



C.M.A.No.882 of 2

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.M.A.No.882 of 2022

and

C.M.P.No.6471 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation,
Office at Railway Station Road,
Kumbakonam Town,
Kumbakonam Taluk,
Thanjavur District.

...Appellant

Vs.

1.Radhakrishnan

2.Thangammal

3.Santhanabharathi

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 28.10.2021 made in MCOP.No.100 of 2020 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Mayiladuthurai.



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For Appellant : Mr.Murali Vinoth

For Respondents : Mr.A.Muthukumar

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Transport Corporation is on appeal, challenging the award of a sum of Rs.34,25,674/- as compensation for the death of one Vigneshwaran in a motor accident that occurred on 16.02.2020 at about 10.00 p.m. According to the claimants, when the said Vigneshwaran was riding a motor cycle bearing Registration No.TN-51-P-8454 on the Mayiladuthurai to Tiruvarur main road from East to West, the bus bearing Registration No.TN-69-N-0288 belonging to the Corporation driven by its driver in a rash and negligent manner came from behind and hit against the motor cycle causing immediate death of the rider, Vigneshwaran.

2.Claiming that the accident occurred only due to the rash and negligent driving of the driver of the bus, the claimants, who are parents and brother of the deceased sought for a compensation of Rs.1,00,00,000/- The quantum was sought to be supported by contending that the deceased was working as a Welder in Dubai and getting a salary of 1,200 Dirams per



month, which on conversion equalled to Rs.33,150/-. The deceased was aged 28 years and was unmarried.

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3.The Corporation resisted the claim contending that the accident did not occurred in the manner suggested by the claimants. The Corporation would also claim that the deceased was under the influence of alcohol and the same was the sole cause of the accident. It was also claimed that the deceased was not wearing a helmet and also did not possess a driving license.

4.At trial, before the Tribunal, two witnesses were examined on the side of the claimants as P.W.1 and P.W.2 and Exs.P1 to P16 were marked. The First Information Report was marked as Ex.P1, the salary certificate was marked as Ex.P6, passport was marked as Ex.P7 and the identity card issued by the authorities in Dubai was marked as Ex.P8. The driver of the bus and the Manager of the Transport Corporation were examined as R.W.1 and R.W.2 respectively. Exs.R1 to R4 were marked. Ex.R1 was the postmortem report and Ex.A4 is the final report filed by the police.



5. On the question of the negligence, the Tribunal took into account the First Information Report, the evidence of P.W.1 and P.W.2 and the postmortem report concluded that the major portion of the negligence was on the part of the driver of the bus. It also referred to the judgment of this Court in CMA.No.2454 of 2013 wherein, it was pointed out that the mere fact that the deceased was under the influence of alcohol cannot be a ground to conclude that he was the sole cause of the accident. Therefore, the Tribunal apportioned the negligence by 70% on the bus and 30% on the deceased.

6. On the quantum, the Tribunal took the monthly salary at Rs.33,150/-, added 40% towards future prospects, deducted 50% towards personal expenses, the deceased being a bachelor. It applied a multiplier of 17 to arrive at the loss of dependency at Rs.47,33,820/- It also awarded a sum of Rs.1,20,000/- towards loss of love and affection, Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses. Thus, the Tribunal arrived at the total compensation at Rs.48,93,820/-. Since it had computed the negligence on the driver of the bus at 70%, it fixed the liability of the Corporation at Rs.34,25,674/-. Aggrieved, the Corporation is on appeal.



7.We have heard Mr.Murali Vinoth, learned counsel for the Corporation and Mr.A.Muthukumar, learned counsel for the claimants.

8.Mr.Murali Vinoth, learned counsel for the Corporation would vehemently contend that the deceased was under the influence of alcohol and he was also not wearing a helmet. Therefore, the apportionment of negligence by the Tribunal at 70:30 is seriously flawed. Inviting our attention to the Ex.R1, the postmortem report and the Ex.R3, viscera Report, to contend that the quantum of alcohol deducted is so much that we can safely conclude that the deceased alone was responsible to the accident. He also pointed out that the driver of the bus has been examined as R.W.1 and he has deposed on the manner of the accident. Advantage is also sought to be taken on the fact that the Police had filed a final report closing the First Information Report concluding that the driver of the bus was not responsible for the accident.

9.Contending contra, Mr.A.Muthukumar, learned counsel for the



respondents / claimants would submit that as pointed out by this Court in CMA.No.2454 of 2013, merely because the deceased was found to be under the influence of alcohol, it cannot be said that he was solely responsible for the accident. The learned counsel would also draw our attention to the fact that Ex.R4, the final report has not been proved in the manner known to law as no Police Officer has been examined. The learned counsel would also draw our attention to the conclusions of the Tribunal that the bus driver also contributed to the accident. We have considered the rival submissions.

10.We see considerable force in the submission of the learned counsel for the Corporation on the aspect of negligence. The viscera report, which has been marked as Ex.R3 shows that the following quantities of alcohol was deducted at the postmortem of the deceased.

- i)Stomach - 457 Milligrams
- ii) Intestine - 118 milligrams
- iii) Liver - 210 Milligrams
- iv) Kidney - 220 milligrams

11.Presence of such a heavy quantity of alcohol in almost all the vital organs would show that the deceased was definitely under the influence of alcohol at the time of the accident. We find from the manner in which the

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accident has occurred and that too, at 10 pm, we cannot completely over rule any negligence on the part of the driver of the bus also. But, at the same time, granting compensation for the death of a person, who had violated the law and driven a two wheeler without helmet under heavy influence of alcohol, in our opinion, would amount to putting a premium on illegality. At the same time, we should also bear in mind the duty that is imposed upon persons driving heavy vehicles, that too, at night to be careful. We therefore, find that apportionment of negligence equally between the driver of the bus and the deceased would be reasonable in the circumstances of the case.

12.No doubt, Mr.Murali Vinoth would attempt to argue on the quantum of compensation also. Admittedly, the deceased was employed in Dubai. His passport and his identity card establishes such employment. The salary certificate has been given in a letter pad and supporting documents like bank statements have not been produced. Going by a very reasonable estimate, we find that for a person who is employed in Dubai earning a monthly income of Rs.33,150/- during the year 2020 is very reasonable and we do not see any reason to interfere with the quantum of compensation arrived at by the Tribunal. The compensation granted under the other heads



is also not excessive. We therefore, confirm the quantum of compensation.

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13.As already pointed out, we apportion the negligence at 50:50 to the deceased and the driver of the bus. Therefore, the claimants would be entitled to Rs.24,46,910/- instead of Rs.34,25,674/- as awarded by the Tribunal.

14.In the light of the above, this Civil Miscellaneous Appeal is **partly allowed** and the compensation granted by the Tribunal is reduced to Rs.24,46,910/-. The interest awarded by the Tribunal is confirmed. The compensation is apportioned as follows:

1. The mother of the deceased will take Rs.13,00,000/-
2. The father if the deceased will take Rs. 7,00,000/- and
3. The brother of the deceased will take Rs. 4,46,910/- with proportionate interest.

15.It is stated that the Corporation has already deposited Rs.19,28,536/- . The Corporation will deposit the balance amount as per the modified award within a period of twelve weeks from the date of receipt of a

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copy of this order. On such deposit, the claimants will be entitled to withdraw the entire amount. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) (N.S., J.)
07.12.2023

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Internet:Yes

Index:No

Speaking

Nuetral Citation :No

To:-

The Motor Accident Claims Tribunal,
Additional District Court,
Mayiladuthurai.

R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.



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