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C.M.A. Nos.1361 of 2022 & 1800 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.Nos.1361 of 2022 and
CMA No.1800 of 2022 & CMP No.12983 of 2022

1.K.Krishnaveni

2.Minor K.Dheivanai

3.Minor K.Muthamilselvan

(Minors are rep. by mother & Natural
guardian K.Krishnaveni)

4.Anjalai

Arumugam (Died)

.. Appellants in CMA No.1361 of 2022 &
Respondents in CMA No.1800 of 2022

Vs.

The Managing Director,
State Express Transport Corporation,
No.2, Pallavan Salai,
Chennai – 600 002.

.. Respondent in CMA No.1361 of 2022 &
Appellant in CMA No.1800 of 2022

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.12.2021 made in MCOP No.2600 of 2018 on the file of Motor Accident Claims Tribunal (Principal District Court), Cuddalore.



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For Appellants in }
CMA No.1361/2022 }
& Respondents in } : Ms.Ramya V. Rao
CMA No.1800/2022 }

For Respondent in }
CMA No.1361/2022 }
& Appellants in } : Mr.K.Kathiresan
CMA No.1800/2022 }

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed challenging the judgment and decree dated 16.12.2021 made in MCOP No.2600 of 2018 on the file of Motor Accident Claims Tribunal (Principal District Court), Cuddalore.

2. Parties are referred to as per their rank in the claim petition for the sake of convenience.

3. The claimants filed MCOP No.2600 of 2018 on the file of Motor Accident Claims Tribunal, Principal District Court, Cuddalore claiming a sum of Rs.35,00,000/- as compensation for the death of one Arumugam who died



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due to the injuries sustained by him in the accident that took place on 08.02.2018.

4. According to the claimants, on 08.02.2018, while the deceased Kaliyavaradhan was riding his Passion Pro Motor Cycle bearing Regn.No.TN91 W 5482 from North to South, keeping to the extreme left of Vadalur to Kumbakonam Salai, Opp.to Petrol Bunk situated near Kuravar Kudiyirupput, Vadalur, the driver of the bus belonging to the respondent, drove the same in a rash and negligent manner in the opposite direction and dashed against the motorcycle of the deceased and caused the accident. In spite of treatment, the said Kaliyavaradhan died on 11.02.2018 and hence the claimants filed the claim petition claiming compensation against the respondent.

5. The respondent filed counter statement denying the averments made in the claim petition including the manner of accident. The driver of the bus drove the same carefully keeping to the extreme left side of the road. The



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deceased who rode the motorcycle in a zig zag manner, suddenly turned the motorcycle towards his right crossing the centre median line to avoid the ditches in the road. Due to the sudden crossing of the motorcycle, the driver of the bus applied sudden brake and stopped the bus. However, the deceased who came in an uncontrollable speed on the wrong side, dashed against the left bumper of the bus and invited the accident. The driver of the bus is not responsible for the accident and hence the respondent is not liable to pay compensation to the claimants. The deceased did not wear helmet at the time of accident and thereby violated the policy conditions. The appellant has not impleaded the owner and insurer of the motorcycle and hence the claim petition is bad for non-joinder of necessary parties. The 2nd respondent denied the age, avocation and income of the deceased. The total compensation claimed by the claimants is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st claimant examined herself as PW1 and one K.Keerthi, eye-witness to the accident was examined as PW2. Seven



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documents were marked as Exs.P.1 to P7. On the side of the respondent, neither witness was examined nor document was marked.

7. The Tribunal, considering the evidence and documents filed on the side of the claimants, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the respondent and directed the respondent to pay a sum of Rs.14,33,000/- as compensation to the claimants.

8. Not being satisfied with the award of the Tribunal, the claimants have filed CMA No.1361 of 2022 seeking enhancement of compensation. Challenging the entire liability fixed on the respondent as well as the quantum of compensation awarded to the claimants, the respondent has filed CMA No.1800 of 2022.

9. The learned counsel appearing for the respondent/Transport Corporation submitted that the Tribunal erred in fixing the entire negligence



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on the driver of the bus belonging to the respondent. Though FIR was registered against the driver of the bus belonging to the respondent/Transport Corporation, the police, on investigation closed the FIR as mistake of fact. The learned counsel further submitted that the deceased did not wear helmet at the time of accident. The postmortem certificate would reveal that the deceased suffered head injuries. In such circumstances, the Tribunal ought to have fixed some part of negligence on the deceased. The learned counsel also submitted that the claimants have not produced any documents to establish the avocation and income of the deceased. In the absence of any documentary evidence to prove the income of the deceased, the Tribunal erred in fixing Rs.7000/- per month as notional income of the deceased. The learned counsel further contended that the Tribunal erred in awarding 8% interest instead of 7.5%. The compensation awarded by the Tribunal under other heads are also excessive and prayed for allowing CMA No.1800 of 2022.

10. Per contra, the learned counsel for the claimants (appellants in



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CMA No.1361 of 2022) contended that the respondent/Transport Corporation

had not let in any evidence contrary to the evidence let in by the claimants to prove the manner of accident. PW2-eye witness to the accident has clearly stated that the accident took place on account of rash and negligent driving by the driver of the bus. The learned counsel further submitted that merely because the FIR was closed as mistake of fact, it would not mean that the driver of the bus was not guilty of negligence. The evidence before the Tribunal has to be independently assessed with regard to fixing of negligence. As regards the quantum of compensation, the learned counsel would submit that the notional income fixed by the Tribunal at Rs.7000/- per month is meagre. This Court had been consistently fixing the notional income as Rs.15,000/- or more per month for accidents that took place in the year 2018. Considering the number of dependents, age, and occupation of the deceased, the learned counsel prayed for fixing higher notional monthly income. The learned counsel also submitted that the claimants 2 & 3 are the minor children and the 4th claimant is the mother of the deceased and the total compensation awarded by the Tribunal towards loss of love & affection to all of them at



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Rs.40,000/-is meagre and prayed for allowing CMA No.1361 of 2022.

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11. Heard the learned counsel appearing for the claimants as well as respondent / Transport Corporation and perused the materials available on record.

12. The questions involved in the above appeals are -

(i) whether the Tribunal is right in fixing entire negligence on the driver of the bus belonging to the respondent/Transport Corporation ;

(ii) whether the quantum of compensation awarded by the Tribunal is just and reasonable.

13 (i). From the materials on record, it is seen that the claimants have examined PW2-eye witness to the accident to prove the manner of accident. PW2 in her evidence has deposed that the accident took place on account of rash and negligent driving by the driver of the bus belonging to the appellant. No contra evidence was let in on the side of the respondent/Transport Corporation to disprove the evidence of PW2. Merely because the FIR was closed as mistake of fact against the driver of the bus, it cannot be held that



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the driver of the bus was not guilty of negligence for the purpose of awarding compensation. In a criminal case, it has to be gross negligence. Therefore, the records in criminal case cannot be basis to determine negligence before the Tribunal. Therefore, this Court is of the view that the Tribunal was right in holding that the driver of the bus was guilty of negligence. However, this Court finds that there is evidence to show that the deceased did not wear helmet at the time of accident. The deceased suffered head injury and skull fracture which confirms the said fact. Therefore, considering the facts and circumstance of this case and the consistent view taken by the Hon'ble Apex Court and this Court, 10% contributory negligence is fixed on the deceased for not wearing helmet.

13 (ii) The accident took place in the year 2018. PW1 in her evidence has stated that the deceased was doing vegetable whole sale business and was earning a sum of Rs.20,000/- per month. However, no document has been produced to substantiate the same. Considering the year of accident, nature of avocation of the deceased and the cost inflation index, this Court is of the



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view that it would be reasonable to fix the notional income of the deceased as Rs.15,000/- per month. As per Ex.P2-postmortem certificate, the deceased was aged 40 years at the time of accident. Though the claimants have stated that the deceased was aged 35 years they have not filed any documents to substantiate the same. As per the judgments of the Hon'ble Apex Court in ***Sarla Verma Vs. Delhi Transport Corporation*** reported in **2009 (6) SCC 121** and ***National Insurance Co. Ltd., Vs. Pranay Sethi*** reported in **2017 (16) SCC 680**, the multiplier applicable is 15 and the claimants are entitled to 40% enhancement towards future prospects. There are three dependents of the deceased. Thus, by applying multiplier 15, adding 40% towards future prospects and deducting 1/4th towards personal expenses of the deceased, the compensation under the head loss of income is calculated as follows -

$$15,000 + 6000 (15000 \times 40\%) \times 12 \times 15 \times \frac{3}{4} = 28,35,000/-$$

13 (iii) In so far as quantum of compensation under the head loss of love & affection is concerned, claimants 2 to 4 are entitled to a sum of Rs.40,000/- each and hence the sum of Rs.40,000/- awarded by the Tribunal is enhanced to Rs.1,20,000/-. The quantum of compensation awarded by the



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Tribunal under other heads are just and reasonable and the same are hereby

confirmed. Thus, the compensation awarded by the Tribunal is enhanced

from Rs.14,33,000/- to Rs.27,22,500/-, break-up 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 income	13,23,000/-	28,35,000/-	Enhanced
2.	Loss of love & affection to appellants 2 to 4	40,000/-	1,20,000/-	Enhanced
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	40,000/-	40,000/-	Confirmed
5.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	14,33,000/-	30,25,000/-	
	Less: Contributory negligence fixed on the deceased	-	3,02,500/- (10%)	
	Net compensation payable to the appellants	14,33,000/-	27,22,500/-	Enhanced by Rs.12,89,500/-



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The interest awarded by the Tribunal @ 8% is hereby reduced to 7.5% per annum.

14. In the result -

(i) C.MA.No.1361 of 2022 filed by the claimants is partly allowed by enhancing the compensation from Rs.14,33,000/- to Rs.27,22,500/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit.

(ii) C.MA.No.1800 of 2022 filed by the respondent/ Transport Corporation is partly allowed by fixing 10% contributory negligence on the part of the deceased.

The respondent/Transport Corporation is directed to deposit Rs.27,22,500/-, being 90% of the award amount (after deducting 10% contributory negligence on the part of the deceased) along with proportionate interest and costs, less the amount already deposited, if any, within a period of eight (8) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants 1 & 4 are permitted to withdraw their share of the award



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amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn.

The share of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalised Bank, till the minors attain majority. However, the 1st appellant, mother of the minor appellants 2 & 3 is permitted to withdraw the accrued interest, once in three months. The appellants are directed to pay necessary court fee, if any on the enhanced amount. No costs.

31.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Cuddalore.

2. The Section Officer,
VR Section,
High Court,
Madras.

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SUNDER MOHAN, J

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and CMA No.1800 of 2022

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