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C.M.A.No.3535 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3535 of 2014

and

M.P No.1 of 2014 &

CMP No.16526 of 2022

The Managing Director
Karnataka State Road Transport
Corporation Limited
Bangalore Division, Shanthi Nagar
Bangalore-560 027.

.. Appellant

Vs.

1.Arjunan
2.Alamelu
3.Minor Elumalai @ Purusothaman
Minor represented by next friend
and father Arjunan

.. Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 06.12.2013 made in MCOP No.1515 of 2013 on the file of the Motor Accident Claims Tribunal/ Special Sub Judge, Krishnagiri.



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For Appellant : Mr.V.Ramesh
For M/s.T.Thiyagarajan
For Respondents : Mr.S.Ramesh Kumar

J U D G M E N T

The Award dated 06.12.2013 passed in MCOP No.1515 of 2013 on the file of the Motor Accident Claims Tribunal Special Sub Judge, Krishnagiri, is under challenge in the present Civil Miscellaneous Appeal.

2. Challenging the finding of the negligence fixing on the driver of Karnakata State Road Transport Corporation bus, bearing Registration No.KA 40 F 143 alone, Karnataka State Road Transport Corporation Limited, Bangalore filed this appeal seeking for reversal of the finding fixing negligence only against its driver.

3. The accident occurred on 13.05.2009 at 1.30 a.m when the deceased Suseela, wife of Arjunan was travelling in the Karnataka State Transport Corporation bus bearing Registration No.KA-40-F-143 at



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Bangalore to Villupuram NH Road, to go to Tirukoilur, near Jogipatti bus stop, the driver of the said bus driven the same in a rash and negligent manner and dashed against the Lorry, which was parked on the left side of the road and thereby, the deceased and other inmates sustained grievous and fatal injuries and she was admitted in the Government Hospital, Krishnagiri where she died due to fatal injuries. Thereafter, the claim petition was filed by the husband, minor daughter and minor son of the deceased, the respondents herein. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties

4. To prove the accident and also to prove the fact that the deceased died due to fatal injuries, on the side of the respondents/claimants, Ex.P1 to Ex.P5 documents were placed before the Tribunal. On the side of the appellant/ respondent Corporation, RW1, driver of the Transport Corporation bus was examined. Ex.P1 first information Report revealed the fact that it is the driver of Karnataka State Transport Corporation bus bearing Registration No.KA 40 F 143 has driven the bus in a rash and



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negligent manner and caused the accident, by hitting at the back side of parked lorry bearing Registration No.TN 25 E6364 on the left side of the road. Hence, the evidence of the claimant is such that the negligent aspect is on the part of the driver of the bus and Ex.P1 also revealed the same. On the other hand, RW1, the driver of the Transport Corporation bus deposed that he was suspended for four months by his department. Observing all these facts, the Tribunal has given a finding that the driver of the bus is very much responsible for the action of hitting on the parked lorry.

5. Heard both sides and also perused the materials available on record.

6. The learned counsel appearing on behalf of the appellant-Transport Corporation has vehemently argued that there is negligent act on the part of the driver of the lorry, who has not observed the Traffic Rules, while parking the vehicle and he parked the lorry without applying parking light and any reflector, which resulted in unavoidable hit of the bus by its



driver. Without taking into account the contributory negligence of the lorry, has fastened the liability on the corporation vehicle. This apart, the Tribunal has wrongly applied 15 multiplier instead of 17 multiplier when the age of deceased was 40 years as per Ex.P2, at the time of the accident, which is contrary to the dictum laid down in *Sarla Verma* case. No supportive documents have been filed to prove that the deceased was working as coolie in building construction drawing a salary of Rs.7,500/- per month. Ex.P4-employment certificate is a fabricated document which has been filed only for fixation of the monthly income of the deceased. The compensation awarded by the Tribunal under the heads viz., transportation, love and affection and consortium is highly excessive. Though charge sheet has been laid against both the appellant Corporation and the lorry driver, the Tribunal has erred in fixing the liability only against the appellant Corporation. Hence, he prays to set aside the award passed by the Tribunal.

7. In the claim application, the respondents/claimants contended that the driver of the bus, without observing traffic rules, with high speed, dashed



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at the back side of the parked vehicle. On the other hand, RW1, who is the driver of the bus, deposed before the Tribunal that while he was proceeding in Bangalore to Villupuram R.H Road, near Jogipatti, the driver of lorry proceeding in front of the bus was suddenly coming back and hit against the bus. The lorry had no proper signal. The accident had occurred due to the negligent driving of the driver of the lorry.

8. In view of the facts elicited by the claimant in the claim application and the evidence placed by the driver of the bus, RW1, the issue whether the said lorry was parked in the road side or which was proceeding in front of the Transport Corporation bus and whether there was any negligent aspect on the part of both the drivers or only against the driver of the bus have to be assessed only by examining any independent witness or the driver of the said lorry and it cannot be decided without examining them. Hence, the grievance of the Transport Corporation is that when there is negligent act on the part of the driver of the lorry, the said lorry and its insurer ought to have been impleaded as parties and the claim application



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cannot be decided without impleading them as necessary parties for arriving at a correct decision.

9. CMP No.16526 of 2022 is filed by the appellant praying to receive the additional document, viz., charge sheet filed by Mathur Police Station, Krishnagiri, before the Magistrate Court, along with translated copy. After hearing both sides, the said Miscellaneous Petition is allowed and the charge-sheet along with translated copy are received as additional documents and the same are marked as Ex.R1 and Ex.R2.

10. On perusal of the Additional Document filed by Appellant viz., charge-sheet, it could be seen that a criminal case has been registered against the drivers of both the bus as well as lorry, since both are held responsible for the accident by their negligent driving as well as negligently parked the vehicle without any parking light or any signal. Hence, in view of the facts and filing of charge sheet, it could be seen that the negligent aspect is on both the drivers. Hence, the observation made by the Tribunal only by assessing the evidence of RW1 that he was under enquiry before his



department, cannot be alone decide the negligent aspect on the driver of the bus alone. Hence, both the drivers are held responsible equally for their negligent act.

11. In support of his contention, the learned counsel for the appellant contended that this Hon'ble Court in the case of Managing Director, Managing Director, Karnataka State Road Transport Corporation, Bangalore v. Pandiyan [2019 (2) TN MAC 565], has held that when two vehicles involved in the accident, finding of the Tribunal that the bus driver alone was responsible is erroneous and hence, both the Drivers are held liable. The said judgment squarely applies to the present case. Hence, in view of the materials available as well as the evidence, charge sheet and pleadings, the negligence is on both the drivers of the said two vehicles and hence both are held liable for the negligent act and the findings of the Tribunal on fixing the liability on the driver of the bus alone is set aside.

12. As far as the multiplier is concerned, the Tribunal has erred in applying 17 multiplier instead of 15 multiplier. Since the deceased was aged



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40 years at the time of accident as per Ex.P2 post-mortem report, it would be appropriate to adopt 15 multiplier as per the *Sarla Verma* case.

13. The compensation granted under the conventional heads are not in consonance with the principles laid down by the principal Apex Court of India in the case of Pranay Sethi. In view of the fact that the Tribunal has erroneously awarded the compensation under the heads of love and affection, consortium and funeral expenses, the award of compensation is to be modified. The Tribunal has erroneously failed to award any compensation towards loss of estate which the appellants/claimants are legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the claimants towards loss of estate.

14. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.



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15. For the forgoing reasons, the award passed by the Tribunal is modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of earning	(Rs.6500 x 12 x 17 x 2/3) 8,84,000/-	(Rs.6500 x 12 x 15 x 2/3) 7,80,000/-
Transportation	10,000/-	10,000/-
Damages to clothes and other articles	5,000/-	5,000/-
Love and affection and consortium	1,00,000/-	
Love and affection		80,000/-
Consortium		40,000/-
Funeral Expenses	20,000/-	15,000/-
Loss of estate	Nil	15,000/-
Total	10,19,000/-	9,45,000/-

On perusal of the award, it is seen that there was an error in calculating the total compensation and the same is corrected as Rs.10,19,000/- instead of Rs.10,09,000/-.



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16. In view of the above said observation,

(i) The liability fixed on the Appellant by the Tribunal is hereby set aside and this Court fixes 50% : 50% liability on both the drivers of the Bus as well as Lorry.

(ii) The sum awarded under the heads are also modified and in view of the said modification, the compensation awarded by the Tribunal is reduced by awarding a sum of Rs.9,45,000/- (Rupees nine lakhs forty five thousand only).

(iii) In respect of interest, the Award of the Tribunal is hereby confirmed.

(iv) Out of the above compensation, since 50% : 50% liability is fixed, the Appellant-Transport Corporation is liable to pay Rs.4,72,500/- and the insurer of the Lorry bearing Registration No.TN-25-E-6364 viz., United India Insurance Company Limited, Regional Office at No.487/1, 2nd Floor, CM.II Road, Indira Nagar, Bangalore-560 038 is liable to pay Rs.4,72,500/-.

(v) The Appellant/ Transport Corporation and the Insurance Company of the Lorry are directed to deposit their respective amount of



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compensation, as awarded by this Court, with proportionate interests and costs of MCOP, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment.

(vi) On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount as per the ratio apportioned by the Tribunal to the Savings Bank Account of the respondents 1 & 2/claimants 1 & 2 through RTGS.

(vii) Insofar as the minor 3rd respondent/3rd claimant is concerned, the Tribunal is directed to deposit the share of his award amount bearing fixed deposit in any one of the Nationalised Bank till he attains majority and the first respondent/father of the minor is permitted to withdraw the interest accrued once in six months for the welfare of the minor.

(viii) Accordingly, this Civil Miscellaneous Appeal is partly allowed. C.M.P No.16526 of 2022, to receive additional document is allowed. No costs. M.P No.1 of 2014 is closed.



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Index : Yes/No

Speaking Order/Non-Speaking Order
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To

1.The Motor Accident Claims Tribunal,
Special Sub Judge,
Krishnagiri.

2.The Section Officer,
V.R Section,
High Court, Madras.

A.A.NAKKIRAN, J.

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