



C.M.A.Nos.2892 & 4 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.Nos.2892 & 4 of 2014

and M.P.No.1 of 2014

Metropolitan Transport corporation
(Chennai Division-1) Ltd.

Rep by its Managing Director

Pallavan House, Anna Salai, Chennai-2

...

Appellant/petitioner

in C.M.A.No.2892/2014

1.M.Kavitha

2.M.Akshan(minor)

3.E.Dhanalakshmi

4.K.Elumalai

...Appellants/petitioners

in C.M.A.No.4 of 2014

Vs.

1.M.Kavitha

2.M.Akshan(minor)

3.E.Dhanalakshmi

4.K.Elumalai

... Respondent/Respondent

in C.M.A.No.2892/2014

Metropolitan Transport corporation
(Chennai Division-1) Ltd.

Rep by its Managing Director

Pallavan House, Anna Salai, Chennai-2

... Respondent/Respondent

in C.M.A.No.4 of 2014



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Prayer in C.M.A.No.2892 of 2014: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree made in M.C.O.P.No.2197 of 2011 dated 23.07.2013 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes, Chennai) by allowing this appeal.

Prayer in C.M.A.No.4 of 2014: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the claim in M.C.O.P.No.2197 of 2011 dated 23.7.2013 on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes, Chennai).

For Appellant
in C.M.A.No.2892/2014 : Mr.S.Sivakumar
For Respondents in
C.M.A.No.2892/2014 : Mr.V.Mohan Choudary
For Appellants
in C.M.A.No.4/2014 : Mr.V.Mohan Choudary
For Respondent in
C.M.A.No.4/2014 : Mr.S.Sivakumar

JUDGMENT

C.M.A.No.2892 of 2014 has been filed by the Transport Corporation as against the compensation awarded by the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes, Chennai) by Award dated



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23.07.2013 in M.C.O.P.No.2197 of 2011, wherein, the Tribunal has awarded a sum of Rs.10,17,700/- with 7.5% interest.

2. C.M.A.No.4 of 2014 has been filed by the appellants/claimants seeking for enhancement of the compensation awarded in M.C.O.P.No.2197 of 2011 dated 23.7.2013 on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes, Chennai.

3. The parties are referred to hereunder according to status and ranking before the trial Court.

4. The case of the claimants before the Tribunal is as follows:

(i) The deceased namely E.Murugan, was riding his motor cycle bearing registration No.TN 02 AL 0549 dated 13.03.2011 at about 17.00 hours, in the Arcot Road, from Vadapalani towards Porur, slowly and cautiously, at that time the MTC bus bearing registration No.TN 01 N 5285 belongs to the first respondent, driven by its driver, rashly and negligently came from behind and knocked down the deceased motor cycle. Resulting which, the deceased sustained multiple injuries and died on the same day.



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(ii) The first petitioner is the wife of the deceased, the second petitioner is the son of the deceased, 3rd and 4th petitioners are mother and father of the deceased respectively and claiming themselves as dependants of the deceased income and filed claim petition claiming Rs.30 Lakhs as compensation.

5. The case of the respondent/Transport Corporation before the Tribunal is as follows:-

(i) The driver of the MTC bus bearing registration No.TN 01 N 5285 has driven the vehicle carefully and the bus proceeding from Pattinapakkam to Iyappanthangal. While the bus was plying on Arcot road near Jaishankar Garden, the two wheeler bearing registration No.TN 02 AL 0549 driven by the deceased, had attempted to over-take towards the left side of the bus. On seeing this through the front left side mirror, the driver of the bus gave horn sound and turned towards the right side. In spite of it, the motor cyclist could not control his balance and hit on the left side body of the bus by the right side handle bar of the motor cycle and fell down and sustained injuries.

(ii) In the FIR, it was specifically stated that the MTC bus hit the



motor cyclist behind while he was trying to over-take. The motor cyclist is only responsible for the accident. The respondent corporation disputed the claim made by the claimants for claim under various heads.

6. Before the Tribunal on behalf of the claimants P.W.1 to 3 were examined and Exp.P1 to P11 were marked. On the side of the respondent/Transport Corporation R.W.1, driver of the bus was examined and no exhibits were marked.

7. The Tribunal after analysing the evidence pointed out that the driver is the tortfeasor for the occurrence and based on the evidence of P.W.2, who is the eye witness to the occurrence, has held that the claimants have proved the case that the driver of the bus is responsible for the accident. The tribunal thus fixed the liability on the Transport Corporation to pay the compensation to the claimants.

8. Aggrieved over the said finding as regards liability, the Transport Corporation filed the appeal raising grounds that the tribunal has not properly appreciated the evidence of the driver of the bus. Driver was



examined as R.W.1 to prove the case of the respondent that the motor cyclist is responsible for the accident. Learned counsel for the Transport Corporation has also contended that the compensation awarded by the tribunal on various heads is enormous and sought to modify the award.

9. Per contra, the learned counsel representing for the claimants has submitted that the Tribunal has considered the evidence of both P.W.2 and evidence of the R.W.1, driver of the bus with regard to accident and has rightly come to the conclusion that the driver of the bus is the tortfeasor and the first respondent herein is vicariously liable to pay the compensation to the claimants.

10. The next contention raised by the learned counsel for the claimants is that the Tribunal has failed to consider the future prospectus of the deceased and the notional income fixed is also on the lower side and sought to modify the award.

11. I have considered the submissions made on both sides and perused the records.



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12. Before the Tribunal P.W.2, who is eye witness to the occurrence has stated that on 13.03.2011 at about 5.00 p.m., while the deceased was riding his motor cycle bearing registration No.TN 20 BL 1923 from Vadapalani to Porur on Arcot Road, the bus bearing registration No.TN 01 N 5285 belongs to the respondent was driven by its driver in rash and negligent manner and in the attempt of the deceased to over-take the bus, he dashed on the bus and due to that, the deceased sustained severe injuries and died.

13. The rough sketch to prove the manner in which the accident taken place is marked as Ex.P2. To disprove the evidence of P.W.2, the Transport Corporation has examined R.W.1 who is the driver of the bus and he has stated that while he was driving the bus on the Arcot Road, motor cyclist i.e., deceased came rashly and negligently and attempted to over-take the bus on the left side, due to which, in that process, he lost balance and hit on the middle of the bus and sustained injuries. In the cross examination, he has admitted that he has not seen the occurrence and came to know about the dashing of the two wheeler only after passenger raised alarm.



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14. Admittedly the rear side wheel of the bus ran over on the head of the deceased. It also shows that the accident occurred on the left hand side corner of the road. The driver of the bus cannot claim that while he was driving the bus, the deceased tried to over-take on the left hand side of the bus and that is why accident happened. It is the duty of the driver to see both sides and drive the bus carefully to avoid accident.

15. The rough sketch also shows that the two wheeler rider turned the two wheeler on the left hand side of the road and there is no occasion to over-take the bus on the left hand side since the road is also a High Road. This aspect has been considered by the Tribunal. The learned Judge, Tribunal, with regard to the evidence of the driver of the bus, has specifically pointed out that he has not at all seen the motor cyclist initially but only after the accident he came to know that the two wheeler was hit by the bus. In this case, P.W.2 is the direct ocular evidence and his evidence is more reliable than the evidence of the R.W.2.

16. On the above discussion and findings of the Tribunal, this Court is



of the view that the Tribunal has rightly concluded that the driver of the bus is responsible for the accident and rightly fixed the liability on the transport corporation to pay the award to the claimants.

17. Nextly, as far as compensation awarded to the claimants is concerned, the Tribunal has fixed Rs.4,500/- as notional income of the deceased. The avocation of the deceased was said to be driver. The petitioners marked driving licence- Exp.P6 (light motor vehicle licence) and also salary certificate as Exp. P7.

18. The employer P.W.3, in his evidence has stated that he paid Rs.13,000/- per month as salary to the deceased. However, there was no supporting document produced to prove the identity of P.W.3, who is said to be the Manager of the firm. Since there was no other additional documents produced in support of the said firm but only produced the simple letter head, the income was not accepted by the Tribunal, therefore, notional income is adopted. However, the notional income fixed at Rs.4,500/- by the tribunal is very low and taking note of the relevant period of accident, this court deems it fit to fix Rs.7,500/- as notional income of the deceased.



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19. The Tribunal has fixed 30% as future prospectus. The age of deceased is 26 years and as per the National Insurance Company Limited Vs.Pranay Sethi reported in 2017 (16) SCC 680, 40% is to be fixed as future prospectus. The proper multiplier is 17 as per the Judgment of the Apex Court in Sarla verma's case. The Tribunal granted consortium to the first petitioner as Rs.25,000/-; for the other petitioners awarded Rs.25,000/- towards “loss of love and affection.” This Court is inclined to revise the same by granting Rs.40,000/- each to the claimants and in total Rs.1,60,000/- under the head “loss of consortium” (spousal consortium to claimant No.1, parental consortium to claimant No.2 and filial consortium to claimant No.3 & 4).

20. The modified compensation is determined as under:-

Loss of dependency is derived as follows:-

Rs.7,500+40% [future prospectus]

10,500 – 1/4th deduction (2625) x 12 months x 17 multiplier

7875 x 12 x 17 = 16,06,500/-.

The compensation awarded by the tribunal under the head transportation



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and funeral expenses at Rs.5000/- each is confirmed. Since the Tribunal granted Rs.10,000/- under the head “Loss of estate”, the same is modified as Rs.15,000/- as per the settled dictum as propounded in the case of Pranay Sethi of the Supreme Court for the compensation to claimants for loss of estate.

21. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Amount confirmed or enhanced or granted or reduced
1	Loss of dependency	Rs.9,47,700/-	Rs.16,06,500 /-	enhanced
2	Consortium to 1 st petitioner	Rs.25,000/-	Rs. 40,000/-	enhanced
3	Love and Affection to petitioners 2 to 4	Rs.25,000/- each	Rs. 40,000/- x 3 =1,20,000/-	enhanced
4	Loss of Estate	Rs.10,000/-	Rs.15,000/-	enhanced
5	Transport	Rs.5,000/-	Rs.5,000/-	confirmed
6	Funeral Expenses	Rs.5,000/-	Rs.5,000/-	confirmed
	Total	Rs.10,17,700/-	Rs.17,91,500/-	Enhanced by Rs.7,73,800/-



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The apportionment of the award to the claimants is as under:-

1st petitioner/wife is entitled to 50% of the award.

2nd petitioner/son is entitled to 30% of the award.

3rd and 4th petitioners-father and mother of the deceased are entitled to each 10% of the award.

22. With the above modification of the award, the appeal filed by the Transport Corporation is dismissed. The appeal filed by the claimants is allowed as stated supra.

23. The Transport Corporation is directed to deposit the enhanced award amount before the Tribunal less the amount already deposited with interest at the rate of 7.5% p.a. On such deposit, the claimants 1, 3 and 4 are entitled to withdraw their share of the award. As far as 2nd petitioner/claimant is concerned, on attaining his majority, he is entitled to withdraw his share. Till then, the amount shall be deposited in Fixed Deposit



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in a Nationalised Bank. No costs. Consequently, connected miscellaneous petition is closed.

19.07.2023

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Chief Judge,
Court of Small Causes,
Chennai.

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

K.RAJASEKAR,J.,

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