



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.08.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1429 of 2022
and C.M.P.No.10509 of 2022

Metropolitan Transport Corporation

(Chennai) Ltd.,

Represented by its Managing Director,

Chennai 600 002.

... Appellant

Vs.

1.Kumari

2.Karthik

3.Yukanth

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.06.2018 in MCOP.No.2233 of 2014 on the file of the Motor Accident Claims Tribunal, III - Small Causes Court, Chennai.

For Appellant : Mr.S.S.Swaminathan

For Respondents : Mr.K.Varadhakamaraj

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant challenging the quantum of compensation awarded by the Tribunal in MCOP.No.2233 of



2014, dated 29.06.2018, on the file of the Motor Accident Claims Tribunal,
III - Small Causes Court, Chennai.

2. The respondents are the claimants in MCOP.No.2233 of 2014 on the file of the Motor Accident Claims Tribunal, III - Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of Muralikrishnan, who died in the accident that took place on 18.11.2013.

3. According to the respondents, on 18.11.2013 at about 09.30 a.m. while the deceased was boarding into the MTC bus bearing Registration No.TN-01-N-5814, the driver of the bus belonging to the appellant/Transport Corporation, before the deceased entered into the bus, in a rash and negligent manner moved the bus. Due to the impact, the deceased sustained grievous injuries and died in the hospital.

4. The appellant/Transport Corporation filed counter statement denying all the averments made in the claim petition and stated that the accident did not happen due to the rash and negligent driving by the driver of the bus bearing registration No.TN-01-N-5814; they denied the age, income



and stated that in any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the respondents examined P.W.1 to P.W.3 and marked ten documents as Exs.P1 to P10. On the side of the appellant/ Insurance Company, the driver of the bus was examined as R.W.1 and marked Ex.R1 to R2.

6. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent the act of driver of the bus belonging to the appellant/Transport Corporation and directed to pay a sum of Rs.9,32,000/- as compensation to the respondents. Aggrieved over the said award, the appellant has preferred the instant appeal.

7. The learned counsel for the appellant/Transport Corporation submitted that the award of the Tribunal fixing the liability on the appellant/Corporation is liable to be set aside; since, the respondent have not established that the bus belonging to the appellant/Transport Corporation was involved in the accident; that the time at which the accident took place and the time when the bus reached its destination would indicate that the respondent's version as improbable. The learned further



submitted that in any event, the Accident Register, Ex.R1, which is the earliest version shows that the deceased had travelled foot-board and invited the accident and therefore, contributory negligence has to be fixed on the deceased.

8. Per contra, the learned counsel for the respondent submitted that there is over-whelming evidence to show that the bus belonging to the appellant/Corporation was involved in the accident. The Final Report marked as Ex.P.1 confirms the said fact. P.W.3, S.I. who had assisted the Investigation Officer has deposed about the involvement of the bus belonging to the appellant/Transport Corporation. Therefore, the Tribunal was right in holding that the appellant/Transport Corporation was liable to pay the compensation.

9. Heard the learned counsel appearing for the appellant/Transport Corporation as well as the learned counsel appearing for the respondents and perused all the materials available on record before this Court.



10. The only question involved in this case is whether the Tribunal was right in fixing the liability on the appellant/Corporation to pay the compensation.

11. The respondents examined P.W.1 to 3 and marked exhibits Ex.P.1 to P.10 in support of their case. P.W.2 was an eye witness of the occurrence. P.W.3 is the Sub-Inspector of Police, who had assisted the Investigation Officer. The F.I.R. Ex.P1 was registered against the driver of the bus belonging to the Transport Corporation. Ex.P.W.10 Final Report after investigation, confirms the allegations in the F.I.R. It is trite that the Tribunal has to assess the evidence adduced before it and not rely merely on the criminal case records. In the instant case, the Tribunal has considered independently the evidence brought before it. R.W.1 is the driver of the bus belonging to the appellant/Corporation and stated that the bus driven by him was not involved in the accident. His evidence cannot be accepted in the light of the other evidence as record as stated earlier. Considering the evidence of P.W.2, along with the other documentary evidences produced on either side, this Court is of the view that the finding of the Tribunal holding that the bus belonging to the appellant/Corporation was involved in the accident cannot be faulted. It is also pertinent to point out here that Ex.R.1,



the Accident Register, which is the earliest version also states that the deceased sustained greivous injuries due to the fall from the running bus. Therefore, it could not be stated that the bus was not involved in the accident.

12. However, it is seen from Ex.R1 that the deceased was travelling in the foot-board in a crowded bus. Considering this evidence, this Court is of the view that the deceased has also contributed to the accident and the contributory negligence on the deceased can be fixed at 10% for travelling in foot-board. The quantum of compensation has not been challenged by either side. Therefore, the respondents are entitled to the compensation awarded by the Tribunal, less 10% fixed towards contributory negligence. Thus the award of compensation is reduced by 10%.

13. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1	Loss of Dependency	7,92,000	7,92,000	confirmed
2.	Loss of consortium	40,000	40,000	confirmed



3.	Loss of love and affection	75,000	75,000	confirmed
4.	Medical expenses	10,000	10,000	confirmed
5.	Funeral expenses	15,000	15,000	confirmed
	Total	9,32,000	9,32,000	
	contributory negligence at 10%	---	93,200	
	Net compensation	Rs.9,32,000	Rs.8,38,800	Reduced by Rs.93,200

14. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.9,32,000/- awarded by the Tribunal is hereby reduced to Rs.8,38,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents are permitted to withdraw the modified award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The 1st respondent is entitled to a sum of Rs.6,00,000/-. The 2nd and 3rd respondents are entitled to a sum of Rs.1,19,400/- each. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of

M.C.O.P.No.2233 of 2014 on the file of Motor Accident Claims Tribunal,



(III Judge, Court of Small Causes), Chennai, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

23.08.2023

Index: Yes/No

Internet: Yes/No

Speaking order: Yes/ No

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To

- 1.The Small Causes Court -III ,
Motor Accident Claims Tribunal,
Chennai.
- 2.The Section Officer,
VR Section, High Court of Madras,
Chennai – 600 104.



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C.M.A.No.1429 of 202



SUNDER MOHAN,J.

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C.M.A.No.1429 of 2022

23.08.2023