



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.09.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

**CMA.Nos.1116 of 2022
and C.M.A.No.2108 of 2023**

CMA.No.1116 of 2022

The Managing Director,
Tamil Nadu Government Transport Corporation,
(Kumbakonam) LTd.,
Kumbakonam. ... Appellant

Vs.

1.E.Mohamed Barook
2.M.Noorulhudha
3.M.Mohamed Fathal
4.M.Mohamed Beladeen ... Respondents

For Appellant : Mr.M.Murali Vinodh

For Respondents : M/s.Ramya V. Rao

CMA.No.2108 of 2023

1.Muhammed Farooq
2.M.Nurulkutha
3.M.Mohammed Bathal



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4.M.Mohammed Balatheen

.. Appellants

Vs.

The Managing Director,
Tamil Nadu Government Transport Corporation,
(Kumbakonam) Ltd.,
Kumbakonam.

... Respondents

For Appellants : M/s.Ramya V. Rao

For Respondent : Mr.M.Murali Vinodh

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.11.2021 made in MCOP.No.3562 of 2018, on the file of Motor Accident Claims Tribunal, Special Court, Cuddalore.

COMMON JUDGMENT

The Transport Corporation as well as the claimants have filed these appeals challenging the award of Tribunal.

2. For the sake of convenience, the parties herein are referred to as claimants and Transport Corporation.



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3. The claimants filed the petition before the Tribunal stating that on 03.04.2018 while the deceased was riding his two wheeler, a bus belonging to the Transport Corporation came in a rash and negligent manner and caused a head-on collision, as a result of which, the deceased sustained fatal injuries and that the claimants are entitled for compensation to a sum of Rs.25,00,000/-.

4. The Transport Corporation resisted the claim petition stating that the accident took place entirely due to the rash and negligent riding of the deceased; that the F.I.R. which was lodged against the driver of the bus was closed "as mistake of fact" holding that the rider of the two wheeler was guilty of negligence; and that in any case the compensation claimed by the claimants is excessive and prayed for dismissal of the claim petition.

5. The claimants examined P.W.1 and P.W.2 and marked six documents as Exs.P.1 to P6. On the side of the Transport Corporation two



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witnesses were examined as R.W.1 and R.W.2, and marked five documents as Exs.R.1 to R.5.

6. The Tribunal after considering the pleadings, oral and documentary evidence held that the accident occurred entirely due to the rash and negligent driving of the driver of the bus belonging to the Transport Corporation and directed the Transport Corporation to pay a sum of Rs.33,09,000/- as compensation to the appellants.

7. The Transport Corporation is aggrieved by the fact that no contributory negligence was fixed on the deceased. The appellants are aggrieved by the fact that the quantum of compensation determined by the Tribunal is meagre.

8. The learned counsel for the transport corporation would contend that in the light of the evidence of R.W.2 (driver of the bus), the final report – Ex.R.4 and Rough Sketch Ex.R.5, the Tribunal ought to have



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fixed the entire negligence on the rider of the two wheeler, that the above facts suggest that the accident took place on the northern side of the road which runs from East to West; that the Ex.R.5, the Rough Sketch suggests that the bus was going from West to East ie., on the left hand side of the road and that the accident also took place on the left hand side of the road; and that therefore, from the above evidence, it is clear that the deceased had contributed to the accident; and that the evidence of P.W.2 – eye witness, also cannot be accepted completely, in the light of the evidence of R.W.2 and the other criminal case records.

9. The learned counsel for the claimants would submit that the compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

10. Considering the evidence and other circumstances of the case, this Court is of the view that though predominantly the accident took place on account of the rash and negligent driving of the driver of the offending



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bus, contributory negligence on the deceased cannot be ruled out, considering the fact that the accident took place on the northern side when the bus was moving from West to East. The deceased was on the wrong side of the road. In the facts and circumstances of the case, this Court is of the view that it would be just and reasonable to fix 30% contributory negligence on the deceased for the violation committed by him.

11. As regards the quantum of compensation, it is seen that the Tribunal had awarded compensation of a sum of Rs.2,50,000/- under the head “Loss of love and affection” to four claimants, which is excessive. Therefore, this Court is of the view that they are each entitled to Rs.40,000/- in total Rs.1,60,000/- under the head "Loss of Love and affection". The compensation under other heads are just and reasonable and the same is confirmed. The claimants or the transport corporation have not challenged the quantum with regard to the notional income fixed by the Tribunal and the method of computing the compensation under the head “Loss of income”. Therefore, the said award is confirmed.



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12. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of income	30,24,000	30,24,000	Confirmed
2	Loss of love and affection	2,50,000	1,60,000	Reduced
3.	Funeral Expenses	15,000	15,000	Confirmed
4.	Transport charges	5,000	5,000	Confirmed
5.	Loss of Estate	15,000	15,000	Confirmed
	Total	Rs.33,09,000/-	Rs.32,19,000/-	
	Less contributory negligence at 30%	----	9,65,700/-	
	Net compensation	Rs.33,09,000/-	Rs.22,53,300	Reduced by Rs.10,55,700/-

13. With the above modification, the C.M.A.No.1116 of 2022 is partly allowed and C.M.A.No.2108 of 2023 is dismissed. The compensation



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of Rs.33,09,000/- awarded by the Tribunal is hereby reduced to Rs.22,53,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any). The Transport Corporation is directed to deposit the modified 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 receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their share of the modified award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn on the basis of apportionment fixed by the Tribunal. The Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.3562 of 2018 on the file of Motor Accident Claims Tribunal, Special District Court, Cuddalore, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

11.09.2023



Index: Yes/No
Internet: Yes/No
Speaking order: Yes/ No
gba

To

- 1.The Special Sub Court,
Motor Accident Claims Tribunal,
Cuddalore.
- 2.The Section Officer
VR Section,
High Court of Madras, Chennai – 600 104.

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SUNDER MOHAN,J.

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C.M.A.No.1116 of 2022
and
CMA.No.2108 of 2023



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