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C.M.A.No.1856 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1856 of 2021

1. Kasilingam

2. Kaviyaran

... Appellants/Claimants

Vs.

1. The Managing Director,
Tamil Nadu State Express
Transport Corporation,
Chennai.

2. The Managing Director,
Tamil Nadu State Express
Transport Corporation,
Kumbakonam.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 06.01.2021 made in M.C.O.P.No.177 of 2018 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Villupuram @ Kallakurichi.

For Appellants	:	Mr. N. Manoharan
For R1	:	No appearance
For R2	:	Mr. M. Murali Vinodh



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JUDGMENT

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The Civil Miscellaneous Appeal has been filed by the appellants against the Award passed in M.C.O.P.No.177 of 2018, dated 06.01.2021, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Villupuram @ Kallakurichi, for enhancement of compensation awarded.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimants is that the first petitioner is the husband and the second claimant is the son of the deceased Jayarani, who died in the road accident. According to the claimants are that on 20.04.2018 at about 3.00 hours the deceased was returning to her village after finishing her work, in a goods vehicle namely, Tata Ace bearing Registration No.TN 31 AW 6145 on Trichy to Chennai National Highways within the jurisdiction of Ulundurpet Police Station, near Edaikkal TRR Thar plant, a bus bearing Registration No.TN 63 N 1774 belongs to the second respondent driven by the first respondent came in the same direction in rash and negligent manner and dashed on the Tata Ace vehicle, which resulted in



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causing severe injuries to the persons travelled in the Tata Ace Van. The deceased Jayarani had sustained grievous injuries and subsequently succumbed. The claimants who are the dependents of the deceased have come forward with the claim petition seeking compensation of Rs.25,00,000/-.

4. The first respondent and the second respondent are the Transport Corporations.

5. The second respondent filed counter and contended that their driver has driven the vehicle with due care and caution in the National Highways, but the driver of the Tata Ace Van drove the vehicle in negligent manner and suddenly crossed the line, which resulted in the accident. If the driver of the Tata Ace van had not suddenly crossed the line in National Highways, the accident could not have happened. Hence, the driver of the second respondent is not responsible for the accident hence prays to dismiss the claim petition. First Respondent is not the owner of the bus has been wrongly added as party.



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6. Before the Tribunal, on the side of the petitioners, P.W.1 and P.W.2 were examined and Exs.P1 to P7 were marked. On the side of the respondents, R.W.1 was examined and no documentary evidence marked.

7. Based on the above pleadings and the evidences adduced, in Point No.1, the Tribunal has held that the driver of the Tata Ace van has suddenly changed the line while proceeding ahead of the bus, similarly if the bus driver has driven the bus in same distance with due care and caution, he could have averted the accident. Hence both the drivers are responsible for the accident in the proportionate of 30 : 70. In point No.2, the Tribunal has quantified the compensation and awarded a sum of Rs.9,15,000/- as total compensation and also the second respondent was directed to pay 75% of compensation i.e., Rs.6,40,500/- along with interest at the rate of 7.5% interest per annum.

8. Aggrieved over the award of fixing negligence on the part of the driver of the Tata Ace Van and also for enhancement of compensation, this appeal has been filed by the claimants.



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9. The learned counsel for the claimants submitted that it is the case of the claimants that the bus driver drove the vehicle in rash and negligent manner and dashed the rear side of the Tata Ace vehicle and caused injuries to the person who travelled in the Tata Ace vehicle, the deceased has succumbed. The Tribunal has not properly appreciated the evidence of eyewitness - P.W.2 and due to rustic answer given by P.W.2, who is also an illiterate, has been improperly interpreted against the claimants herein. Hence prays to set aside the negligence fixed on the part of the driver of the Tata Ace vehicle.

10. Per contra, the learned counsel for the second respondent - Transport Corporation has submitted that based on the evidences placed on record, the Tribunal has arrived its conclusion regarding the negligence act more particularly, there was a admission made on the part of the eye witness describing the manner in which, the accident had taken place. Hence prays to confirm the finding of the Tribunal regarding the negligence fixed on the part of the first respondent.

11. I have considered the rival submissions made on both sides



and also perused the records available on record.

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12. On the side of the claimants they have examined one of the person who travelled along with the deceased as P.W.1 and she has stated that, they travelled in the Tata Ace vehicle, on the Trichy to Chennai National Highways, towards their Village at Maangudi. While they reached near Edaikkal TRR Thar plant, via Ulundurpet, a bus bearing Registration No.TN 63 N 1774 came behind them in high speed and hit on the Tata Ace vehicle which resulted in causing injuries to several persons. In the cross examination, it was suggested to her that the Tata Ace vehicle driver suddenly changed the line from right side to left side in the National Highways and had also applied sudden brake in the road, resulted in accident.

13. On the side of the respondents, they have also examined R.W.1, who is the driver of the bus. He has stated that, on 20.04.2018, he was driving the bus towards Chennai from Rameswaram around 3.00 a.m., between Ulundurpet to Edaikal, when they reached near TRR Thar Plant, the Tata Ace vehicle which was running ahead of him suddenly changed the track and entered in the middle of the road and applied brake, which resulted



in the accident. Though, he applied brake to avoid the accident, yet the bus hit on the Tata Ace vehicle.

14. Admittedly, in the cross examination it was also elicited that the Tata Ace vehicle was carrying several persons and a criminal complaint was also registered against the driver of the bus. In Ex.P1- FIR, it is stated that more than 10 persons have been travelled in the Tata Ace vehicle who were seated on the cabin area. Based on the above facts and also the admission made by the eyewitness examined on the side of the claimants and on the basis of the evidence of R.W.1, the Tribunal has taken a view that the Tata Ace vehicle has suddenly changed the track and stopped the vehicle in the middle of the road, which resulted in the accident. However, the Tribunal has fixed the proportionate of negligence into 30% : 70%.

15. This Court is of the view that the evidence placed on record only supports the view taken by the Tribunal and the proportionate negligence fixed is also found to be reasonable. Since, the deceased as well as many persons have travelled in the Tata Ace vehicle as a gratuitous passengers in the goods vehicle, which makes the driver of the Tata Ace vehicle as contributory to the accident. Hence, this Court is of the view that



finding regarding the negligence fixed by the Tribunal is proper and there is no need for interference and the same is hereby confirmed. However the deceased travelled in the goods vehicle, which is violation of statutory rules, since the driver and owner of Tata Ace vehicle have not made as party and deceased was a gratuitous passenger, dependents are not entitled to claim compensation from the Transport Corporation to the extent of contributory negligence caused by the driver of Tata Ace vehicle. They have to claim 30% of the compensation only from the owner and driver of Tata Ace vehicle.

16. With regard to the quantum of compensation, the Tribunal has fixed the notional income of the deceased as Rs.6,000/- per month. Considering the fact that the deceased is working women and the date of accident fixing of notional income of Rs.9,000/- per month would be proper. Accordingly, the notional income fixed by the Tribunal is hereby modified to Rs.9,000/-. The age of the deceased is 41 years at the time of accident and the Tribunal has applied proper multiplier of '14' and 25% amount awarded towards future prospects is also proper. The dependents of the deceased are two in number hence $\frac{1}{3}^{\text{rd}}$ deducted towards personal expenses of the deceased is permissible. In all, the loss of dependency is arrived at



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Rs.12,60,000/- [9000 + 2250 (25% of 9000) = 11250 after deducting 1/3rd = 7500 x 12 x 14].

17. The Tribunal has also awarded Rs.60,000/- separately under the head loss of love and affection and this Court is of the view that the same is on the higher side. As per the Judgment of the Hon'ble Apex Court in *National Insurance Company Ltd., vs. Pranay Sethi and others [2017 (16) SCC 680]* all the claimants are entitled for a sum of Rs.40,000/- under the head of loss of consortium accordingly, for each claimants a sum of Rs.40,000/- is awarded under the head Loss of Consortium. This Court is of the view that since this Court has awarded compensation under the head loss of consortium, the head loss of love and affection separately awarded by the Tribunal is hereby rejected. The Tribunal has properly awarded a sum of Rs.15,000/- for Funeral Expenses and the same needs no interference and the same is hereby confirmed. The Tribunal has not awarded any amount for loss of estate and this Court is inclined to award a sum of Rs.15,000/- under the head Loss of Estate.

18. Thus the compensation awarded by the Tribunal under



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various heads are hereby 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	Rs.8,40,000/-	Rs.12,60,000/-	Enhanced
2.	Loss of Consortium	Rs.40,000/-	Rs.80,000/-	Enhanced
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000	Confirmed
4.	Loss of Love and Affection	Rs.20,000/-	---	Rejected
5.	Loss of Estate	---	Rs.15,000/-	Granted
	Total Compensation	Rs.9,15,000/-	Rs.13,70,000/- -	
	After deducting 30% awarded	Rs.6,40,500/-	Rs.9,59,000/-	Enhanced by Rs.3,18,500/-

The Total compensation payable by the Respondent No.2 is Rs.9,59,000/-.

19. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation payable as determined by the Tribunal is at Rs.6,40,500/- is hereby enhanced to Rs.9,59,000/- [Rupees Nine Lakhs and Fifty Nine Thousand only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The Second respondent/Transport Corporation is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of



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receipt of a copy of this judgment to the credit of M.C.O.P.No.177 of 2018, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Villupuram @ Kallakurichi. On such deposit, the appellants/claimants are entitled to withdraw the amount, now awarded by this Court as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants without any formal application. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

15.11.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The III Additional District Judge,
Motor Accidents Claims Tribunal,



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Villupuram @ Kallkurichi.

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2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K.RAJASEKAR,J.

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