IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.08.2023**

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MRS.JUSTICE **R.KALAIMATHI**

Civil Miscellaneous Appeal Nos.1243 of 2023 and 62 of 2022
and
CMP No.12132 of 2023 in CMA No.1243 of 2023

CMA No.1243 of 2023

The Managing Director,
Tamil Nadu State Transport
Corporation (Coimbatore)
Tirupur 641 604. ... Appellant / Respondent

vs.

1. D.Ganesh Babu

2. Minor G.Vidhusha Dhayalini

3. T.Ramkumar

4. R.Renuka @ Renukadevi
(Minor petitioner rep by father, guardina,
NF D.Ganesh Babu, 1st petitioner herein)
… Respondents 1-4 / Petitioners 1-4

5. V.Mythili … 5th Respondent / 1st Respondent

6. Divisional Manager
The New India Assurance Co. Ltd.
DO III Floor, No.179 JN Street,
Puducherry 605 001. … 6th Respondent/ 2nd Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 15.09.2021 made in MCOP No.3180 of 2017 on the file of the Motor Accident Claims Tribunal/ I Additional District & Sessions Judge, Cuddalore.

CMA No.62 of 2022

1. D.Ganesh Babu

2. Minor G.Vidhusha Dhayalini

3. T.Ramkumar

4. R.Renuka @ Renukadevi
(Minor petitioner rep by father, guardina,
NF D.Ganesh Babu, 1st petitioner herein)
… Appellants / Petitioners

vs.

1. V.Mythili

2. The Managing Director,
   Tamil Nadu State Transport
   Corporation (Coimbatore)
   Tirupur 641 604.
3. The Divisional Manager
   New India Assurance Co. Ltd.
   DO. 3rd Floor, No.179 JN Street,
   Puducherry 605 001. … Respondents/ Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to allow the Appeal and enhance the compensation in MCOP No.3180 of 2017 dated 15.09.2021 on the file of the Motor Accident Claims Tribunal/ I Additional District & Sessions Judge, Cuddalore.

For Appellants : Mr.M.Murali Vinodh,
for appellant in CMA 1243/23
and for R2 in CMA 62/2022

For Respondents : Ms.Ramya V. Rao,
for RR1 to 4 in CMA 1243/23 and
Appellants in CMA 62/2022

Mr.J.Chandran, for R6 in CMA1243/23
& for R3 in CMA 62/2022

No appearance for R5 in CMA 1243/23
& for R1 in CMA 62/2022

COMMON JUDGMENT

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

These two Appeals arise out of the award passed by the Motor Accident Claims Tribunal, Cuddalore in MCOP No.3180 of 2017.

2. CMA No.1243 of 2023 is filed by the Transport Corporation, challenging the apportionment of negligence between the drivers of the Transport Corporation and the driver of the goods vehicle which had carried iron rods which were protruding outside the main frame of the vehicle.

3. CMA No.62 of 2022 is filed by the claimant aggrieved by the deduction of Income Tax at a particular percentage without adhering to the slab rate.

4. The claimants in MCOP No.3180 of 2017 are the husband, minor child and parents of one Hemalatha, aged about 29 years, who was a passenger in the bus. According to the claimants when the bus was proceeding from west to east on Trichy to Thanjavur Main Road near Vallam Alakkudi Byepass Bridge, the Tata Ace Goods Vehicle bearing Registration No.TN.48.AF.9482 which was proceeding in front, with iron rods projecting out in the rear portion endangering human life, slowed down suddenly without giving any indication. As a result, TNSTC Bus which was following the goods vehicle rammed into it, resulting in the iron rods that were protruding piercing into the bus as well as the passengers who were sitting in the few seats in the front portion of the Bus. The iron-rods also pierced into the deceased body and she died on the spot.

5. Terming the negligence on the part of the drivers of both the vehicles as cause of the accident, the claimants sought for a compensation of Rs.1,50,00,000/-. The quantum was sought to be justified by pleading that the deceased was working as a Postal Assistant earning Rs.31,194/- per month. Since she was employed in the Postal Department and she was only 29 years old, the future prospects were claimed at 50%. An FIR was filed against the driver of the Tata Ace

Goods Vehicle.

6. At trial, the first claimant examined himself as P.W.1 and also examined three other witnesses, of whom P.W.4 is an eye witness and Exhibits P1 to P23 were marked. On the side of the respondents, the driver of the Bus was examined as R.W.1, no documents were produced. None was examined by the Insurance Company.

7. The Tribunal on a consideration of the manner in which the accident had occurred concluded that both the drivers had contributed equally to the accident and apportioned the liability at 50% each. On the quantum, the Tribunal took the monthly income at Rs.31,194/- added 50% towards future prospects and arrived at the monthly income of Rs.46,791/-. It worked out the annual income at Rs.5,61,492/-. It deducted 20% flat towards Income Tax and arrived at the annual income sans income tax at Rs.4,49,194/-. It deducted 1/4th towards the personal expenses of the deceased and the annual loss of dependency was fixed at Rs.3,36,896/- applying multiplier of 17, the total loss of dependency was arrived at Rs.57,27,232/-. The Tribunal granted a sum of Rs.44,000/- towards loss of consortium to the husband and it also granted Rs.40,000/- towards loss of love and affection for all the four claimants. It awarded a sum of Rs.15,000/- for transport and Rs.16,500/- towards funeral expenses, the total compensation awarded by the Tribunal worked out to Rs.58,42,732/-.

8. Aggrieved the claimants and the Transport Corporation are on Appeal. The Insurance Company has accepted the award and has deposited its share of the compensation.

9. We heard Mr.M.Murali Vinodh, learned counsel appearing for the Transport Corporation, Mrs. Ramya Rao, learned counsel appearing for the respondents 1 to 4 in CMA No. 1243 of 2023 and the appellants in CMA No.62 of 2022 and Mr.J.Chandran, learned counsel appearing for the Insurance Company.

10. The first respondent in CMA No.62 of 2022 and the fifth respondent in CMA No.1243 of 2023 though served not appearing either through counsel or in person.

11. Mrs. Ramya Rao, learned counsel appearing for the appellants in CMA 62 of 2022 would submit that she is aggrieved only by deduction of 20% flat towards Income Tax. She would point out that the Tribunal must have adopted the slab rates of Income Tax. Relying upon the Income Tax slab rate for women below 60 years of age for the Financial Year 2017-2018 which is as follows:

Income Tax Slab	***Income Tax Rate***
Income upto Rs.2,50,000	Nil
Income between Rs.2,50,001 – Rs.5,00,000/-	5% of income exceeding Rs.2,50,000/-
Income between Rs.5,00,001 – Rs.10,00,000/-	20% of income exceeding Rs.5,00,000/-
Income above Rs.10,00,000/-	30% of income exceeding Rs.10,00,000/-

the learned counsel would contend that the Tax payable by the deceased at best would have been only Rs.24,800/-, if the slab rate is adopted. Adoption of flat rate of Income Tax at 20% on the entire income, has resulted in the Tribunal deducting a huge sum of Rs.1,12,298/- towards income tax. We find considerable force in the submission of the learned counsel, neither the counsel for the Insurance Company nor the counsel for the Transport Corporation are able to support the action of the Tribunal deducting 20% flat on the entire income. If the slab rate as stated above is applied the income tax that should have been deducted is only Rs.24,800/-. Therefore, the compensation has to be reworked.

12. The admitted income of the deceased is Rs.31,194/- per month. If we are to add 50% towards future prospects it works out to Rs.46,791/-. Therefore, the annual income would be Rs.5,61,492/-, if we are to deduct Rs.24,800/- towards income tax, the annual income sans income tax would be Rs.5,36,692/-. If we deduct 1/4th towards personal expenses of the deceased, the annual income would be Rs.4,02,519/-. Applying the multiplier of 17, which is not in dispute, the total loss of dependency would be Rs.68,42,823/-. We have to add a sum of Rs.44,000/- towards loss of consortium to the husband, Rs.44,000/- towards loss of love and affection to the child and Rs.88,000/- towards loss of filial consortium to the parents. The award under the head of transport is reduced to Rs.5,000/-. The award under the head of loss of estate and funeral expenses is fixed at Rs.16,500/- each. Thus the total compensation is arrived at Rs.70,56,823/- and the same is rounded off to Rs.70,56,000/-.

13. The same is apportioned as follows:

The husband/the first claimant will take a sum of Rs.19,56,000/-; for the minor child/the second claimant will take Rs.36,00,000/- and the parents/ claimants 3 and 4 will each get Rs.7,50,000/-. The claimants would be entitled to interest at 7.5% per annum from the date of petition till date of payment. The Tribunal is directed to deposit the share of the minor, namely the second claimant, in an cummulative interest earning fixed deposit in any one of the Nationalised Banks till she attains majority.

14. Adverting to the Appeal by the Transport Corporation Mr.M.Murali Vinodh would contend that the Tribunal erred in fixing the liability equally. The Tribunal ought to have considered that there is a violation of Sub Rule 8 of Rule 93 of the Central Motor Vehicles Rules, by the owner and the driver of the Tata Ace Goods Vehicle. All the witnesses had spoken about the fact that the iron rods were protruding outside the main frame of the vehicle. Rule 93(8) of the Central Motor Vehicle Rules reads as follows.

> ***Rule 93 (8)***:- *No motor vehicle shall be loaded in such a manner that the load or any part thereof extends.—*
>
> *(i) laterally beyond the side of the body;*
>
> *(ii) to the front beyond the foremost part of the load body of the vehicle;*
>
> *(iii) to the rear beyond the rearmost part of the vehicle;*
>
> *(iv) to a height beyond the limits specified in sub-rule (4);*

Sub Section (3) of Section 190 of the Act makes use of vehicle in unsafe condition a punishable offence.

15. In view of the said statutory violation, the learned counsel for the Transport Corporation would contend that the Tribunal should have fixed the liability on the goods carrier at a higher rate than 50%. Mr.J.Chandran, learned counsel appearing for the Insurance Company would submit that the evidence of P.W.4 would go to show that the driver of the bus had driven the bus in a rash and negligent manner , therefore, the Tribunal had balanced the interest of the Insurer as well as the Transport Corporation and said action of the Tribunal does not call for interference at our hands.

16. We have considered the rival submissions.

17. No doubt P.W.4 in his evidence has deposed that the driver of the bus was driving the bus in a rash and negligent manner, but the same witness in his cross-examination has admitted that the accident would not have happened but for the protruding iron rods. He has also admitted that there was no red flag at the end of the iron rods to indicate that they are protruding outside the vehicle. A Goods Carrier is prohibited from carrying goods which extend outside its main frame under Rule 93 of the Central Motor Vehicles Rules. If there is a violation of a Rule then the violator must face the consequences. It is also seen that an FIR has been rightly lodged under more serious offences against the driver of the Tata Ace Goods Vehicle.

18. We are therefore of the considered opinion that the contributory negligence cannot be equally attributed to both the vehicles. We therefore fix the contributory negligence at 65% on the Tata Ace Goods Vehicle and 35% on the TNSTC Bus. The Insurance Company is stated to have deposited 50% of the compensation as awarded by the Tribunal. It will deposit the balance amount, both the enhanced compensation and enhanced percentage of negligence within a period of twelve (12) weeks from the date of receipt of a copy of this order. The Transport Corporation will also have twelve (12) weeks to deposit the compensation as awarded by this Court. needless to state that the claimants would be entitled to interest on the enhanced compensation at 7.5% from the date of petition till date of payment. Both the appeals are partly allowed on the above terms.

19. In view of the fact that the Transport Corporation has also succeeded in the Appeal in part, we direct the parties to bear their own costs. The claimants will pay the additional Court Fee payable on the award. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J .) (R.KALAIMATHI, J.)
18.08.2023

jv

Index : No
Internet : Yes
Neutral Citation : No
Speaking order

To

1. The I Additional District & Sessions Judge,
   Motor Accident Claims Tribunal,
   Cuddalore.

2. The Section Officer,

V.R. Section.
Madras High Court.

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

jv

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