



C.M.A.No.4489 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

|                      |            |
|----------------------|------------|
| <b>Reserved on</b>   | 13.04.2023 |
| <b>Pronounced on</b> | 27.04.2023 |

**CORAM**

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR  
AND**

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.**

**C.M.A.No.4489 of 2019**

**and**

**Cross Objection No.30 of 2023**

**and**

**C.M.P.No.25376 of 2019**

The Managing Director,  
KSRTC, Shanthi Nagar,  
Bengaluru-560 027

...Appellant

**Vs.**

1.Vijayalakshmi  
2.Minor.Jayawant.V.S,  
3.Selvi  
Minor represented by  
N.F.Mother Vijayalakshmi

...Respondents



C.M.A.No.4489 of 2019

WEB COPY

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, appeal against the award and decree dated 18.09.2018 made in M.C.O.P.No.43 of 2018 on the file of the Motor Accidents Claims Tribunal (Special District Judge), Krishnagiri.

For Appellant : M/s.T.Thiyagarajan

For RR1 to R3 : Mr.E.Rajadurai

for M/s.Mukund R.Pandiyan

### **JUDGMENT**

(Judgment of the Court was delivered by K.GOVINDARAJAN THILAKAVADI,J.)

The Transport Corporation has filed this Civil Miscellaneous Appeal, aggrieved by the award, dated 18.09.2018 made in M.C.O.P.No.43 of 2018 , on the file of Motor Accident Claims Tribunal (Special District Judge), Krishnagiri fastening liability on the appellant/Transport Corporation to pay compensation to the claimants.



C.M.A.No.4489 of 2019

2.The 1<sup>st</sup> claimant has filed Cross Objection in Cross. Obj. No.30 of 2023, aggrieved over the insufficiency of the compensation awarded by the Tribunal in M.C.O.P.No.43 of 2018 on the file of the Motor Accident Claims Tribunal (Special District Judge), Krishnagiri.

3.Both the C.M.A and the Cross Objections are taken together for disposal.

4. It is the case of the claimants, that on 29.05.2017 at about 16.45 hours when the deceased Sivarasan was driving his Scooty Zest 110 in Krishnagiri to Thiruvannamalai NH road towards Krishnagiri. While he was driving his vehicle near Periyapanamuttulu Village, the driver of the KSRTC Bus bearing Registration No.KA-57-F-1684 drove the vehicle in a rash and negligent manner and dashed against the deceased, due to which the deceased sustained fatal injuries and died on the spot. According to the claimants, the driver of the Corporation bus was responsible for the accident and therefore, prayed for appropriate compensation under various heads.



C.M.A.No.4489 of 2019

5.The appellant/Transport Corporation disputed the manner of the accident.

It is submitted that the accident occurred only due to the negligence of the respondent/claimant. It is also submitted that the deceased did not have driving license and was not wearing helmet at the time of accident which amounts to violation of Motor Vehicle Act under Section 129. Without prejudice to the above, the nature of injuries sustained by the deceased and the compensation claimed under various heads were also disputed.

6.Before the Tribunal, the 1<sup>st</sup> claimant examined herself as P.W.1 and P.W.2 is said to be an eyewitness to the accident. The claimants have relied upon Exs.P.1 to P.15 to establish their claim. On the side of the respondent, the driver of the bus was examined as R.W.1.

7.The Tribunal on evaluation of pleadings and evidence, held that the driver of the Corporation bus is at fault and fixed the liability on the Transport Corporation to pay compensation and awarded a sum of Rs.36,63,296/- with interest at the rate of 7.5% per annum from the date of claim till the date of realization.



C.M.A.No.4489 of 2019

WEB COPY

8. Assailing the correctness of the award, Mr.T.Thiyagarjan, the learned counsel appearing for the appellant/Transport Corporation submitted that the Tribunal has erred in arriving at the conclusion that the driver of the Corporation bus bearing Registration No.KA-57-F-1684 is at fault, despite the fact that the deceased was responsible for the accident. The learned counsel further submitted that the Tribunal ought to have appreciated the evidence of R.W.1, the driver of the Corporation bus, who had spoken about the manner of the accident. It is further submitted that the author of Ex.P.10 Certificate was not examined and no Tax deduction was made by the learned Tribunal while considering the three years Income Tax Returns. Hence, it is submitted that the Tribunal without taking into account the contributory negligence on the part of the deceased erroneously fastened the entire liability on the Corporation vehicle and also disputed the quantum of compensation arrived by the Tribunal.

9.Per contra Mr.E.Rajadurai, learned counsel for the claimants submitted that the accident occurred not due to the negligence of the deceased. Placing



C.M.A.No.4489 of 2019

reliance on the evidence of P.W.2 and Ex.P.1-FIR, he submitted that the Tribunal has rightly fixed the liability on the Transport Corporation.

10.On the quantum of compensation, the learned counsel for the claimants would submit that aggrieved by the insufficiency of the compensation amount awarded by the Tribunal, the claimants have preferred the Cross Objection in Cross.Obj. No.30 of 2023. According to the learned counsel, the amount awarded by the Tribunal is very low and the same has got to be substantially enhanced. It is further submitted that the Tribunal erred in fixing the annual income of the deceased as Rs.2,96,150/-, the deceased at the time of accident was earning a sum of Rs.3,56,040/- per annum by running a press in the name, "New Singam Press". It is further submitted that the Tribunal failed to award under the heads love and affection and Transport expenses. The Tribunal also erred in awarding less amount for loss of estate and funeral expenses.

11.Heard the learned counsels for the parties and perused the materials available on record.



12.The learned counsel for appellant/Transport Corporation contended that the deceased drove the motor cycle in a zigzag manner, without valid driving license and without wearing helmet, dashed against the Corporation bus and caused the accident. The Tribunal ought to have fixed the contributory negligence on the part of the deceased. It was further contended that the quantum of compensation of Rs.36,93,296/- awarded is very much excessive and on the higher side.

13.In his evidence, P.W.2 has stated that, the accident had occurred due to the rash and negligent driving of the driver of the KSRTC bus bearing Registration No.KA-57-F-1684. The FIR was also registered only as against the Corporation bus driver. On the side of the Corporation, excepting the interested version of bus driver (R.W.1), no other independent evidence was examined to disprove the case of the claimant. Even though the corporation has raised the plea of the contributory negligence, except the evidence of R.W.1/driver, no substanting evidence was adduced to establish contributory negligence. In the absence of independent evidence, the plea of the contributory negligence cannot be said to have been established by the appellant/Transport Corporation. Based on the evidence of P.W.2 and the registration of the case against the Corporation bus driver, the



C.M.A.No.4489 of 2019

Tribunal rightly held that the accident was due to rash and negligent driving of the Corporation bus driver. The finding of the Tribunal on the question of negligence is unassailable.

14.The next question falling for consideration is whether the Tribunal has awarded a just compensation for the death of Sivarasan.

15.According to the learned counsel for the appellant/Transport Corporation the Tribunal without taking note of the fact that, no deductions were made in the Income Tax Returns marked as Ex.P.11 to P.13, erroneously fixed the yearly income of the deceased at Rs.2,96,150/-. He further submitted that the claimants have not filed any document to show the income of the deceased except the Income Tax Returns.

16.On the other hand, the learned counsel appearing for the claimants would submit that, the learned Tribunal ought to have considered the oral and documentary evidence adduced by the claimants while fixing the annual income of



the deceased. The Tribunal erroneously fixed the income of the deceased at Rs.2,96,150/- per annum instead of Rs.3,56,040/- per annum.

17. According to the claimants, the deceased was owning a press and was also a Collection Agent in Municipal Bathrooms in bus stand and was earning Rs.35,000/- per month. On the side of the claimants, the Income Tax Returns for the year 2014-15, 2015-16 and 2016-17 were marked as Exs.P.11 to P.13. The accident occurred in the year 2017. Based on Ex.P.11 to P.13, the Tribunal has taken the average income for three years and fixed the annual income of the deceased at Rs.2,96,150/- which is found to be reasonable. The Tribunal has awarded a sum of Rs.35,93,296/- towards loss of dependency. A Sum of Rs.40,000/- is awarded towards loss of consortium for the wife of the deceased. However, as per the principles laid down in *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others* reported in (2018) 2 TN MAC 452, the minor children of the deceased are entitled for parental consortium of Rs.40,000/- each. Therefore, the claimants are entitled for compensation under heads as follows:





C.M.A.No.4489 of 2019

apportionment ordered by the Tribunal, through NEFT/RTGS within a period of 12 weeks from the date of receipt of a copy of this order. The mother of the minor is permitted to withdraw the accrued interest once in six months for the benefit of the minor. Consequently, connected miscellaneous petition is closed. No costs.

**(D.K.K.,J.)      (K.G.T.,J.)**

27.04.2023

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To:-

The Motor Accidents Claims Tribunal

(Special District Judge), Krishnagiri.



WEB COPY



C.M.A.No.4489 of 2019

**D.KRISHNAKUMAR, J.**  
**and**  
**K.GOVINDARAJAN THILAKAVADI, J.**

vsn

**Pre delivery Judgment made in**

**C.M.A.No.4489 of 2019**

**and**

**Cross Objection No.30 of 2023**

**and**

**C.M.P.No.25376 of 2019**

27.04.2023