



C.M.A.No.2528 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 03.01.2023	Pronounced on 19.01.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2528 of 2022

and

C.M.P.No.19658 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam,
Karaikudi Region.

... Appellant

Vs.

1.Thirumoorthy,
S/o.Kuppan,

2.Palaniyammal,
W/o.Thirumoorthy,

Both are residing at 39 Masal Street,
Puliyakulam, Ramanathapuram,
Coimbatore South,
Coimbatore 641 045.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 01.09.2021 made in M.C.O.P.No.2697 of 2018 on the file of the Presiding Officer, Special Motor Accident Claims Tribunal, Tiruppur.



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For Appellant : Mr.M.Murali Vinoth

For Respondents : No appearance

J U D G M E N T

The Appeal has been filed against the Decree and Judgment dated 01.09.2021 made in M.C.O.P.No.2697 of 2018 on the file of the learned Presiding Officer, Special Motor Accident Claims Tribunal, Tiruppur.

2.The Transport Corporation is the Appellant herein. The Respondents herein are the parents of the deceased viz., Selvakumar, who is a bachelor aged about 25 years, working as Sweeper. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The claim Petitioners filed claim Petition in MCOP.No.2697 of 2018 before the learned Presiding Officer, Special Motor Accident Claims Tribunal, Tiruppur, seeking compensation for the death of their son in a road accident occurred on 12.11.2018, on the ground that on the said day, while their son was travelling in a Transport Corporation bus having Reg. No.TN 63 N 1793 on Palladam - Kovai Road, near Kongu marriage hall, the bus was driven in a rash



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and negligent manner. At that time, the deceased, who was sitting near the foot board was thrown away and fell down from the bus and sustained injuries and subsequently died.

4.Before the Tribunal, Transport Corporation filed counter affidavit denying various allegations *inter alia* contended that on the alleged day, the driver of the bus drove the vehicle in a moderate speed with care and caution, on the left side of the road from Coimbatore to Madurai. The conductor after assured that all the passengers are seated, closed both the doors of the bus. While the conductor was giving tickets at about 3 kms from Palladam bus stand, the deceased was suddenly got up from the seat, without listening the conductor, and open the door to spit outside, fell down and invited the accident and hence, he is not entitled for any compensation.

5.During trial before the Tribunal, on the side of the claim Petitioner, PW1 and PW2 were examined, Ex.P1 to Ex.P.6 were marked and on the side of the Transport Corporation RW1 was examined and no document was marked.

6.Heard the learned counsel for the Transport Corporation/Appellant and



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learned counsel for the claim Petitioner.

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7.The Tribunal has held that since it is deposed by RW1 that doors are already closed, which clearly indicates that there is a door and hence, it should be properly closed. Based upon the occurrence witness PW2, the Tribunal has come to the conclusion that due to the rash and negligent driving of the driver of the Transport Corporation bus, the accident was taken place with 10% contributory negligence of the deceased. Accordingly, held the ratio at 90 : 10.

8.After perusing the evidence of PW2 and the evidence of RW1, this Court finds that the doors are not properly closed and hence 90% contributory negligence fixed upon the transport corporation appears to be reasonable. At the same time, from the evidence and answer elicited in the cross examination of PW2 coupled with evidence of RW1, the Tribunal has rightly come to the conclusion that 10% contributory negligence on the part of the deceased, which is also found to be reasonable and hence the ratio of contributory negligence arrived by the Tribunal upon the Transport Corporation bus and the passenger (deceased) are just and reasonable, well considered and does not warrant any interference of this Court. Accordingly, the contributory negligence fixed by the



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Tribunal is hereby confirmed.

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9. On the point of the quantum of compensation, I find that in the absence of any positive evidence to show that the deceased was earning a sum of Rs.20,000/- per month and permanently employed, the monthly income fixed by the Tribunal at Rs.13,000/- is reduced to Rs.10,000/- and as per the Aadhar Care/Ex.P.6, the date of birth of the deceased is 25.04.1991 and as on the date of accident i.e., 12.11.2018, the deceased completed 27 years. The Tribunal by adopting the ratio laid down by the Hon'ble Supreme Court in the case of ***Sarla Verma & Others .Vs. Delhi Transport Corporation & another***, reported in ***2009 (2) TNMAC 1 (SC)*** taken the multiplier "17" and awarded 40% towards future prospects, and deducted 50% from the income as the deceased was a bachelor, the same are hereby confirmed. Accordingly the pecuniary loss sustained by the claim Petitioners are re-assessed as follows:

$$\text{Rs.10000} \times 40\% \text{ of } 10000 = \text{Rs.14,000/-}$$

$$\text{Rs.14000} \times 12 \times 17 \times 1/2 = \text{Rs.14,28,000/-}$$

10. The claim Petitioners as parents are entitled for Rs.40,000/- each



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towards loss of love and affection. The Tribunal has awarded a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, which are just and proper and the same are hereby confirmed.

<i>S.No.</i>	<i>Head</i>	<i>Amount (Rs.)</i>
1	Pecuniary loss	1428000
2	Loss Love and affection	80000
3	Funeral expenses	15000
4	Loss of Estate	15000
	Total Compensation	1538000

In total, the claim Petitioners are entitled to a sum of Rs.13,84,200/- (Rupees thirteen lakh eight four thousand and two hundred only) [90% of Rs.15,38,000/-] and the interest awarded by the Tribunal at the rate of 7.5% per annum from the date of petition is also confirmed.

11. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, reducing the compensation from Rs.17,33,760/- to Rs.13,84,200/- to the extent indicated above. No Costs. Consequently, connected Miscellaneous Petition is closed.

(ii) the Transport Corporation is permitted to withdraw the amount already



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deposited, less the reduced award amount, with accrued interest.

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(iii) out of the reduced award amount, the claim Petitioners are entitled to get their share, as per the ratio of apportionment made by the Tribunal. The claim Petitioners are permitted to withdraw their entire share with proportionate interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal.

19.01.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

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To

The Presiding Officer,
Special Motor Accident Claims Tribunal,
Tiruppur.



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RMT.TEEKAA RAMAN.J,

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**Pre-delivery Judgment made in
C.M.A.No.2528 of 2022
and
C.M.P.No.19658 of 2022**

Dated: 19.01.2023