



C.M.A.No.1448 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **K. RAJASEKAR**

C.M.A.No.1448 of 2021

and

C.M.P.No.7542 of 2021

Tamil Nadu State Transport Corporation Limited,
rep. by Managing Director,
Periya Melakuparai, Trichy - 620 001

... Appellant

Vs.

1.Malliga
2.Govindammal
3.Manikandan

... Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in M.A.C.T.O.P.No.1495 of 2013 dated 28.11.2019 on the file of the Motor Accident Claims Tribunal(Special District Judge) at Tirupur.

For Appellant : M/s.M.Krishnamoorthy

For Respondents : M/s.M.A.PA.Thangavel



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Transport Corporation against the judgment and decree passed in M.A.C.T.O.P.No.1495 of 2013, dated 28.11.2019 on the file of the Motor Accident Claims Tribunal(Special District Judge), Tirupur.

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

3. The brief case of the claimants is that the deceased i.e., Ramesh is the son of the claimants 2 and 3. He suffered injuries in the road accident and filed this claim petition. Subsequently, he died during the pendency of the claim petition. Accordingly, his parents have impleaded themselves as claimants. When the deceased was riding his two wheeler on 10.07.2013 at about 23.15 hours near Tiruppur railway bridge from west east side direction, the bus belonging to the appellant Corporation came in the opposite direction and dashed against the two wheeler and as a result, he sustained injuries. Subsequently, after undergoing treatment at various places, he had filed the present claim petition seeking compensation for a



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sum of Rs.40 lakhs by invoking Section 166 of the Motor Vehicle Act.

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4. The transport corporation has filed a counter stating that the driver of the bus rode the same with due caution by observing all the traffic rules at moderate speed. While the bus was near pushpa theatre, the motor cyclist, who was riding on the left side, suddenly attempted to overtake the bus from the left side of the road. In spite of the best efforts of the driver, the accident had taken place, the deceased himself hit on the rear foot board side of the vehicle and sustained injuries. Since the deceased is responsible for the accident, the transport corporation is not liable to pay the compensation. They also contended that the claims under various heads are on the higher side and hence prayed to dismiss the claim petition.

5. Pending the claim petition, the deceased died and in his place, his parents have impleaded themselves and subsequently the father of Mr.Ramesh also died and his legal heirs were also impleaded.



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6. On the side of the petitioner, P.W.1 to P.W.4 have been examined and Ex.P1 to Ex.P22 have been marked. On the side of the respondents, one witness has been examined as R.W.1 and no document has been marked.

7. The Tribunal based on the evidence placed on record has held that the driver of the bus is responsible for the accident and the respondent is liable to pay the compensation.

8. In point no.3, the Tribunal has held that the deceased had died only due to the injuries sustained by him in the accident. Hence, the claimants are entitled to claim compensation for the death of the deceased.

9. Accordingly, in point no.4, the Tribunal has quantified the compensation and awarded a sum of Rs.33,61,547/-. Aggrieved over the quantum of compensation awarded, the transport corporation has filed this appeal.



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10. It is contented by the learned counsel for the transport corporation that the deceased died only due to improper treatment and as such, the transport corporation could not be held liable to pay compensation for the death of the deceased. He also contended that the compensation awarded under various heads are on higher side. Hence, he prayed to modify the compensation awarded.

11. I have carefully heard both sides and perused the materials available on record.

12. With regard to awarding of compensation for the death of the injured claimant, the Hon'ble Supreme Court in ***Oriental Insurance Company Limited Vs. Kahlon @ Jasmail Singh Kahlon(deceased) reported in 2021 (2) TN MAC 305 (SC)***, while considering the entitlement of a claimant for compensation for the personal injuries suffered by the claimant, has held in paragraph 9 as follows:-

"The Act is a beneficial and welfare legislation. Section 166(1)(a) of the Act provides for a statutory claim for compensation arising out of an accident by the person, who



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has sustained the injury. Under Clause (b), Compensation is payable to the Owner of the property. In case of death, the Legal Representatives of the deceased can pursue the claim. Property, under the Act, will have a much wider connotation than the conventional definition. If the Legal Heirs can pursue claims in case of death, we see no reason why the Legal Representatives cannot pursue claims for loss of property akin to estate of the injured if he is deceased subsequently for reasons other than attributable to the accident or injuries under Clause 1(c) of Section 166. Such a claim would be completely distinct from Personal injuries to the Claimant and which may not be the cause to death. Such claims of Personal injuries would undoubtedly abate with the death of the injured. What would the Loss of Estate mean and what items would be covered by it are issues, which has to engage our attention. The Appellant has a statutory obligation to pay Compensation in Motor Accident Claim cases. This obligation cannot be evaded behind the defence that it was available only for Personal injuries and abates on his death irrespective of the loss caused to the estate of the deceased because of the injuries".

13. The claimants examined themselves as P.W.2 and P.W.3. and stated that the deceased claimant was undergoing continuous treatment and in spite of the best treatment, he was not able to recover and succumbed to the injuries.

14. Originally, the claimant was treated by PW.3 doctor attached with Deepa Hospital, Tiruppur. He has stated that he was a surgeon and he has



given continuous treatment to the deceased from 11.12.2013 to 14.02.2014.

Prior to undergoing treatment under PW.3, the deceased Ramesh had undergone treatment at PSG Hospital, Coimbatore and Ganga Hospital, Coimbatore.

15. The discharge summary issued by the Ganga Hospital and PSG Hospital were also marked as Exhibits before the Tribunal. P.W.3 stated that at the time of undergoing further treatment in these hospitals, the injury of the deceased was not fully cured and the wound debridement was also done to the injured. The penis of the claimant was also damaged and he has also suffered injuries on his other private parts. Thereafter, during treatment, the deceased had died and he has issued Ex.P.15 stating that the deceased died due to the injuries sustained by him. The discharge summary issued by the PSG Hospital shows that he was admitted on 11.07.2013 and discharged on 29.08.2013, the nature of treatment given and the discharge summary reads as follows:-

DIAGNOSIS:

RTA with severe degloving injury - penoscrotal and RT thigh and leg with LT Groin Laceration - Left Pelvic ramus fracture, fracture neck of



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fibula RT:

1) Wound infection and 2) Urinary Tract infection

Treatment given:

Wound debridement, Suturing for degloving injury thigh and Wound debridement and skin grafting for penoscrotal skin loss done on 11.07.2013 Wound debridement done on 17.07.2013. Wound debridement and dressing done on 19.07.2013 and Wound debridement and SSG (Autograft and homograft) done on 26.07.2013.

Procedure:

Under SA, wound debridement done, muscle necrosis over the antero lateral leg is also debrided. minimal bleeding present. SSG harvested from LT thigh and leg is fixed over the posterior aspect of RT thigh and leg. Homograft harvested from his mother fixed over anterior part of RT thigh and leg. Remaining raw area is covered by using SSG from RT lower third leg. Haemostasis achieved. Sterile dressing and pop applied.

16. Originally, he was admitted at Ganga Hospital and after discharge, he has also undergone further treatment. Subsequently, on 02.09.2013, he was again admitted in the Ganga Hospital, Coimbatore for the treatment on



02.09.2013 and discharged on 07.10.2013. Thereafter, he had taken treatment at the Deepa Hospital, Tiruppur. The continuous reading of other evidence shows that the claimant has undergone better treatment in these best two hospitals. Even, thereafter, he was not able to recover and succumbed to the injuries.

17. As discussed supra, this Court is of the considered view that the deceased claimant has succumbed to the injuries sustained by him in the road accident which took place on 10.07.2013, which was caused by the driver of the respondent herein. Hence, the respondent herein is liable to pay the compensation.

18. As far as the quantum is concerned, the Tribunal has awarded compensation under the head loss of income. This Court is of the considered view that the compensation awarded by the Tribunal under the head loss of income is proper and the same is hereby confirmed.

19. Similarly, the Tribunal has awarded Rs.2 lakhs under the head attendant charges. The evidence placed on record shows that he has



undergone treatment as in-patient in PSG hospital and Ganga Hospital and subsequently at Deepa Hospital for 14 months. For taking treatment, he required the support of an attendant and accordingly, the Tribunal has granted a sum of Rs.2/- lakhs as lump sum. This court is of the considered view that the same is on higher side. The Tribunal while discussing about the attendant charges has rightly held that the claimants are entitled to attendant charges for 14 months. It requires modification however, awarding Rs.10,000/- per month is on the higher side and this Court is inclined to modify the same as Rs.6,000/- per month, i.e., Rs.84,000/- (Rs.6000x14). Accordingly, the attendant charges is modified to Rs.84,000/- Similarly, the transport charges of Rs.1,00,000/- is concerned, the compensation awarded is on higher side and the same is also modified to Rs.40,000/-.

20. The tribunal has also awarded compensation under the head pain and sufferings without any basis and discussion. Since the compensation is paid treating the case as fatal case, the claimants are not entitled to get the compensation under the head pain and sufferings. Accordingly, the compensation awarded under the head pain and suffering is hereby set aside.



21. The compensation awarded under other heads are concerned, more particularly, the loss of love and affection, the Tribunal had awarded for a sum of Rs.40,000/-. The claimants 2 and 3 are entitled for compensation under the head loss of consortium and the compensation awarded by the tribunal under the head loss of love and affection is hereby confirmed.

22. Since the deceased had undergone 14 months as in-patient treatment, he must be given various extra nourishment for his recovery. However, the Tribunal without giving any reason has awarded Rs.1,63,000/- for the head extra nourishment and the same is on higher side and it requires modification. Considering the nature of injury and it has been awarded since it is a pecuniary nature, this Court is of the considered view that compensation for a sum of Rs.80,000/- under the head extra nourishment, is maintainable.

23. Thus, the compensation awarded by the Tribunal under various heads are hereby modified as follows:-



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Sl. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of income	15,12,000/-	15,12,000/-	Confirmed
2.	Love and affection	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	15,000/-	Rs.15,000/-	Confirmed
4.	Attendant charges	2,00,000/-	Rs.84,000/-	Reduced
5.	Transport charges	1,00,000/-	Rs.40,000/-	Reduced
6.	Medical Expenses	8,31,547/-	8,31,547/-	Confirmed
7.	Pain and sufferings	5,00,000/-	-	Set aside
8.	Extra nourishment	1,63,000/-	Rs.80,000/-	Reduced
	Total	Rs.33,61,547/-	Rs.26,02,547/-	Reduced by Rs.7,59,000/-

24. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.33,61,547/- is hereby reduced to Rs.26,02,547/- [Rupees Twenty Six Lakhs Two Thousand Five Hundred and Forty Seven only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The appellant-Transport Corporation is directed to deposit the award amount now determined 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



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receipt of a copy of this judgment to the credit of M.C.O.P.No.1495 of 2013, on the file of the Motor Accidents Claims Tribunal (Special District Judge) Tirupur. On such deposit, the claimants are permitted to withdraw the amount now awarded by this Court along with proportionate 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 without any formal application. The appellant-Transport Corporation is permitted to withdraw the amount which was lying in the credit of M.C.O.P.No.1495 of 2013, if, any, already deposited. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

19.12.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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K. RAJASEKAR, J.

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To:-

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

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