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C.M.A.No.2219 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.2219 of 2023

1.Muniyammal
2.Santhoshkumar
3.Anilkumar
4.Kanaga
5.Asha

... Appellants

Versus

The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Regional Office, Dharmapuri,
No.12, Ramakrishna Salai,
Salem, Salem District – 636 007.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to set aside the judgment and decree dated 08.03.2023 made in M.C.O.P.No.1539 of 2016 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Namakkal.

For Appellants : Mr.M.Lokesh
For Respondent : Mr.D.Nittin

JUDGMENT

The claimants have preferred the instant appeal challenging the finding of the Tribunal with regard to negligence and quantum of compensation.



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2.The appellants/claimants filed the claim petition stating that on 11.07.2016 at about 9.15 p.m., while the deceased was travelling in the bus belonging to the respondent Corporation, he fell down from the bus due to the negligence of the driver of the bus; that as a result of which, he sustained serious injuries and died on 24.07.2016.

3.The respondent herein filed a counter stating that the accident took place only due to the negligence of the deceased, who travelled in the rear foot board; that as a result of which, he fell down from the bus; and that the respondent Corporation is not liable to pay the compensation and prayed for dismissal of the claim petition.

4.The appellants examined P.W.1 and marked Exs.P1 to P8. The respondent examined R.W.1-conductor of the bus and did not mark any document.

5.The Tribunal after considering the oral and documentary evidence, held that the accident took place predominately due to the negligence of the driver of the bus belonging to the respondent Corporation and fixed 10% contributory negligence on the deceased for



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travelling on the foot board of the bus. Further, the Tribunal directed the respondent to pay the compensation of Rs.9,99,185/- to the appellants.

6.The learned counsel for the appellants submitted that the Tribunal had erroneously fixed contributory negligence on the deceased; that the respondent had taken contradictory stand as regards the manner of the accident; that in counter they had stated that the deceased fell down from the rear foot board of the bus, whereas in the deposition of R.W.1, he had stated that the deceased fell down from the front foot board of the bus; and that therefore, the Tribunal ought not to have fixed contributory negligence based on such inconsistent version of the respondent. The learned counsel further submitted that though the appellants had established the fact that the deceased was working as mason, had fixed a meagre monthly income of Rs.9,000/- and the same has to be enhanced; that the appellants 2 to 5 are each entitled to Rs.40,000/- under the head loss of love and affection; and that the Tribunal awarded only a sum of Rs.16,500/- under the head loss of love and affection and prayed for allowing of the appeal.



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7.The learned counsel for the respondent per contra submitted that the evidence of R.W.1-conductor of the bus belonging to the respondent Corporation would make it clear that the deceased was travelled on the foot board and thus, the accident took place due to the negligence of the deceased; that therefore, the award of the Tribunal fixing contributory negligence cannot be faulted; that the compensation awarded by the Tribunal was excessive in as much as the Tribunal had granted 15% enhancement towards future prospect and prayed for dismissal of the appeal.

8.The questions involved in the instant appeal are:-

- (a) Whether the Tribunal was right in fixing contributory negligence on the deceased?
- (b) Whether the compensation awarded by the Tribunal is just and reasonable?

9.On perusal of records, it is seen that the appellants had examined P.W.1-son of the deceased, who was an eye-witness to the occurrence. He had deposed before the Tribunal that the accident happened entirely due to the negligence of the bus driver. The respondent stated in the



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counter that the deceased fell down from the rear foot board of the bus.

However, in the deposition of R.W.1 he had stated that the appellant fell down from the front foot board of the bus. In view of the contradictory versions of the respondent, this Court is of the view that the evidence of R.W.1 cannot be accepted to hold that the deceased contributed to the accident. Hence, the finding of the Tribunal fixing 10% contributory negligence on the deceased is liable to be set aside and the same is set aside.

10.As regards quantum of compensation, it is seen that the deceased was aged 55 years at the time of accident. P.W.1 had stated that the deceased was working as a mason. Considering the age, avocation and year of accident, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased at Rs.12,000/-. The appellants would be entitled to 10% enhancement towards future prospect. The Tribunal had erroneously granted 15% towards future prospect. The multiplier applicable is 11. After deducting 1/4th towards personal expenses, the award of compensation under the head loss of income has to be as follows:-

Rs.13,200/- (Rs.12,000 + 10%) X 12 X 11 X 3/4 = Rs.13,06,800/-



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The appellants 2 to 5 are entitled to Rs.40,000/- each towards loss of love and affection. Thus, a sum of Rs.16,500/- awarded by the Tribunal towards loss of love and affection is enhanced to Rs.1,60,000/-. The amount awarded by the Tribunal under the head loss of consortium is reduced to Rs.40,000/- and the amount awarded under the funeral expenses is reduced to Rs.15,000/-. The Tribunal had not awarded any amount under the head loss of estate and hence, a sum of Rs.15,000/- is awarded under the said head. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	9,22,185	13,06,800	Enhanced
2.	Loss of consortium to the 1 st appellant	44,000	40,000	Reduced
3.	Loss of Love and Affection to the appellants 2 to 5	16,500	1,60,000	Enhanced
4.	Funeral Expenses	16,500	15,000	Reduced
5.	Loss of Estate	-	15,000	Granted
	Total	9,99,185	15,36,800	Enhanced by Rs.5,37,615/-

11. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at



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Rs.9,99,185/- is hereby enhanced to Rs.15,36,800/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. 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 eight (8) weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellants are permitted to withdraw their respective shares, as per the apportionment fixed by the Tribunal, 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.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

- 1.The I Additional District Judge,
The Motor Vehicle Accident Tribunal,
Namakkal.
- 2.The Section Officer,
VR Section, High Court, Madras.



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SUNDER MOHAN, J.

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