



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2023

Coram

The Honourable Mr.Justice SUNDER MOHAN

**C.M.A.No.822 of 2022
and C.M.P.No.5883 of 2022**

The Managing Director,
Tamilnadu State Transport Corporation,
Salem Division Limited,
No.12, Ramakrishna Road,
Salem – 636 007.

...Appellant

Versus

1.Manickam
2.Lakshmi

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the order dated 01.11.2021 made in M.C.O.P.No.1832 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

For Appellant : Mr.M.Murali Vinoth

For Respondents : Mr.V.Vijayakumaar



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant Transport Corporation questioning the quantum of compensation awarded by the learned Special District Judge, Motor Accident Claims Tribunal, Salem in M.C.O.P.No.1832 of 2018 vide order dated 01.11.2021.

2. The brief facts of the case are as follows:

On 02.02.2011, at about 10.30 a.m, when one Raja was riding a motorcycle bearing Registration No.TN 30 AY 9432 along with two pillion riders on Deevattipatti to Omalur Main Road, near Kupur Kaliamman Temple bus stop, the driver of a Bus belonging to the appellant Transport Corporation which was proceeding in front of the said motorcycle, suddenly, stopped the bus without any indication or signal, due to which, the motorcycle hit the bus from behind resulting in the accident. The said Raja died on the spot and one of the pillion riders died on the way to Hospital. Aggrieved over the death of said Raja, his father and mother (respondents/claimants) had filed a claim petition in M.C.O.P.No.1832 of 2018 against the appellant Transport Corporation, claiming a sum of Rs.10,00,000/- as compensation.



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3. The appellant/Transport Corporation filed its counter statement denying all the averments made by the respondents/claimants in the Claim Petition. It is stated that the owner and insurer of the two wheeler were not impleaded as parties in the petition and hence, the claim petition is bad for non-joinder of necessary parties; that when the bus was stopped in the bus stop and the passengers were getting down, the deceased who came behind in the motorcycle, hit the bus and invited the accident and that the appellant/Transport Corporation was not liable to pay compensation and prayed for dismissal of the claim petition.

4. Before the Tribunal, on the side of the respondents/claimants, the second respondent (mother of the deceased Raja) examined herself as P.W.1 and marked 5 documents as Exs.P1 to P5. On the side of the appellant/Transport Corporation, Mr.Mailsamy (driver of the bus) was examined as R.W.1. However, no documents were marked as exhibits.

5. On an appreciation of the oral and documentary evidence adduced before it, the Tribunal had held that the accident occurred due to the rash and negligent driving by both the driver of the bus belonging to the appellant/Transport Corporation as well as deceased Raja and fixed the



contributory negligence equally on driver of the bus belonging to the appellant/Transport Corporation & deceased Raja in the ratio 50:50 and partly allowed the claim petition by directing the appellant/Transport Corporation to pay a sum of Rs.7,13,000/- as compensation to the respondents/claimants with proportionate cost and interest at 7.5% per annum from the date of petition till the date of realization.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant Transport Corporation has preferred this appeal before this Court.

7. Mr.M.Murali Vinoth, learned counsel for the appellant Transport Corporation submitted that the Tribunal had rightly fixed 50% contributory negligence on the deceased Raja since he rode the two wheeler with two other pillion riders and hit the appellant/Transport Corporation Bus from behind. The learned counsel also submitted that the amount awarded by the Tribunal towards Loss of Income is on the higher side; that the respondents/claimants did not produce proof before the Tribunal to establish the income of the deceased Raja. In the absence of proof, the Tribunal had notionally fixed the monthly income of the deceased Raja as Rs.9,000/-.



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Further, he submitted that out of the amount awarded towards Loss of Income, the Tribunal ought to have deducted 50% towards Personal Expenses of the deceased Raja since the deceased was a Bachelor at the time of accident; that, without doing so, it had erroneously deducted 1/3rd towards personal expenses of the deceased Raja; that the amount awarded by the Tribunal towards Loss of Love & Affection is also on the higher side; and that the overall compensation awarded by the Tribunal is excessive and hence, prayed for reduction of the compensation awarded by the Tribunal.

8. *Per Contra*, Mr.V.Vijayakumar, learned counsel appearing for the respondents submitted that the compensation awarded by the Tribunal is not excessive. He further submitted that while computing Loss of Income, the Tribunal had rightly applied the multiplier '18' as held by the Hon'ble Supreme Court in the case of ***Sarla Verma & Ors. Vs.Delhi Transport Corporation & Anr.*** reported in ***2009 (6) SCC 121***. However, it failed to add 40% of income of the deceased towards Future Prospects as per the ratio laid down by the Hon'ble Supreme Court in the above referred cases. He submitted that at the time of accident, the deceased was only 19 years old and he was working as a Lorry Driver. Therefore, the learned counsel



prayed this Court to add 40% of monthly income towards Future Prospects of the deceased and enhance the amount awarded under the head, 'Loss of Income'.

9. Heard the learned counsel on either side and perused the materials available on record.

10. From the materials on record, it is seen that the Tribunal had rightly fixed the contributory negligence equally on driver of the bus belonging to the appellant Transport Corporation as well as deceased Raja. Neither the appellant/Transport Corporation nor the respondents/claimants have challenged the apportionment of negligence before this Court. Hence, the finding of the Tribunal with regard to apportionment of negligence does not warrant interference by this Court.

11. So far as the quantum of compensation awarded by the Tribunal is concerned, considering the year of accident and the job pursued by the deceased Raja before the accident, the Tribunal had rightly fixed Rs.9,000/- as notional monthly income of the deceased Raja. It applied the multiplier '18'. However, as rightly pointed out by the learned counsel for the



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respondents/claimants, the Tribunal had failed to add 40% of monthly income of the deceased towards future prospects as held by the Hon'ble Supreme Court in the cases of ***Sarla Verma*** and ***Pranay Sethi***. Similarly, without taking note of the fact that the deceased Raja was Bachelor at the time of accident, the Tribunal had deducted 1/3rd towards personal expenses of the deceased instead of 50%.

12. In a claim petition, the Tribunal and the Court must award just compensation. The compensation awarded should not be meagre and at the same time, it should not be windfall and exorbitant. The Tribunal and the Courts have power to grant compensation more than the amount claimed by the claimants in the facts and circumstances of the case. Considering the materials on record and the facts and circumstances of the case, this Court is of the view that this is a fit case to invoke Order 41 Rule 33 of C.P.C., Section 151 C.P.C. and Article 227 of the Constitution of India to enhance the compensation awarded by the Tribunal even though the respondents have not filed any appeal or cross-appeal before this Court. On a similar issue, the Division Bench of this Court in ***C.M.A.No.420 of 2013, dated 16.04.2018 [The New India Assurance Company Ltd., Vs. R.Nagaraj & Ors.]***, had held as follows:



“11. Though the Insurance Company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.20,93,500/- is enhanced to Rs.45,00,000/- invoking Order 41 Rule 33 of CPC and Section 151 and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are beneficial in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).”

13. The deceased was aged 19 years at the time of accident. The accident took place in the year 2011. Considering the age of the deceased and the year of accident, this Court is of the view that the notional income fixed by the Tribunal at Rs.9,000/- per month is just and reasonable. Thus, by applying multiplier '18', adding 40% towards future prospects and deducting 50% towards personal expenses of the deceased, the compensation towards Loss of Income is calculated as follows:

Rs.9,000/- + Rs.3,600/- (9000 x 40%) x 12 x 18 x 50% = Rs.13,60,800/-

Since 50% contributory negligence fixed by the Tribunal on the part of the deceased is confirmed by this Court, the respondents/claimants are entitled only to Rs.6,80,400/- (13,60,800 x 50%) towards Loss of Income.



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14. The compensation awarded by the Tribunal towards all other heads are just and reasonable and hence, the same are confirmed. The break-up details of the enhanced compensation are as follows:

<i>Sl.No.</i>	<i>Description</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award Confirmed or Enhanced or Granted</i>
1	Loss of Income	Rs.6,48,000/-	Rs.6,80,400/-	Enhanced
2	Loss of Love & Affection	Rs.40,000/-	Rs.40,000/-	Confirmed
3	Funeral Expenses	Rs.25,000/-	Rs.25,000/-	Confirmed
Total		Rs.7,13,000/-	Rs.7,45,400/-	Enhanced by Rs.32,400/-

15. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation of Rs.7,13,000/- awarded by the Tribunal is enhanced to Rs.7,45,400/- (Rupees Seven Lakhs Forty Five Thousand and Four Hundred only). Out of the award amount as enhanced by this Court, the respondents/claimants are entitled to Rs.3,72,700/- each. The appellant Transport Corporation is directed to deposit the enhanced award amount of Rs.7,45,400/-, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any), to the credit of

<https://www.mhc.tn.gov.in/Order> M.C.O.P.No.1832 of 2018, within a period of six weeks from the date of



receipt of a copy of this judgment. On such deposit being made, the respondents/claimants are permitted to withdraw their share of the award amount along with proportionate interest and cost, as per the apportionment ordered by this Court. The respondents/claimants are directed to pay the necessary Court fee, if any, on the enhanced award amount. No costs. Consequently, connected miscellaneous petition is closed.

25.07.2023

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

- 1.The Special District Judge,
Motor Accident Claims Tribunal, Salem.
- 2.The Section Officer,
Vernacular Records Section,
High Court, Madras.



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SUNDER MOHAN, J.

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