



C.M.A.No.1999 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1999 of 2018

1. Gopu
2. Rani

...Appellants

Vs.

The Managing Director,
TamilNadu State Transport Corporation,
Kancheepuram.

...Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decretal order dated 24.10.2016 made in M.A.C.T.O.P.No.477 of 2013 by the learned Special Motor Accident Claims Tribunal, Thiruvannamalai.

For Appellants : Mrs.M.Malar

For Respondent : Mr.S.S.Santhosakumar



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JUDGMENT

This appeal is filed by the claimants challenging the quantum of compensation awarded by the Tribunal in M.A.C.T.O.P.No.477 of 2013 dated 24.10.2016.

2 The appellants are the claimants and respondent is Transport Corporation. The appellants filed a claim petition before the Tribunal claiming Rs.20,00,000/- for the death of one Ragu son of the claimants.

3 According to the claimants on 03.10.2012 at about 8.45 p.m. when the deceased was travelling in the bus bearing Reg.No.TN 21 N 650 belonged to the respondent and when the bus reaches Tambaram to Sembakkam Road Nandivaram Village Malaimedu Bus Stop, the Driver of the bus driven the vehicle in a rash and negligent manner and suddenly applied the break and hit against the speed breaker, which resulted in the accident. In the said accident the deceased sustained fatal injuries and succumbed to the injuries on 05.10.2012.



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4 The claim petition was contested by the respondent/Transport Corporation which filed a detailed counter denying all the allegations in the claim petition apart from disputing the negligence and liability.

5 Before the claims Tribunal, father of the deceased was examined as P.W.1 and an eye witness was examined as P.W.2 and Exs.P1 to P6 were marked in support of the claim. On the side of the respondent/Transport Corporation, Driver of the Bus was examined as R.W.1 and no documentary evidence was produced.

6 The claims Tribunal, on an assessment of the entire evidence on record, awarded a sum of Rs.9,66,500/- as compensation and fixed 25% contributory negligence on the deceased and hence after deducting 25% from Rs.9,66,500/- a sum of Rs.7,24,875/- was awarded to the claimants along with 7.5% interest. Challenging the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal before this Court.

7 Learned counsel appearing for the appellants/claimants would submit that the deceased was travelling in the bus belonged to the



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respondent/Transport Corporation and due the rash and negligent driving of the Driver of the respondent/Transport Corporation, the deceased was thrown out from the Bus, in which the deceased sustained grievous injuries and subsequently succumbed to the injuries. In order to substantiate the claim, father of the deceased was examined as P.W.1 and one of the passengers, who travelled in the Bus was examined as P.W.2. The evidence of P.W.2 the eye witness is very clear and he has clearly stated that the deceased was only sitting in the front left side seat of the Bus near the door and due to rash and negligent driving of the Driver of the Bus, the deceased was thrown away from the Bus. As against the Driver of the Bus, departmental action has also been taken, which was admitted by R.W.1 during the course of cross examination.

7.1 Even though Driver of the offending vehicle was examined and he has stated that the deceased was travelling in the foot steps and under the influence of the alcohol he himself fell down from the bus, but, no independent witness either conductor of the Bus or the other passengers who travelled in the offending vehicle at the time accident was examined to prove the version of R.W.1. P.W2 eye witness to the occurrence has clearly stated about the manner of the accident and there is no evidence to prove that at the time of the accident,



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the deceased was under the influence of the alcohol. Ex.P3 Postmortem report shows that the Doctor who conducted autopsy on the body of the deceased has not stated that the deceased consumed alcohol and there was alcohol content present in the body of the deceased and hence in the absence of the same, fixing 25% contributory negligence on the part of the deceased by the Tribunal warrants interference.

7.2 Further the learned counsel contended that the deceased at the time of accident was only 30 years old and was earning Rs.20,000/- p.m. by working as Tailor and without appreciating the evidence of P.W.1, the Tribunal fixed notional income of the deceased at Rs.5,500/-, which is erroneous. Therefore the claimants are entitled for enhancement.

8 Learned counsel appearing for the respondent/Transport Corporation would submit that Driver of the Bus was examined as R.W.1, who has clearly stated that the deceased at the time of accident, was under the influence of alcohol and travelling in the foot steps and when the road was slopping down, the deceased who was standing near the door fell down from the bus. The Driver of the bus drove the vehicle in a moderate speed and the



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deceased himself fell down from the bus and except the deceased no other passengers sustained injuries, which clearly shows that it is only on the part of the deceased alone. The Tribunal based on the evidence of R.W.2, should have dismissed the claim petition, but, on a sympathy ground awarded compensation, which in fact is on the higher side. Therefore the appeal is liable to be dismissed.

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

10 It is the main contention of the learned counsel for the respondent/Transport Corporation that the deceased at the time of accident was under the influence of alcohol and he himself fell down from the Bus. But, it is seen there is no medical records or any other evidence to prove the said contention. According to the claimants the deceased was travelling in the front seat of the Bus and due to rash and negligent driving of the Driver of the offending vehicle, he was thrown away and sustained grievous injuries. But, the fact remains that admittedly the deceased alone was not travelling in the Bus and there were many other passengers also and it is also admitted that no other



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passengers except the deceased sustained injuries. Further, admittedly the deceased was sitting in the front seat of the Bus, where there must be safety guard and hence the version of the claimants also unbelievable. Therefore, the Tribunal considering all these facts fixed 25% contributory negligence on the part of the deceased, in which this Court does not find any perversity to interfere with the same.

11 Coming to the quantum of compensation, the claimants contended that deceased at the time of accident was earning Rs.20,000/- as Tailor, but to prove the same the claimants did not produce any oral or documentary evidence. The Tribunal fixed Rs.5,500/- p.m. as notional income of the deceased and this Court, considering the cost of living prevailed at the time of accident, fixes Rs.6,500/- as notational income of the deceased. Further since the age of the deceased at the time of accident 30 years and there is no proof for the income of the deceased, this Court adds 40% towards future prospects instead of 50% and the multiplier adopted by the Tribunal is 17, which is correct and the same is confirmed. Accordingly the Loss of income is calculated hereunder:

$$\text{Rs.6500/-} \times 40\% = \text{Rs.2600/-}$$

$$\text{Rs.6500/-} + \text{Rs.2600/-} = \text{Rs.9100/-}$$



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Deduct $\frac{1}{2}$ towards personal expenses of the deceased

Rs.9100 – 4500 = Rs.4500/-

Rs.4500/- x 12 x 17 = Rs.9,28,200/-

12 In view of the said discussions the award of the Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Loss of Income	8,41,500.00	9,28,200.00
2.	Loss of love and affection Rs.50,000/- to each of the claimants	1,00,000.00	1,00,000.00
3.	Funeral Expenses	25,000.00	25,000.00
TOTAL COMPENSATION		9,66,500.00	10,53,200.00

Total Compensation awarded by this Court – Rs.10,53,200/-

After deducting 25% towards contributory negligence – Rs.7,89,900/-

13 The claimants are therefore entitled to enhanced compensation of Rs.7,89,900/- along with 7.5% interest from the date of claim petition till the date of realisation as per the apportionment made by the Tribunal. The respondent is directed to deposit the enhanced compensation along with 7.5% interest, less the amount already deposited, within a period of four weeks from



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the date of receipt of a copy of this order. On such deposit being made, the

Tribunal is directed to credit the award amount directly to the account of the claimants without any formal application as per the decision of the Division Bench of this Court reported in 2016 (2) LW 561 (*The Divisional Manager, The Oriental Insurance Company Limited, Kannur, Vs. Rajesh and Others*). . Accordingly the appeal is partly allowed. There shall be no order as to costs.

27.09.2023

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Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The Special Motor Accident Claims Tribunal, Thiruvannamalai.
2. The Section Officer, V.R.Section, High Court, Madras.



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P.VELMURUGAN. J.,

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