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C.M.A. No.76 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.76 of 2022

1.S.Amsavalli
2.M.Sampathu

...Appellants/Petitioners

Vs.

The Managing Director
Metropolitan Transport Corporation Ltd.
Pallavan House,
Chennai – 600 002.

...Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.5127 of 2015 dated 12.12.2019 on the file of the Principal Special Judge Special Court Under E.C & NDPS Act, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mrs.A.Subadra for
A.Shanmuga Raj

For Respondent : M/s.Anton Dhanasekaran



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 12.12.2019 made in M.C.O.P.No.5127 of 2015 on the file of the learned Principal Special Judge, Special Court under E.C. & NDPS Act, (Motor Accident claims Tribunal), Chennai – 104.

2. The appellants filed M.C.O.P.No.5127 of 2015 on the file of the learned Principal Special Judge, Special Court under E.C. & NDPS Act, (Motor Accident claims Tribunal), Chennai - 104, claiming a sum of Rs.20,00,000/- as compensation for the death of one A.Tamilmani, who died in a road accident that took place on 04.01.2015.

3. The appellants filed the said claim petition stating that on 04.01.2015 at about 9.00 a.m., while the deceased was standing with a motor cycle bearing Registration No.TN-22-BJ-6952 in front of the Petrol Pump Station to cross the Palavanthangal Subway Road from South to North, a driver of the MTC bus bearing Reg.No.TN-01-N-4968, belonging to the



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respondent drove the same in a rash and negligent manner, hit the motor cycle and caused the accident; that in accident, the said A.Tamilmani died on the spot and hence, the appellants claiming compensation against the respondent.

4. The respondent filed counter statement denying all the averments made by the appellants in the claim petition and stated that the driver of the bus drove the same with due care and caution observing traffic rules; that when the bus was nearing Palavanthangal Subway road, the deceased person suddenly attempted to cross the road carelessly and invited the accident, hence, the respondent is not liable to pay compensation to the appellants; that in any event, the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, appellants examined three witnesses as P.W.1 to P.W.3 and marked nineteen documents as Exs.P.1 to P.19. The respondent examined one witness as R.W.1 and no exhibit was marked on the side of the respondent.



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6. The Tribunal after considering the oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent and the deceased and fixed 50% negligence on the driver of the bus and 50% contributory negligence on the deceased and directed the respondent to pay a sum of Rs.7,91,000/- (after deducting 50% towards negligence) as compensation to the appellants.

7. Aggrieved by the said award, the appellants have preferred the instant appeal seeking enhancement of compensation.

8. Learned counsel for the appellants submitted that the Tribunal had erroneously fixed 50% contributory negligence on the deceased; that there is no evidence to prove that the deceased also contributed to the accident; that the driver of the bus was liable for the accident as could be seen from the evidence of eye-witness and also the other documents filed on the side of the appellants; and that the Tribunal had not appreciated the evidence of R.W.1, the driver of the offending bus in proper perspective. The learned counsel



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further submitted that as regards the compensation, though the appellants had established the income earned by the deceased, the Tribunal fixed a meagre notional income of Rs.10,000/- per month, which requires enhancement and prayed for allowing the appeal.

9. Learned counsel for the respondent, per contra, submitted that the deceased had contributed to the accident and he had crossed the road in a place which is not designated for crossing; and that the deceased took the driver of the bus by surprise as seen from the evidence, adduced on the side of the respondent and hence, the Tribunal was right in fixing the contributory negligence of 50% on the deceased. The learned counsel further submitted that in the absence of any evidence to prove the income earned by the deceased, the Tribunal had rightly fixed the notional income as Rs.10,000/- per month and awarded just compensation, therefore, no reason to interfere with the award of Tribunal and hence, prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellants as well as respondent and perused the materials available on record.



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WEB COPY 11. The questions involved in the instant appeals are:

- (a) Whether the Tribunal was right in fixing 50% contributory negligence on the deceased ?
- (b) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

12. As regards negligence, it is seen that the appellants had examined P.W.2/eye-witness to the occurrence. The respondent had examined R.W.1/driver of the offending bus. The rough sketch prepared by the Police during investigation was marked as Ex.P2. As per the evidence adduced in this case, it is seen that the offending vehicle was going from East to West direction on the Palavanthangal Subway Road. The deceased attempted to cross the road and came from the South to North side. P.W.2 had stated in the evidence that the deceased had almost crossed the road and the driver of the bus came in a rash and negligent manner and hit the two wheeler from behind. R.W.1, on the other hand, would state that the deceased had crossed the road in a place which was not designated for crossing, he was taken by



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surprise and inspite of his best efforts, he could not control the bus.

The Rough Sketch corroborates the evidence of P.W.2. Therefore, this Court is of the view that if the driver of the bus had driven the bus in a careful manner, the accident could have been averted. At the same time, it is seen from the evidence that the deceased had crossed the road at a non designated place for crossing and the two wheeler had almost crossed the road and was hit from behind. Considering the nature of evidence let in on either side, this Court is of the view that the accident took place predominately on account of the negligence of the driver of the bus. Hence, the finding apportioning 50% contributory negligence on the deceased is not appropriate. For the violation committed by the deceased in crossing the road at a non designated place, it would be just and reasonable to fix the contributory negligence at 30% on the deceased. Therefore, this Court is of the view that the driver of the respondent Corporation is liable for 70% negligence and the deceased is liable for 30% contributory negligence.



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13. As regards compensation, it is seen that P.W.3/employer of the deceased was examined. Though he had stated that the deceased was earning Rs.10,000/- as regular income, and Rs.2,000/- as additional income for the extra work done by him, no documentary evidence has been produced. However, considering the fact that the deceased was employed in a Petrol Bunk and also considering the evidence of P.W.3., the age of the deceased and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.11,000/- per month. The deceased was aged 21 years at the time of the accident, hence, 40% has to be added towards future prospects and the multiplier applicable is '18'. Since the deceased was bachelor at the time of the accident hence, 50% of his income has to be deducted towards his personal expenses. Thus, by applying multiplier '18', adding 40% towards future prospects and deducting 50% of his income towards personal expenses, the compensation awarded by the Tribunal under the head Loss of Dependency is calculated as follows:

Rs.11,000/-+Rs.4,400 (40% X Rs.11,000) X 12 X 18 X 1/2 – Rs.16,63,200/-



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14. Further, this Court is of the view that the appellants are entitled to compensation under the head Transportation Expenses. Hence, this Court awards Rs.10,000/- under the head. The Tribunal had awarded Rs.40,000/- (20,000 X 2) towards Loss of Love and Affection, which is meagre and hence, the same is enhanced from Rs.40,000/- (Rs.20,000/- X 2) to Rs.80,000/- (Rs.40,000/- X 2). The compensation awarded under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.7,91,000/- to Rs.12,48,240/- 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 Dependency	15,12,000/-	16,63,200/-	Enhanced
2.	Loss of Love and Affection	40,000/- (20,000 X 2)	80,000/- (40,000 X 2)	Enhanced
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
5.	Transportation Expenses	---	10,000/-	Granted



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	Total	15,82,000/-	17,83,200/-	
		50% Contributory Negligence Rs.7,91,000/-	30% Contributory Negligence Rs.5,34,960/-	
	Net Compensation	Rs.7,91,000/-	Rs.12,48,240/-	Enhanced by Rs.4,57,240/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,91,000/- is hereby enhanced to Rs.12,48,240/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 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 (6) weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellants are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, less



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the amount if any, already withdrawn, on the basis of apportionment fixed by the Tribunal. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

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dk

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

1. The Principal Special Judge,
Special Court Under E.C & NDPS Act,
Motor Accidents Claims Tribunal,
Chennai - 104.
2. The Section Officer,
VR Section,
High Court of Madras,
Chennai – 104.

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SUNDER MOHAN, J

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