



C.M.A.No.1340 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.1340 of 2023

and

C.M.P.No.13412 of 2023

The Managing Director,
Tamil Nadu State Transport Corporation Ltd. (TNSTC),
(Coimbatore Division-II)
Chennimalai Road, Erode-1.

...Appellant

Vs.

1.B.Ravi
2.R.Nethra
3.Minor R.R.Arun
4.P.Murugesan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.12.2022 made in M.C.O.P.No.158 of 2020 on the file of the Motor Accident Claims Tribunal, IV-Additional District Judge, Coimbatore.

For Appellant : Mr.M.Murali Vinodh



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J U D G M E N T

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

Challenge in this appeal is to the award of the Motor Accident Claims Tribunal granting a sum of Rs.57,25,164/- as compensation for the death of one Renuka Devi in a road accident that occurred at about 3.30p.m. on 07.07.2019.

2.According to the claimants, the accident occurred while the bus belonging to the appellant Corporation attempted to overtake the two wheeler, in which the said Renuka Devi along with her husband and her minor son were travelling, hit the right handle bar of the two wheeler. As a result of the impact all of them fell down. Unfortunately, the deceased fell down on the right side of the road and the rear left wheel of the bus over ran her causing her instantaneous death.

3.The Tribunal, relying upon the First Information Report in which the driver of the bus was charged for offences under Section 279 and 304-A of IPC and the absence of any evidence on the side of the Corporation



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concluded that the accident occurred due to rash and negligent driving of the driver of the bus. On the quantum also, the Tribunal took monthly income at Rs.38,854/-, added 35% towards future prospects. After deducting 1/3rd towards personal expenses and applying multiplier of 13 arrived loss of dependency at Rs.54,55,164/-. The Tribunal awarded a sum of Rs.1,20,000/- for loss of consortium and Rs.1,20,000/- for loss of love and affection, apart from Rs.15,000/- each towards funeral expenses and loss of estate. In all, the Tribunal awarded a sum of Rs.57,25,164/- as compensation.

4.The learned counsel for the appellant / Corporation would submit that since three persons were found riding a two wheeler, the Tribunal should have deducted a certain percentage towards contributory negligence. It is seen that one of the passengers in the two wheeler is a minor child and it is not uncommon for a minor child to travel in a two wheeler along with his or her parents. That alone cannot be said to contribute towards negligence. We also find that there is no evidence let in on the side of the Corporation. Contributory negligence is the matter to be



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proved as a fact and in the absence of any evidence on the side of the Transport Corporation, we do not think, we can permit the learned counsel to raise the question of contributory negligence at the appellate stage. We therefore, do not find any merit in the appeal. This Civil Miscellaneous Appeal therefore, fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) (R.K.M.,J.)
04.07.2023

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Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order
Neutral Citation:Yes/No



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To:-

The IV-Additional District Court,
Coimbatore.



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R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

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