



C.M.A.No.1775 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 08.12.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.1775 of 2022
and C.M.P.No.12840 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Railway Station Road,
Kumbakonam.

... Appellant

Vs.

1.R.Usha
2.P.Poongodi
3.M.Nalini
4.R.Kathirvel
5.R.Manikandan
6.R.Udhayakumar

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, seeking to set aside the decree and judgment dated 06.04.2022 made in MCOP.No.182 of 2018 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruvarur.



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For Appellant : Mr.M.Muralivinodh

For Respondents : Mr.K.Arunagiri

JUDGMENT

In a road accident that took place on 12.01.2018, a certain Rajendran died when a bus bearing No.TN-49-N-1478 belonging to the appellant dashed against a motorcycle which he was riding. The said Rajendran packed his wife and children as pillion riders.

2.Claiming compensation, the wife and children of Rajendran preferred a claim petition in MCOP.No.182 of 2018 before MACT, (Chief Judicial Magistrate Court), Thiruvarur. The Tribunal had found that the driver of the bus was the major tortfeasor and fixed 90% negligence on the driver of the bus and 10% on the victim, since the latter was traveling at least with two in the pillion. In the final result, the Tribunal had arrived at a loss of dependency at Rs.4,32,000/-, and after providing for all conventional heads of compensation, it determined the total value of compensation at Rs.8,12,000/-, from which it deducted 10% as representing the contributory negligence of the victim and determined the compensation payable at Rs.7,30,800/-. Aggrieved by the same, the respondent



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corporation has preferred this appeal.

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3.Heard Mr.M.Muralivinodh, the learned counsel for the appellant and Mr.K.Arunagiri, the learned counsel appearing for the respondents.

4.The learned counsel for the appellant made two pointed submissions: (a) that the Tribunal ought to have apportioned a greater percentage of negligence to the victim; and (b) that it had deducted 1/5 towards the personal expenditure of the victim when the total number of claimants are only six. In other words, the Tribunal ought to have deducted only 1/4 and not 1/5 towards personal expenditure of the victim.

5.Per contra, the learned counsel for the respondents contend that merely because there were two pillion riders in the two wheeler at the time when the accident took place, that does not *ipso facto* implies that the rider of the motorcycle was negligent. Violation of certain rules in using the vehicle by itself cannot invite contributory negligence, unless it is accompanied by a proof that it has resulted in negligence of the rider of the motorcycle. This apart, the Tribunal



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has been singularly parsimonious in not fixing a realistic sum as the notional monthly income of the victim.

6.Rival submissions are carefully considered. While there may be some merit in the contention of the learned counsel for the respondents that a wrong use of a vehicle by itself need not necessarily result in a road accident, but then if it is condoned, it will also be seen as patronizing violation of law. On facts, this Court finds that there is nothing to interfere with the finding of the Tribunal in distributing negligence between the driver of the bus belonging to the appellant and the victim of the accident.

7.Turning to the quantum, this Court finds that since the accident has taken place in 2018, it would be appropriate to fix the monthly notional income at Rs.11,500/- for the victim of the accident. Then, applying 5 as a multiplier, and reducing it by $1/4^{\text{th}}$, the value of loss of dependency will be Rs.5,17,500/-. So far as the compensation for loss of consortium and loss of love and affection, they can be consolidated and Rs.44,000/- is awarded to each of the six claimants.



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The details are as below:

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<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award enhanced or confirmed or granted</i>
1.	Loss of dependency	Rs.4,32,000/-	Rs.5,17,500/-	enhanced
2.	Loss of consortium	Rs.1,00,000/-	Rs.2,64,000/- (Rs.44,000 x 6)	granted
3.	Loss of love and affection	Rs.2,50,000/-		
4.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	confirmed
5.	Loss of estate	Rs.15,000/-	Rs.15,000/-	confirmed
	Total	Rs.8,12,000/-	Rs.8,11,500/-	difference is Rs.450/-
	Less 10% contributory negligence	Rs.81,200/-	Rs.8,1150/-	
	Grand Total	Rs.7,30,800/-	Rs.7,30,350/-	

8.If 10% is deducted towards contributory negligence of the victim, the net value of the compensation will be Rs.7,30,350/-. The difference is less than Rs.450/- as between the sum now arrived and the amount awarded by the Tribunal. Therefore, this Court does not find any reason to tinker with the amount so arrived by the Tribunal.



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N.SESHASAYEE, J.

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Anu

9.In conclusion, even though the appellant have secured a few points on certain issues, still they are not good enough to upset the net effect of the award passed by the Tribunal.

10.This Civil Miscellaneous Appeal stands dismissed accordingly. No Costs. Consequently, the connected miscellaneous petition is closed.

08.12.2023

Anu

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruvarur.

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