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C.M.A.Nos.1555 of 2023 & 101 of 2022
and C.M.P.No.15714 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.Nos.1555 of 2023 & 101 of 2022
and C.M.P.No.15714 of 2023

C.M.A. No. 1555 of 2023:

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai
Chennai – 2

... Appellant/Respondent

Versus

1.K.Kannamma

2.K.Dhanasekar

3.K.Karthick

... Respondents/Claimants

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 05.03.2021 passed in M.C.O.P.No.8626 of 2015, by the Motor Accident Claims Tribunal, Chennai (Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai).



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For Appellant : Mr.A.Vinothraj
For Respondents : Mr.K.Malaikannu for R1 to R3

C.M.A. No. 101 of 2022:

1.K.Kannamma
2.K.Dhanasekar
3.K.Karthick

... Appellants/Petitioners

Versus

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai
Chennai – 2

...Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 05.03.2021 passed in M.C.O.P.No.8626 of 20165 on the file of the Motor Accident Claims Tribunal, NDPS, Chennai.

For Appellants : Mr.K.Malaikannu
For Respondent : Mr.A.Vinothraj



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COMMON JUDGMENT

Both these appeals arise out of the same award and hence these appeals are disposed of by this common judgment.

(For the sake of convenience, parties are referred to as per their rank in the claim petition).

C.M.A.No.1555 of 2023 has been filed by the respondent/Transport Corporation and C.M.A.No.101 of 2022 has been filed by the claimants questioning the negligence as well as the quantum of compensation passed by the Tribunal in M.C.O.P. No. 8626 of 2015 dated 05.03.2021 on the file of the Principal Special Judge, Special Court under E.C. & NDPS Act, Motor Accident Claims Tribunal, Chennai.

2. The claimants filed claim petition stating that on 25.02.2014 at about 19.30 hours, while Mr.G.Kuppan/deceased was boarding to the respondent's bus bearing Registration No. TN 01 -N-4809, at Mint New Bus Stand, the



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driver of the bus belonging to the respondent/Transport Corporation moved the bus suddenly without taking any due care of the boarding passenger, due to which the deceased fell down and the bus ran over the deceased; that the said G.Kuppan died on the spot; that the deceased was aged 46 years and was earning Rs.12000/- per month at the time of the accident and hence, the claimants filed claim petition claiming compensation against the respondent.

3. The respondent/Transport Corporation filed a counter denying all the averments made in the claim petition and stated that the accident occurred only due to the negligent act of the deceased; that the deceased while attempting to board the bus in an inebriated condition, fell down and invited the accident; that there is no negligence on the part of the driver of the bus; that the age, occupation and monthly income of the deceased are denied and stated that in any event, the compensation claimed by the claimants was highly excessive and prayed for dismissal of claim petition.



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4. The claimants examined two witnesses as P.W.1 and P.W.2 and marked six documents as Exs.P1 to P6. The respondent examined two witnesses as R.W.1 and R.W.2 and marked two documents as Exs.R1 and R2.

5. The Tribunal after considering the oral and documentary evidence held that the accident occurred due to negligent act of both the deceased as well as the driver of the bus belonging to the respondent; fixed negligence in the ratio 50:50; awarded a sum of Rs.6,27,500/- as compensation to the claimants, payable by the respondent/Transport Corporation.

6. Aggrieved by the said order, the respondent/Insurance company as well as the claimants have preferred these appeals.

7. Learned counsel for the claimants submitted that the finding of negligence is erroneous inasmuch as the Tribunal ought not to have fixed 50% contributory negligence on the deceased; that the Tribunal ought to have fixed the entire negligence on the driver of the bus belonging to the Transport



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Corporation. The learned counsel pointed out to the admissions made in the cross-examination of the witnesses examined on the side of the claimants in support of his submission. The learned further submitted that the compensation awarded by the Tribunal is meagre and prayed for allowing C.M.A.No.101 of 2023 by setting aside the contributory negligence fixed on the deceased and enhancing of compensation.

8. Learned counsel for the respondent/Transport Corporation/appellant in C.M.A.No.1555 of 2023, *per contra*, submitted that the Tribunal having found that the deceased attempted to board in the front entrance at a non designated bus stop, ought to have fixed the entire negligence on the deceased; that therefore, the findings of the Tribunal fixing 50% contributory negligence on the deceased and 50% on the driver of the bus is erroneous. The learned counsel relied upon the evidence of witnesses, examined on the side of the Transport Corporation in support of his submission, and prayed for allowing C.M.A.No. 1555 of 2023 by setting aside the award of the Tribunal and fixing the entire negligence on the part of the deceased.



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9. The questions involved in the above appeals are:-

(a) Whether the Tribunal was right in fixing 50% contributory negligence on the part of the deceased and 50% contributory negligence on the driver of the bus belonging to the Transport Corporation?

(b) Whether the Tribunal was right in fixing the quantum of compensation?

10. As regards the question of contributory negligence, the evidence of R.W.1 and R.W.2 would be relevant. The driver of the bus was examined as R.W.1. In his cross examination, he would state that several people attempted to board the Bus and while the bus was moving into the bus stand, the deceased also attempted to enter into the moving bus and thereafter, he had stopped. The Inspector of Police was examined as R.W.2. The relevant portion of cross examination of R.W.1 is extracted hereunder:-

"...சம்பவத்தன்று ரெட் உறில்ஸ் இருந்து
பல்லவா நகர் வந்த பஸ்சை நிறுத்தினேன். பயணிகள்
அனைவரும் இறங்கிவிட்டார்கள் நிறைய பேர்
அப்போது பேருந்தில் ஏறினார்கள். பஸ்



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ஸ்டான்டிற்கு வெளியிலேயே நான் பயணிகளை
இறக்கிவிட்டுவிட்டேன். காலியாகத்தான் பஸ்
ஸ்டான்டிற்குள் பேருந்து போனது பஸ்ஸ்டான்டிற்கு
வெளியே இருந்து பஸ் ஸ்டான்டிற்கு உள்ளே
நுழையும் போது பயணிகள் உள்ளே ஏற
முயன்றார்கள். இந்த பயணியும் கூட பஸ்சில் ஏற
முற்பட்டு தடுமாறி கீழே விழுந்துவிட்டார்..''

In view of the above admission of R.W.1, it is clear that several passengers attempted to board the bus along with the deceased. In such circumstances, this Court is of the view that when attempts are made by several passengers for boarding into the moving bus, the driver and the conductor of the bus ought to have been careful. The evidence of R.W.1, indicates that he was aware of the fact that the passengers were attempting to board into the vehicle and yet he moved the vehicle. Therefore, this Court is of the view that the driver and the conductor of the bus have been negligent in the circumstances of this case. In this regard, the Judgment of the Division Bench of this Court in *M.Jaganathan Vs. Pallavan Transport Corporation Ltd., rep. by its Managing Director, Pallavan Salai, Madras – 600 002* reported in *1997-1- L.W-226* is applicable to the facts



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of this case wherein in similar circumstances, the Division Bench of this Court had held that in the facts of the case, it is the fundamental duty of the driver and the crew members of the Bus to verify whether the passengers are getting into the bus or getting down before the bus is moved, irrespective of the fact that place is a bus stop or not. The relevant observations are extracted below for better appreciation :

“14.Further, in 1989 ACJ 371 (supra), a learned judge of this Court was dealing with a case where a lady passenger was alighting from the front exit of the bus and her one foot was on the loot board and other on the road when the conductor gave whistle and the driver moved the bus and she was knocked down and dragged along by the body of the bus and sustained fatal injuries. There was no bus stop at the place of accident therein and the above said passengers jumped from the running bus. However, the further evidence is that eye witnesses who were passengers of the bus shouted to the driver to stop the bus. In the above circumstance, it was held that the crew of the bus



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were negligent for the accident which occurred at a place where the bus had stopped, though it was not a bus stop. The relevant observation therein is as follows:-

But the fundamental duty of both the driver as well as the conductor is to verify specifically whether any passengers is getting into the bus or getting down from the bus before actually the bus is moved from the bus stop where it is stopped, irrespective of the fact whether that place or stopping is a bus stop or not".

We may however point out here that this observation would be mere appropriate particularly in the case of conductor, since the driver as such may not be able, by himself to verify every time whether any passenger is getting into the bus or getting down from the bus before actually the bus is moving from the place where it has stopped, particularly when the abovesaid ingress or egress is at the rear entrance of the bus. Anyway, the point to be emphasized is that even though in the abovesaid 1989 ACJ 371 the deceased got down from the bus in a place, which is not a bus stop, the court held on



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the facts of the said case, that there was negligence on the part of the driver of the vehicle in question."

Further in ***Pallavan Transport Corporation Ltd. Vs. M.Jaganathan***, reported in ***2001(1) CTC 49***, the Supreme Court had held as follows:

"5...It is always important to have coordination between the conductor and the driver, whenever passengers start getting down or are led to get down, to see that before any signal is given by the conductor, in any form, as normally there is bell in most of the buses which conductor rings signalling the driver to start the bus, the driver should, not restart the bus. In the absence of coherence or lack of coordination between the two it is bound to result into accident which has happened in the present case. This would constitute to be a negligence on the part of both the conductor and the driver..."

11. This Court is of the view that in the facts of the case, R.W.1 had admitted that several passengers attempted to board the bus. Therefore, it is clear



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that there was no coordination between the conductor and the driver. The driver of the bus ought not to have allowed passengers from getting into the moving bus. In any event, knowing that some passengers were attempting to get into the moving bus, the driver ought not to have moved the bus. Therefore, this Court is of the view that no contributory negligence can be fixed on the deceased in the facts and circumstances of this case. Hence, this Court is of the view that the entire liability has to be fixed on the respondent/Transport Corporation for the negligence of its crew members.

12. As regards the quantum of compensation, on perusal of the records, this Court finds that the award of the Tribunal is just and reasonable under the head Loss of Dependency. Neither the respondent/transport corporation nor the claimants were able to find any error in the said computation. However, this Court finds that the Tribunal had awarded Rs.2,00,000/- towards Loss of Love and Affection apart from awarding Rs.50,000/- towards Loss of Consortium to the wife of the deceased. The claimants are not entitled to compensation under the Loss of Love and Affection and hence, the same is set aside. Since the second and third claimants are the sons of the deceased, they are entitled to



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compensation under the head Parental Consortium. Hence, a sum Rs.40,000/- each is awarded to the claimants 2 and 3 under the head Loss of Parental Consortium. The compensation under head Loss of Consortium is reduced from Rs.50,000/- to Rs.40,000/-. The amount of Rs.25,000/- awarded towards Funeral Expenses is on the higher side and hence, the same is reduced to Rs.15,000/-. Further, the claimants were not awarded any amount towards Loss of Estate and hence, a sum of Rs.15,000/- is awarded under the head Loss of Estate. The amount of Rs.15,000/- awarded by the Tribunal towards Transport Expenses is reasonable and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.6,27,500/- to Rs.11,28,000/-. Since the entire negligence is fixed on the driver of the bus belonging to the respondent/Transport Corporation, the respondent is directed to deposit the entire compensation amount.

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	9,68,000/-	9,68,000/-	Confirmed



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2.	Loss of Consortium	50,000/-	40,000/-	Reduced
3.	Loss of Love and Affection	2,00,000/-	---	Set aside
4.	Funeral Expenses	25,000	15,000	Reduced
5.	Transport Expenses	10,000/-	10,000/-	Confirmed
6.	Loss of Parental Consortium	---	80,000	Granted
7	Loss of Estate	---	15,000/-	Granted
	Total	12,53,000/ - Rounded off to 12,55,000/-	11,28,000/-	
	Less : 50% contributory negligence	Rs.6,27,500/ -	Set aside	
	Net Compensation payable to claimants	Rs.6,27,500/-	11,28,000/-	Enhanced by Rs.5,00,500/-



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(i) CMA No.1555 of 2023 is partly allowed in respect of setting aside the compensation awarded by the Tribunal under the head Loss of love & affection and reducing the award from Rs.25,000/- to Rs.15,000/- under the head funeral expenses and Rs.50,000/- to Rs.40,000/- under the head loss of consortium.

(ii) CMA No.101 of 2022 is partly allowed by setting aside the award of the Tribunal in respect of fixing 50% negligence on the deceased and enhancing the compensation awarded by the Tribunal from Rs.6,27,500/- to Rs.11,28,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

(iii) The respondent/Transport Corporation 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 receipt of a copy of this Judgment. On such deposit, the claimants are permitted to withdraw their respective shares of the award amount, on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The claimants are directed to



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pay necessary Court fee, if any, on the enhanced compensation. No costs.

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Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

NCC: Yes/No

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To

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

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



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SUNDER MOHAN, J.

dk

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