



C.M.A. No.1797 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1797 of 2023

1.S.Lakshmi

2.Selvaraj

...

Appellants

Vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Illam, Anna Salai,
Chennai – 600 002

...

Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order made in M.C.O.P. No.9123 of 2015 on the file of the Motor Accident Claims Tribunal, (In the Court of the Principal Special Judge, Special Court under E.C. and NDPS Act at Chennai).

For Appellants : Mr.Amar Dineshbhai Pandiya

For Respondent : Mr.M.Murali Vinodh



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants challenging the contributory negligence fixed on the deceased by the Tribunal in the order made in M.C.O.P. No.9123 of 2015 on the file of the Motor Accident Claims Tribunal, (In the Court of the Principal Special Judge, Special Court under E.C and NDPS Act at Chennai).

2. The appellants filed the above said claim petition claiming a sum of Rs.75,00,000/- as compensation for the death of Karthick who died in the accident that took place on 23.10.2015.

3. According to the appellants, on the date of accident, when the deceased was riding his motorcycle bearing Regn.No.TN02 BA 1877 on R.K.Mutt Road towards North to South, near Thinathoothu daily edition office, a bus bearing Regn.No.TN01 N 5252 belonging to the respondent, driven in a rash and negligent manner, hit the motorcycle of the deceased from behind. The deceased sustained multiple fatal injuries and died on the



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way to hospital. Hence, the appellants filed the above said claim petition claiming compensation against the respondent.

4. The respondent filed counter denying the averments mentioned in the claim petition and stated that the accident occurred only due to the rash and negligent riding by the deceased who overtook on the left side of the road, lost balance and came in contact with the left front side body of the bus and sustained injuries; hence the respondent is not liable to pay compensation to the appellants. The respondent also denied the age, occupation and monthly income of the deceased and stated that in any event the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the 2nd appellant examined himself as PW1 and eye-witness as PW2. Seventeen documents were marked as Exs.P.1 to P.17. On the side of the respondent, driver of the bus was examined as RW1 and copy of rough sketch was marked as Ex.R1.



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6. The Tribunal, considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by driver of the bus belonging to the respondent and directed the respondent to pay a sum of Rs.17,40,000/- as compensation to the appellants. Aggrieved by the said order, the appellants have preferred the present appeal.

7. The learned counsel appearing for the appellants submitted that the finding of the Tribunal in fixing 50% contributory negligence on the deceased is erroneous in the absence of any definite evidence. The learned counsel submitted that the Tribunal had proceeded on the basis of the evidence of RW1, driver of the bus belonging to the respondent which is contrary to the FIR registered against RW1; that on investigation, the final report confirmed the allegations in the FIR; that in final report, it is stated that RW1 had overtaken the two wheeler ridden by the deceased and caused the accident; that the version of RW1 has been disbelieved by the police; that the appellants had examined PW2, brother of the deceased who was the eye-



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witness to the accident; that his evidence also corroborates the FIR and the final report filed by the police; and that in such circumstances, the Tribunal erred in fixing 50% negligence on the deceased and prayed for allowing the appeal.

8. The learned counsel appearing for the respondent, per contra submitted that the Tribunal had rightly fixed 50% contributory negligence on the deceased since RW1 has categorically stated that the deceased attempted to overtake the bus from the left side in a narrow road; that RW1 had taken sufficient care and caution and it was the deceased who was negligent, lost his balance, fell on the left side of the bus and invited the accident; thus he prayed for dismissal of the appeal.

9. Heard the learned counsel appearing for the appellants as well as the respondent and perused the materials available on record.



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WEB COPY 10. The only question involved in the instant appeal is whether the Tribunal was right in fixing 50% contributory negligence on the deceased.

11. On a perusal of the records, this court finds that Ex.P1 - FIR was registered against the driver of the bus. The final report, after investigation also reveals that the driver of the bus was responsible for the accident in as much as it states that RW1 had rammed into the two wheeler of the deceased. The evidence of PW2 – eye witness to the accident also corroborates the said version. This Court is conscious of the fact that the records in the criminal case has to be appreciated in the light of the evidence adduced before the Tribunal. Though the respondent has examined RW1, no other independent witness was examined on their side. The evidence of RW1 is to the effect that the deceased had overtaken from the left side. The evidence of PW2 who is said to have followed the deceased in another two wheeler also cannot be completely accepted as according to him, he was proceeding behind the bus and could not have witnessed the occurrence fully. Considering the over all



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circumstance of the case, the fact that the accident took place in a narrow road; that there was a damage to the left side of the bus, it is probable that the deceased had cut across the road. But there is no evidence to suggest that the deceased had contributed to the extent of 50%. In the facts of the present case, considering the evidence on record, it would be just and reasonable to fix 20% contributory negligence on the deceased and 80% negligence on the driver of the bus belonging to the respondent instead of 50 : 50 fixed by the Tribunal. The award in other aspects are confirmed. Thus, the compensation towards loss of dependency is arrived as follows -

$$23662 + 9464.80 (23662 \times 40\%) \times 12 \times 17 \times 50\% = 33,78,933.60$$

After deducting 20% towards contributory negligence on the deceased, the appellants are entitled to Rs.27,03,146/- [33,78,933.60 – 6,75,786.72] towards loss of dependency.



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	16,18,066/-	27,03,146/-	Enhanced
2.	Loss of Estate	16,500/-	16,500/-	Confirmed
3.	Loss of consortium	88,000/-	88,000/-	Confirmed
4.	Funeral expenses	16,500/-	16,500/-	Confirmed
	Total	17,39,066.80 rounded off to Rs.17,40,000/-	28,24,146/- rounded off to Rs.28,25,000/-	Enhanced by Rs.10,85,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,40,000/- is hereby enhanced to Rs.28,25,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The respondent is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the



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appellants are permitted to withdraw the award amount equally, along with proportionate interest and costs, less the amount if any, already withdrawn.

The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

16.08.2023

rgr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Principal Special Judge,
Special Court under E.C. and NDPS Act,
Motor Accident Claim Tribunal,
Chennai.

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



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SUNDER MOHAN, J.

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