2011, the appellant/Transport Corporation come out with the present appeals.

6. The learned counsel appearing for the appellant/Insurance Company has contended that the Order of the Tribunal is against the law, weight of evidence and probabilities of the case. It has erred in holding that the bus driver as negligent. It also erred in awarding Rs.5,00,000/- on the head of loss of income though admittedly the deceased was a student at the



time of accident and aged about 18 years and the claimants are the parents of the deceased and the second claimant is not dependent on the deceased.

The claimants did not prove that the deceased was a student studying at the time of accident. Hence it erred in awarding huge amount on the basis of judgment of the Hon'ble Apex Court. It did not properly appreciate the aspect of non-joinder of the Insurance Company of the vehicle by the claimants. It erred in not appreciating to evidence of RW2 the conductor of the bus. The reason given by the Tribunal in fixing only 20% of contributory negligence on the part of the rider of the two wheeler is not legally sustainable. The other grounds for awarding huge amount by the Tribunal is also not legally sustainable. Thus, the award of the Tribunal is irrational, unjust and excessive and liable to be set aside. Hence, they pray for setting aside the award passed by the Tribunal.

7. Per contra, the learned counsel appearing for the respondents/claimants has submitted that the Tribunal has rightly considered the materials and evidences available on record and has arrived at the compensation, which is fair, just and reasonable and correctly fixed



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the liability on the part of the appellant / Transport Corporation and hence the Judgment of the Tribunal does not require any interference at the hands of this Court.

8. Heard the learned counsel for the appellant as well as the learned counsel for the respondents and perused the materials available on record carefully.

9. From the materials available on record, it is seen that the respondents/claimants have contended that the accident has occurred only due to rash and negligent driving of the driver of the bus belonging to the appellant/Transport Corporation. To substantiate the said contention, first claimant in MCOP.No.628/2011 was examined as P.W.1 and Ex.P1 to P7 were marked through her. In Ex.P1/FIR, it has been clearly mentioned that one Bharath and the deceased B. Ramkumar and B. Arunkumar have gone to beach and after dinner, when they were proceeding from east to west on the MG road, the driver of the bus, owned by the appellant was driving the said



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bus from south to north in a rash and negligent manner and dashed against the motor cycle which was being rode by B.Ramkumar and in which the deceased B.Arunkumar was travelling as a pillion rider and as such caused fatal injuries to both the deceased. It is the case of RW1 and RW2 that as the rider of the motor cycle was riding the same in an uncontrollable speed and though RW1 slow down the speed of the bus after noticing the light in the traffic signal, the rider of the same did not notice the bus driven by RW1 approaching the main road and dashed against the right side rear of the bus and fallen and sustained fatal injuries. RW2 has admitted that the right rear wheel of the bus ran over both the deased and immediately knowing consequences of the said admission changd his stand and would try to brush aside his version and deposed that both the deceased fallen on the road and sustained fatal injuries. In Ex.P9/port mortem certificate of B.Ramkumar, Doctor has mentioned that 500 milligrams of semi digested solid foodgrains with the smell of alcohol was present in the stomach of B.Ramkumar.

10. On perusal of records, it is seen that there is some degree of negligence on the part of the rider of motor cycle. In respect of negligence,



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the ratio of 80:20 is the contributory negligence fixed on the driver of the bus and the rider of the motor cycle respectively and hence the Tribunal has rightly fixed the contributory negligence on them in both the cases. Therefore, there is no error in the above finding of the Tribunal warranting interference by this Court.

11. As far as quantum of compensation is concerned, the Tribunal has awarded a total sum of Rs.9,25,720/- which being 80% of total compensation of Rs.11,57,150/- with 7.5 % interest per annum in MCOP.No.628 of 2011 and Rs.11,34,067/- which being 80% of total compensation of Rs.14,17,584/- with 7.5 % interest per annum in MCOP.No.629 of 2011 as compensation for the fatal injuries sustained by the claimants, which are not excessive and are based on records. There is no error in the award passed by the Tribunal warranting interference by this Court in the aspect of quantum also.

12. In fine, this Civil Miscellaneous Appeals are dismissed and a sum of Rs.9,25,720/- in MCOP.No.628 of 2011 and Rs.11,34,067/- in



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MCOP.No.629 of 2011 awarded by the Tribunal as compensation to the claimants along with interest and costs are confirmed. The appellant/Transport Corporation is directed to deposit the award amount as ordered by the Tribunal, 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 MCOP.No.628 of 2011 and MCOP.No.629 of 2011 on the file of the Motor Accident Claims Tribunal, (II Additional District Court, Thiruvallur, Poonamallee). On such deposit, the Tribunal is directed to transfer the amount to the account of the claimants, within two weeks thereafter. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index:Yes/No  
Internet : Yes/No  
gv

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**A.A.NAKKIRAN, J.**

gv

To

1. The Motor Accidents Claims Tribunal  
(II Additional District Court, Thiruvallur, Poonamallee)

2. The Section Officer  
V.R.Section,  
High Court of Madras.

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and  
MP.Nos.1 + 1 of 2015**

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