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C.M.A.Nos.996 & 997 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.Nos.996 & 997 of 2023

C.M.A.No. 996 of 2023:

1.P.Lavanya

2.P.Tharun Kumar, Minor rep. by the
1st petitioner S/o Late Prasanna

3.N.Bhavani

... Appellants

Versus

The Managing Director,
State Express Transport Coporation Ltd.,
Pallavan Salai, Chennai – 2.

... Respondent

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.4274 of 2015 dated 12.08.2022 on the file of the Motor Accident Claims Tribunal/ (Principal Special Judge, EC and NDPS Act, Chennai)

For Appellants : Mrs.R.Sreevidhya
for M/s.Ramya V.Rao

For Respondent : Mrs.P.M.Vijayakumari



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C.M.A. No. 997 of 2023:

1. B. Chithra,
2. B. Yokesh, Minor rep. by
the 1st petitioner mother and guardian
3. R.Dharani

...Appellants

Versus

The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan Salai, Chennai – 2.

...Respondent

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.4289 of 2015 dated 12.08.2022 on the file of the Motor Accident Claims Tribunal/ (Principal Special Judge, Special Court under EC and NDPS Act, Chennai)

For Appellants : Mrs.R.Sreevidhya
for M/s.Ramya V.Rao

For Respondent : Mrs.P.M.Vijayakumari

COMMON JUDGMENT

The appellants have preferred the instant appeals seeking enhancement of compensation in the common award passed by the Tribunal in M.C.O.P.Nos.4274 and 4289 of 2015 dated 12.08.2022. Since the deceased in



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both the cases died due to the same accident, the above appeals are taken up together for disposal.

2. The appellants have filed the claim petitions stating that on 07.08.2015 at about 24.00 hours, while N.Prasanna (deceased in respect of C.M.A.No.996 of 2023) was travelling in a car bearing Reg.No.TN-11-1978 driven by the driver R.Balachandar (deceased in respect of C.M.A.No.997 of 2023) which was proceeding at Chennai – Salem Bypass Road, a Bus bearing Reg.No.TN – 01 -N- 7210, came in a rash and negligent manner and dashed against the car of the deceased, as a result of which both of them sustained fatal injuries.

3. The respondent in both the appeals filed a counter stating that the accident took place due to the negligence of the driver of the car; and that in any case, the compensation claimed in both the appeals are excessive and prayed for dismissal of the claim petitions.



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4. Before the Tribunal, the appellants examined three witness as P.W.1 to P.W.3 and marked 32 documents as Exs.P1 to P32. The respondent examined its driver as R.W.1 and no documents were marked on their side.

5. The Tribunal after taking into consideration the oral and documentary evidence held that the accident took place due to the rash and negligent driving by the driver of the bus as well as the driver of the car and fixed 50% contributory negligence on the driver of the bus and 50% negligence on driver of the car and directed the respondent to pay a compensation of Rs.9,75,000/- to the appellants in C.M.A.No.996 of 2023 and a compensation of Rs.9,75,000/- to the appellants in C.M.A.No.997 of 2023.

6. The learned counsel for the appellants in C.M.A.No.996 of 2023 submitted that the award of the Tribunal fixing 50% contributory negligence on the driver of the car is erroneous; that the bus driver was at fault; that the accident took place only because the driver of the car was blinded due to the head light of the bus; that the evidence of P.W.1 and R.W.1, if read together



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would show that the accident predominantly took place on account of the negligent act of the driver of the bus. The learned counsel further submitted that though the appellants in C.M.A.No.996 of 2023 had established that the deceased was doing business in the name and style of “Exodus Power Service” as self employed and he was earning more than Rs.6,50,000/- per annum as per his statement of account- Ex.P8; the Tribunal had fixed a meagre notional income of Rs.9,000/- per month and prayed for enhancement of compensation.

7. As regards the appellants in C.M.A.No.997 of 2023, the learned counsel submitted that though the appellants had established that the deceased was working as a driver and had marked the certificate issued by the employer - Ex.P22, the Tribunal had fixed a meagre notional income of Rs.9,000/- per month and prayed for enhancement of compensation.

8. The learned counsel for the respondent in both the appeals per contra submitted that the Tribunal after taking into consideration the oral and documentary evidence had rightly apportioned 50% negligence on the driver



of the car since it was head on collusion. The learned counsel further submitted that in the absence of any evidence to prove the income of deceased in both the cases, the Tribunal was right in fixing the notional income as Rs.9,000/- p.m., and submitted that no interference is called for and prayed for dismissal of both the Civil Miscellaneous Appeals.

9. Heard both sides.

10. The questions involved in the instant appeals are as follows:

- (a) Whether the Tribunal was right in fixing 50% contributory negligence on the driver of the car.
- (b) Whether the quantum of compensation awarded by the Tribunal to the appellants in both the appeals are just and reasonable.

11. As regards the question of negligence, it is seen that the appellants had examined P.W.2 - eye witness to the occurrence, to show that the accident took place entirely due to the negligence of the driver of the respondent/ corporation. The respondent also examined its driver as R.W.1 to show that



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the accident took place due to the negligence of the driver of the car.

However, neither the appellants nor the respondent in both the appeals had filed any documentary proof or other records in the criminal case except the FIR to corroborate their evidence. Admittedly, the FIR-Ex.P1, was lodged against the driver of the bus belonging to the respondent/corporation.

12. It is seen from R.W.1's evidence that the respondent corporation had taken disciplinary action against its driver/R.W.1 and R.W.1 was suspended for nearly 40 days. It is also seen that the accident took place at 12.00 a.m., (mid night). The right side body of both the vehicles has been damaged in the accident. Considering the fact that the accident took place during mid night and head lights would be on in both the vehicles, there is possibility of the driver of the car being blinded. At the same time, the driver of the car ought to have been careful and must have exercised sufficient care while driving on the road at odd hours. Considering the above fact, this Court is of the view that the accident took place predominantly due to the negligence of the driver of the respondent corporation. In such circumstances,



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it would be just and reasonable to fix 60% contributory negligence on the driver of the respondent/ corporation and 40 % on the driver of the car.

13(a) As regards compensation in C.M.A.No.996 of 2023 is concerned, it is seen from the records that the appellants had marked Ex.P.6 - original course completion certificate of the deceased showing that he had completed course as “Mechanic Diesel” at the Industrial Training institute. The appellants had marked Ex.P7 to show that the deceased was running a company in the name and style of “Exodus Power Service” at Chengalpattu. They had marked Ex.P8 - the statement of accounts showing the credit of Rs.6,50,000/- in his account during the financial year. However, as rightly observed by the Tribunal, the said credits cannot be taken as income in the absence of any other supporting documents to prove the income of the deceased. Therefore, the Tribunal was right in fixing the notional income. However, this Court is of the view that considering the facts and circumstances of the case, the notional income fixed is meagre. As stated earlier, the deceased was running a concern and had undergone course and had filed Bank statement showing that he was active in business. Considering



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the above facts, the age of the deceased and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.18,000/- per month. Since the deceased was aged 32 years at the time of the accident, the appellants are entitled to 40% enhancement towards future prospects and the multiplier applicable is '16'. Since the deceased was married and the claimants are wife, son and mother, 1/3rd has to be deducted towards personal expenses. Therefore, the compensation under the head “Loss of Dependency” is calculated as follows:-

**Rs.18,000/- + Rs.7200/- (40% of Rs.18,000/-) X 12 X 16 X 2/3 –
Rs.32,25,600/-**

13(b).The award under the other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is 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 Dependency	Rs.8,06,400/- (After deducting 50% contributory negligence)	32,25,600/-	Enhanced
2.	Loss of Estate	16,500/-	16,500/-	Confirmed
3.	Funeral Expenses	16,500/-	16,500/-	Confirmed
4.	Loss of Consortium	1,32,000/-	1,32,000/-	Confirmed
	Total	Rs.9,71,400/-	Rs.33,90,600/-	
			Less 40% contributory negligence Rs.13,56,240/-	
	Net compensation payable	Rounded off to Rs.9,75,000/-	Rs.20,34,360/-	Enhanced by Rs.10,59,360/-

14(a). As far as compensation in C.M.A.No.997 of 2023 is concerned, the appellants have examined P.W.2 to P.W.4 to prove that the deceased was working as a driver. They had also marked Ex.P22 - the certificate issued by



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the employer, to show that the deceased was working as a driver and was earning a monthly salary of Rs. 20,000/-. However, it is seen that the employer was not examined and no other supporting documents such as bank statements were filed. In the absence of the same, the Tribunal was right in fixing the notional income. However, considering the avocation of the deceased, his age and the year of the accident, this Court is of the view that it would be just and reasonable to fix Rs.13,000/- per month as notional income of the deceased. Since the deceased was aged 33 years at the time of the accident, the appellants are entitled to 40% enhancement towards future prospects and the multiplier applicable is '16'. Since the deceased was married and the claimants are wife, son and mother, 1/3rd has to be deducted towards personal expenses. Therefore, the compensation under the head “Loss of Dependency” is calculated as follows:-

$$\text{Rs.13,000/-} + \text{Rs.5,200/- (40\% of Rs.13,000/-)} \times 12 \times 16 \times \frac{2}{3} - \text{Rs.23,29,600/-}$$

14(b).The award under the other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the



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Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	8,06,400/- (After deducting 50% contributory negligence)	23,29,600/-	Enhanced
2.	Loss of Estate	16,500/-	16,500/-	Confirmed
3.	Funeral Expenses	16,500/-	16,500/-	Confirmed
4.	Loss of Consortium	1,32,000/-	1,32,000/-	Confirmed
	Total	Rs.9,71,400/-	Rs.24,94,600/-	
			Less 40% contributory negligence Rs.9,97,840/-	
	Net compensation payable	Rounded off to Rs.9,75,000/-	Rs.14,96,760/-	Enhanced by Rs.5,21,760/-

15. In the result -

(i) C.M.A.No.996 of 2023 is partly allowed and the compensation



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awarded by the Tribunal at Rs.9,75,000/- is hereby enhanced to Rs.20,34,360/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit.

(ii) C.M.A.No.997 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.9,75,000/- is hereby enhanced to Rs.14,96,760/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit.

(iii) The respondent corporation is directed to deposit the award amount, now determined by this Court in both the appeals, along with interest and costs, less the amount already deposited, if any, within a period of eight(8) weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit, the appellants 1 and 3 in both the appeals are permitted to withdraw their share of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and cost, less the amount if any, already withdrawn.

(v) The share of the minor second appellant in both the appeals are directed to be deposited in an interest bearing Fixed Deposit till the minors attain majority and the first appellant in both the appeals are permitted to



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withdraw the accrued interest once in every three months. The appellants in both the appeals are directed to pay the necessary Court fee if any, on the enhanced award amount. No Costs.

08.09.2023

Index : Yes/No

NCC: Yes/No

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Copy to:-

1.The Principal Special Judge,
EC and NDPS Act,
Chennai)

2.The Section Officer
VR Section
High Court of Madras.



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SUNDER MOHAN, J.

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