



C.M.A.No.734 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.03.2023

PRONOUNCED ON : 26.05.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.734 of 2013

1.Susila

2.Mala

3.Lakshmi ... Appellants

VS.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Periyamilaguparai,
Trichy. ... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award dated 11.11.2011 passed in M.C.O.P.No.456 of 2009 on the file of Motor Accident Claims Tribunal, (Principal District Court), Perambalur.

For Appellants : Mr.P.Mani

For Respondent : Mr.M.Murali Vinodh

JUDGMENT



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The legal heirs of deceased Markandan, namely wife and daughter have preferred this appeal against the award dated 11.11.2011 passed in M.C.O.P.No.456 of 2009 on the file of Motor Accident Claims Tribunal, (Principal District Court), Perambalur, questioning the contributory negligence fixed on the deceased and for enhancement.

2. The claim petition was filed, claiming compensation of Rs.10,00,000/- for the death of Markandan, who died in a road accident which had taken place on 15.07.2009 and the Tribunal has passed an award for an amount of Rs.89,175/-. The Tribunal by its award dated 11.11.2011, awarded a compensation in favour of the appellants, directing the respondent/Transport Corporation to pay a sum of Rs.3,56,700/- and deducted 75% towards contributory negligence on the part of the rider of the two wheeler/deceased and awarded a compensation of Rs.89,175/- together with interest at 7.5% p.a., from the date of claim petition till the date of realisation.

3. Mr.P.Mani, the learned counsel for the appellants/claimants



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would argue that contributory negligence to the tune of 75% was fixed on the deceased by the Tribunal is without any valid reason. He would further contend that RW1 conductor of the bus has stated that the deceased hit the bus on the right side. Though referred charge sheet in respect of driver of the bus was filed was marked as Ex.R1, he was not examined by the Insurance Company. The Tribunal has erred in holding that the driver of the bus and the deceased have caused the accident and fixing the negligence at 25% and 75% respectively is incorrect.

4. The learned counsel for the appellants would further argue that the Tribunal ought to have accepted the evidence of eye-witness PW2 and ought to have held that the accident had solely caused by the rash and negligent driving of the bus belonging to the respondent. Multiplier method adopted by the Tribunal is not correct. The deceased who was a Government Servant was not awarded 50% of the salary towards future prospects. Deduction of 50% of the gross salary for the personal expenses of the deceased is incorrect.

5. To strengthen the above said arguments, the following



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citations were referred to by the learned counsel for the appellants/claimants:

1. Oriental Insurance Company Limited v. S.Venkateswari and others in C.M.A.No.1074 of 2015 dated 07.12.2016.
2. Govindammal and others vs.Velayudham and others in C.M.A.No.2347 of 2015 dated 13.04.2017.
3. Kamalam and others v. Giri and another in C.M.A.No.2924 of 2008.

6. Per contra, Mr.M.Murali Vinodh, learned counsel for the respondent/Transport Corporation while reiterating the grounds of appeal would vehemently argue that the Tribunal has passed an award for an amount of Rs.89,175/- by fixing contributory negligence on the driver of the two wheeler is well reasoned order and needs no interference. He would further contend that the driver of the bus was not at fault, therefore, the contributory negligence fixed at 25% on the driver of the bus is not correct.

7. Heard the rival submissions of the learned counsels for both



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sides and perused the materials available on record.

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8. The pivot issue is who was at fault and on whose negligence the accident had happened to be seen.

9. It is evidence of ocular witness PW2 that the driver of the respondent bus came in a rash and negligent manner and dashed against the TVS motor cycle which was driven by the deceased.

10. Whereas, the conductor of the respondent bus involved in the accident (RW1's) evidence is that the TVS motor cycle came in a zigzag manner, the driver of the respondent bus, on seeing the two wheeler halted the bus on the left side of the road and the rider of the Two wheeler lost his balance and dashed on the front side of the bus. He would pinpoint that the rider of the motor cycle was at fault and because of his rash and negligent driving, the accident had occurred.

11. It is also relevant to note that through RW3, the then



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Special Sub-Inspector of Police, Ramanatham Police Station,
referred charge sheet-Ex.R1 was marked to the effect that the First
Information Report registered against the driver of the respondent
bus was closed as mistake of fact.

12. It is the evidence of RW3, based on the referred charge sheet that the deceased alone had driven his two wheeler in negligent manner and dashed on the front central portion of the bus and died on the spot. It is also pertinent to note that in Ex.R1, namely copy of referred charge sheet, in the 161 statement of the Doctor, who conducted post-mortem on the body of the deceased, has stated that the deceased was not under the influence of alcohol at the time of his death.

13. The learned Tribunal has elaborately discussed the evidence put-forth by both sides. Though on both sides ocular witnesses have been examined, PW2-Sridhar has stated that the driver of the bus was at fault. Whereas, the evidence of RW1-Conductor of the bus would state that the driver of the bus halted the



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vehicle having seen the two wheeler (TVS 50) coming in a zig-zag manner.

14. The rider of the two wheeler was not in inebriated condition was completely ruled out by the statement of the Doctor who conducted the post-mortem (vide Ex.R1-referred charge sheet). It is vividly clear that the rider of the two wheeler was not under the influence of alcohol. Therefore, the version of RW1 to the effect that the driver of the two wheeler came in a zig-zag manner is unbelievable.

15. It is a fact that the rider of the two wheeler hit at the front centre portion of the bus which came in the opposite direction. Had the driver of the bus halted the bus as stated by RW1, accident would not have occurred. In the facts and circumstances of the case, the rider of the two wheeler who was aged about 50 years having over taken the four wheeler which was proceeding towards eastern direction and went to the right side of the road which is meant for the on coming vehicle from the opposite side. As the deceased did over



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take the vehicle which was proceeding towards eastern side, because of the error in deciding. More so, the bus which came in the opposite direction hit him. In the result, as the bus is a heavy vehicle, he succumbed to injuries. Therefore, the learned Tribunal was perfectly correct in fixing the contributory negligence on the rider of the two wheeler and driver of the bus as 75% and 25% respectively.

16. Section 168 of the Motor Vehicles Act reads that just compensation, I am reminded of observation made, the Hon'ble Supreme Court in ***R.D.Hattangadi v. M/s.Pest Control (India) Pvt. Ltd.***, reported in ***AIR 1995 SC 755***, wherein, it has been held that "*in its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards.*"

17. The Tribunal is expected to fix the compensation befitting the age, income of the deceased number of dependents etc., despite



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the uncertainties like the deceased would have lived for a shorter period or the dependents may not live for a longer period, the deceased might have got a good employment, in worst case, deceased would have lost his employment etc. Hence, every case is to be viewed in a different angle. As far as the deceased is concerned, he was drawing a very meagre salary of Rs.5,306/- in which there is no allowance exclusively meant for the benefit of the Government Servant. Therefore, the learned Tribunal has relied upon the salary certificate-Ex.P4 and as the widow would be drawing 50% out of the same as family pension deducting 50% cannot be found fault with.

18. The Hon'ble Apex Court in ***National Insurance Co. Ltd., v. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)*** as to the future prospects for the age group of persons between 40 to 50 years 30% to be added. 50% of the salary comes to Rs.3,449/. With regard to application of multiplicand, the Hon'ble Apex Court in ***Smt.Sarla Verma & Others v. Delhi Transport Corporation & another*** reported in ***2009 (2) TN MAC (1) SC***, for the age group of



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persons between 46 to 50 years, the multiplier to be adopted is 13.

For calculating loss of dependency, the following formula emerges:

$$\text{Rs.3449/-} \times 12 \times 13 = \text{Rs.5,38,044/-}.$$

19. The Tribunal has not granted any amount towards transportation and loss of estate, therefore a sum of Rs.5,000/- is granted towards transportation and Rs.15,000/- is granted towards loss of estate. In all other aspects, the award of the Tribunal appears to be reasonable and I see no reason to interfere with the same. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Loss of Income	Rs. 2,54,688/-	Rs.5,38,044/-	Enhanced
2	Consortium to the 1 st claimant	Rs. 50,000/-	Rs. 50,000/-	Confirmed
3	Loss of Love and Affection	Rs. 50,000/-	Rs. 50,000/-	Confirmed
4	Funeral	Rs. 2,000/-	Rs. 2,000/-	Confirmed



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S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
	Expenses			
5	Transportation	NIL	Rs. 5,000/-	Granted
6	Loss of Estate	NIL	Rs. 15,000/-	Granted
	Total	Rs.3,56,688/-	Rs.6,60,044/-	
	Less 75% towards contributory negligence	Rs.89,175/-	Rs.1,65,011/- Rounded to Rs,1,65,000/-	

20. The 1st appellant, the wife of the deceased Markandan and 2nd appellant, widowed daughter of the deceased and 3rd appellant, married daughter of the deceased. The Tribunal has dismissed the claim petition as against the 3rd claimant holding that she being a married daughter living along with her husband is not a dependent of the deceased. But, in the body of the judgment, under the head of love and affection, claimants 2 and 3 namely daughters of the deceased have been awarded Rs.25,000/- each. Therefore, 3rd claimant is only entitled to receive Rs.25,000/- with proportionate interest.



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21. Thus, the compensation awarded by the Tribunal is enhanced from Rs.89,175/- to **Rs.1,65,000/-** which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

22. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.89,175/- to **Rs.1,65,000/-**.

(iii) The respondent / Transport Corporation is directed to deposit the enhanced compensation amount i.e., **Rs.1,65,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.456 of 2009 on the file of Motor Accident Claims Tribunal, (Principal District Court), Perambalur, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the 1st appellant / 1st claimant is at liberty to withdraw Rs.70,000/- with proportionate interest and



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the 2nd appellant / 2nd claimant is at liberty to withdraw Rs.70,000/- with proportionate interest and the 3rd appellant/ 3rd claimant is at liberty to withdraw Rs.25,000/- with proportionate interest, on filing of cheque petition. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

26.05.2023

Index : Yes/No
Speaking / Non-speaking order
ssn

R.KALAIMATHI, J.,
ssn

To:

1. The Motor Accident Claims Tribunal,
(Principal District Court),
Perambalur.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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**Pre-delivery Judgment in
C.M.A.No.734 of 2013**

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