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CMA Nos.1425 and 2329 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.Nos.1425 and 2329 of 2023

and

C.M.P.No.22119 of 2023 in C.M.A.No.2329 of 2023

C.M.A. No. 1425 of 2023

1.Sheela Rani

2.Sasikumar

... Appellants

Versus

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai, Chennai - 600 002.

... Respondent

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.03.2023 MACT.O.P.No.7699 of 2015, on the file of the Chief Judge, Court of Small Causes, (Motor Accidents Claims Tribunal) Chennai.

For Appellants : Mr.K.Ayyadurai

For Respondent : M/s.Anton Dhana Sekaran



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C.M.A.No.2329 of 2023

Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai - 600 002.

... Appellant

Versus

1.Sheela Rani
2.Sasikumar

... Respondents

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 29.03.2023 M.C.O.P.No.7699 of 2015 on the file of the Motor Accidents Claims Tribunal, in the Chief Judge, Court of Small Causes, at Chennai.

For Appellant : M/s.Anton Dhanasekaran

For Respondents : Mr.K.Ayyadurai

COMMON JUDGMENT

The claimants have preferred C.M.A.No.1425 of 2023 seeking enhancement of compensation. The Transport Corporation has preferred C.M.A.No.2329 of 2023 praying for setting aside the award of compensation.



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WEB COPY 2. For the sake of convenience, parties are referred to as Claimants and the Transport Corporation

3. The claimants filed the claim petition stating that on 14.07.2015, at about 16.15 hours, when the deceased was travelling as a passenger in the bus belonging to the transport corporation, the driver drove the bus in a rash and negligent manner, as a result of which the deceased fell down from the bus and sustained grievous injuries and succumbed to the injuries 40 days after the accident i.e. 22.08.2015.

4. The transport corporation filed a counter stating that the driver drove the bus in a careful manner; that the deceased was a footboard traveler and attempted to alight from the front entrance, while the bus slowed down to take a left turn; and that the deceased slipped, fell and was caught in the rear wheel of the bus and therefore, the transport corporation was not liable to pay compensation and hence prayed for dismissal of the claim petition.



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5. Before the Tribunal, the claimants examined P.W.1 and P.W.2 and marked sixteen documents as Exs.P1 to P.16. The transport corporation examined its driver as R.W.1 and marked the copy of the FIR as Ex.R1.

6. The Tribunal after taking into consideration the oral and documentary evidence held that the deceased/a minor boy was also guilty of contributory negligence by taking judicial notice of the fact that school children in order to avoid walking from the bus stop, usually get down from the moving bus. The tribunal determined the compensation amount as Rs.10,17,943/- and directed the transport corporation to pay 50% of the said amount as compensation to the claimants.

7. The learned counsel for the claimants submitted that the contributory negligence fixed on the minor boy is without any basis. He further submitted that the doctrine of contributory negligence is not applicable in the case of children in the same manner as in the case of the adults and relied upon the Judgment of the Hon'ble Supreme Court in ***Sudhir Kumar Rana and Surinder Singh & others*** reported in **2008 (3) CTC 605** in support of his submission. The learned counsel further



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submitted that R.W.1/driver of the bus admitted in his cross examination that he got down from the bus after hearing the scream of the other passengers and therefore, R.W.1's version that the deceased travelled in the footboard cannot be accepted.

8. The learned counsel for the transport corporation per contra submitted that the award of the Tribunal is just and reasonable; that Ex.R1- FIR given by a stranger shows that the deceased was at fault. He further submitted that R.W.1's evidence also would confirm that the deceased travelled in the footboard; that the claimants had not given any complaint relating to the alleged accident since they were aware that the deceased was at fault; and that therefore, prayed for setting aside the award of the Tribunal.

9. The questions involved in the instant appeals are as follows:

- (a) Whether the tribunal was right in fixing 50% contributory negligence on the deceased.
- (b) Whether the award of the compensation is just and reasonable.



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10. As regards the first question, it is seen that admittedly the deceased was a ninth standard student. The claimants have examined P.W.2-eyewitness to the occurrence, who had deposed that the driver of the bus drove the bus in a rash and negligent manner and took a sharp left, which resulted in the deceased being thrown out of the bus. R.W.1 - driver of the bus, examined on the side of the transport corporation had stated that he stopped the bus when he heard the other passengers scream; and that he came to know that the deceased fell down from the bus through the front entrance. Therefore, this Court is of the view that R.W.1's version that the deceased travelled in the footboard cannot be accepted. At the same time, this Court is of the view that even if the driver of the bus has taken a sharp left, the accident would not have occurred, if the deceased had travelled carefully in the bus. Therefore, the contributory negligence on the deceased cannot be ruled out. The Hon'ble Supreme Court in ***Sudhir Kumar Rana and Surinder Singh & others*** (cited supra), held that the doctrine of contributory negligence on children is not applicable with the same force as in the case of the adults ordinarily. Considering the said position of law and the facts and circumstance of this case as narrated above, this



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Court is of the view that it would be just and reasonable to fix the contributory negligence on the deceased as 25% .

11. As regards the quantum of compensation, it is seen that the Tribunal had fixed the consolidated annual income of Rs.60,000/- and applied the multiplier of "15". There is no infirmity in the said award of the Tribunal. However, it is seen from the records that the deceased was in the Hospital for nearly 38 days. Hence, in these circumstances, the award under the head pain and sufferings can be enhanced from Rs.20,000/- to Rs.50,000/-. The Tribunal had not awarded any compensation under the head "Loss of Estate" and hence, Rs.15,000/- is granted under the said head. The Tribunal had also not awarded compensation towards "Attender Charges". Considering the period of hospitalization, a sum of Rs.25,000/- is awarded under the said head. The award under other heads is just and reasonable and hence, the same is confirmed. Thus, the total compensation awarded by the Tribunal is enhanced from Rs.5,08,972/- to Rs.8,15,957/-. The break-up is as follows:



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income/ Dependency	9,00,000/-	9,00,000/-	Confirmed
2.	Loss of Consortium	80,000/-	80,000/-	Confirmed
3.	Medical Expenses	2,943/-	2,943/-	Confirmed
4.	Pain and Sufferings	20,000/-	50,000/-	Enhanced
5.	Funeral Expenses	15,000/-	15,000/-	Confirmed
6.	Attender Charges	---	25,000/-	Granted
7.	Loss of Estate	---	15,000/-	Granted
	Total	10,17,943/-	10,87,943/-	
	Less : Contributory Negligence	Rs.5,08,971/- (50%)	Rs.2,71,986/- (25%)	
	Net compensation amount	Rs.5,08,972/-	Rs.8,15,957/-	Enhanced by Rs.3,06,985/-

12. In the result,

(i) CMA No.1425 of 2023 is partly allowed by fixing 25% contributory negligence on the deceased and enhancing the compensation awarded by the Tribunal from Rs.5,08,972/- to Rs.8,15,957/- together



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with interest at 7.5% per annum (excluding the default period, if any)
from the date of petition till the date of deposit.

(ii) CMA No.2329 of 2023 is dismissed.

(iii) The transport corporation is directed to deposit the modified award amount now determined by this Court i.e., Rs.8,15,957/- along with interest and cost, less the amount already deposited if any.

(iv) On such deposit, the claimants are permitted to withdraw their share of the award amount along with proportionate interest and cost as per the apportionment fixed by the Tribunal.

No costs. Consequently, the connected Miscellaneous Petition is closed.

27.09.2023

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Index: Yes/No

Speaking Order / Non~Speaking Order

Neutral Citation: Yes / No

Copy to:-

1. The Chief Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

dk

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Dated: 27.09.2023