



C.M.A.No.3674 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3674 of 2019

1.Nabisha
2.Ummar

... Appellants

Vs.

1.R.Mahesh

2.The Managing Director,
Tamil Nadu State Transport Corporation (Coimbatore) Limited,
37, Mettupalayam Road,
Coimbatore at Erode – 641 043.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the present appeal, award enhanced compensation in judgment and decree dated 13.09.2017 in M.C.O.P.No.581 of 2015 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Sathyamangalam as prayed for in this civil miscellaneous appeal with cost.

For Appellants : Ms.N.Premalatha

For Respondents : R1 – NRN

Mr.Murali Vinodh for R2



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J U D G M E N T

This appeal has been filed by the appellants/ claimants challenging the judgment and decree passed in M.C.O.P.No.581 of 2015 dated 13.09.2017 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Sathyamangalam.

2.The brief facts of the case is that on 09.05.2015 at about 10.30 p.m., the deceased Sadam Hussain was riding TVS Star City Motor Cycle bearing Registration No.TN-38-AP-4230 along with his friend Abudhakir as a pillion rider at Karamadai to Mettupalayam Road in the direction of North to South at the left extreme end of the road near Press Colony near SMT Tower. At that time an Ashok Leyland TNSTC Bus bearing Registration No.TN-33-N-2425 came in a rash and negligent manner in the opposite direction and dashed against the motor cycle, due to which, the deceased died on the way to Hospital.

3.Thereafter, the parents of the deceased Sadam Hussain/ appellants/ claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming a sum of Rs.15 Lakhs as compensation for the death of their son. After adjudication, the Tribunal awarded a



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of Rs.9,05,500/- as compensation and fixed 30% contributory negligence on the part of the deceased Sadam Hussain and directed that the claimants are entitled to compensation of Rs.6,33,850/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and costs. Aggrieved by the 30% contributory negligence fixed on the part of the deceased Sadam Hussain and seeking enhancement in compensation, the claimants have preferred this appeal.

4.The learned counsel appearing for the appellants submitted that the deceased was riding the motor cycle cautiously on the left side of the road. The driver of the Transport Corporation bus, drove the vehicle in a rash and negligent manner and dashed against the motor cycle, due to which, the deceased died on the way to Hospital. Inorder to prove the negligence aspect, the pillion rider was examined as P.W.2 and he specifically deposed that the driver of the Transport Corporation bus, drove the vehicle in a rash and negligent manner and dashed against the motor cycle, however, without any evidence the Tribunal fixed 30% contributory negligence on the part



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of the deceased, which is not sustainable one.

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5.The learned counsel appearing for the appellants further submitted that the Hon'ble Apex Court in Syed Sadiq case fixed Rs.6,500/- as the notional income of the vegetable vendor in the year 2008. In the present case, the accident is of the year 2015, however, the Tribunal has fixed only a sum of Rs.6,500/- as the notional monthly income of the deceased and awarded compensation, which is very meagre. Hence, the appellants are entitled for enhancement in compensation.

6.The learned counsel appearing for the second respondent Transport Corporation submitted that P.W.2, who was the pillion rider, in his cross examination has specifically admitted that the deceased tried to overtake the car going in front of them and the Transport Corporation bus came in the opposite direction, thereby the accident happened. Hence, the Tribunal fixed 30% contributory negligence on the part of the deceased, which warrants no interference. Further, the compensation amount awarded by the Tribunal is just and reasonable and warrants no interference.



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7. Heard the learned counsel appearing for the appellant as well

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as the learned counsel appearing for the second respondent and perused the materials available on record.

8. The claimants in the claim petition has stated that on 09.05.2015 at about 10.30 p.m., the deceased Sadam Hussain was riding the TVS Star City Motor Cycle along with his friend Abudhakir as a pillion rider at Karamadai to Mettupalayam Road in the direction of North to South at the left extreme end of the road near Press Colony near SMT Tower. At that time an Ashok Leyland TNSTC Bus came in a rash and negligent manner in the opposite direction and dashed against the motor cycle, due to which, the deceased died on the way to Hospital.

9. P.W.2, who was the pillion rider, in his cross examination has specifically admitted that the deceased tried to overtake the car going in front of them and the Transport Corporation bus came in the opposite direction, thereby the accident happened. Hence, the Tribunal fixed 30% contributory negligence on the part of the deceased, which warrants no interference.



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10.Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.7,28,000/- for loss of income, Rs.25,000/- for funeral expenses, Rs.2,500/- as per the car hiring receipt Ex.P.10, Rs.1,50,000/- as consolation amount for the claimants and arrived at a total compensation of Rs.9,05,500/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

11.The Hon'ble Apex Court in Syed Sadiq case fixed Rs.6,500/- as the notional monthly income of the vegetable vendor in the year 2008. In the present case, the accident is of the year 2015. Hence, this Court fix Rs.10,000/- as the notional monthly income of the deceased. The deceased is a bachelor and $\frac{1}{2}$ of the amount has to be deducted towards his personal expenses. The deceased was aged 19 years at the time of death. Hence, the correct multiplier to be adopted is 18. Hence, by adopting the multiplier 18, the actual loss of income works out to Rs.10,80,000/- [Rs.5,000/- X 12 X 18 = Rs.10,80,000/-]. This Court is of the opinion that some amount has to be awarded for future prospects, love and affection and for loss of



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estate. Accordingly, this Court awards 40% of actual loss of income for future prospects,

which comes to Rs.4,32,000/- [40% of Rs.10,80,000/- = Rs.4,32,000/-], a sum of Rs.80,000/- [Rs.40,000/- each] for love and affection and a sum of Rs.15,000/- for loss of estate. The amount awarded under the head funeral expenses is high and this Court is inclined to reduce the amount awarded under the said head. Accordingly, the amount awarded for funeral expenses is reduced to Rs.15,000/- from Rs.25,000/-. The amount awarded under the other heads, in the opinion of this Court are not necessary and the same are deleted.

12.Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of income	Rs.7,28,000/-	Rs.10,80,000/-
2.	Funeral Expenses	Rs. 25,000/-	Rs. 15,000/-
3.	As per car hiring receipt Ex.P10	Rs. 2,500/-	---
4.	Consolation amount for the claimants	Rs.1,50,000/-	---
5.	Love and affection	---	Rs. 80,000/-
6.	Future prospects	---	Rs.4,32,000/-



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S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
7.	Loss of estate	---	Rs. 15,000/-
	Total	Rs.9,05,500/-	Rs.16,22,000/-

13.The claimants are entitled to 70% of the total compensation i.e., Rs.11,35,400/- [70% of Rs.16,22,000/- = Rs.11,35,400/-] along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

14.The civil miscellaneous appeal is partly allowed. The judgment and decree passed in M.C.O.P.No.581 of 2015 dated 13.09.2017 by the Motor Accidents Claims Tribunal (Subordinate Judge), Sathyamangalam, is modified to the above extent.

15.The second respondent Transport Corporation is directed to deposit 70% of the modified/ enhanced award amount i.e.,Rs.11,35,400/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the appellants/ claimants are permitted to



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withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before

the Tribunal. The appellants/ claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellants/ claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accidents Claims Tribunal (Subordinate Judge), Sathyamangalam, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants/ claimants.

16.The civil miscellaneous appeal is partly allowed. No costs.

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal (Subordinate Judge),
Sathyamangalam.

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M.DHANDAPANI,J.
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