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C.M.A.No.1721 of 2023
and C.M.P.No.16888 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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and C.M.P.No.16888 of 2023

The Managing Director,
The Tamil Nadu State Transport Corporation,
Divisional Office II,
Periyamilaguparai,
Trichy -1.

... Appellant

Versus

1.Malarvizhi
2.Akash
3.Dhanush (Minor)
Represented by Malarvizhi
(mother and natural guardian)
4.Chinnaponnu

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 29.03.2022 passed in M.C.O.P. No.108 of 2021, by the Motor Accident Claims Tribunal, Special Court-2, Jayankondam.

For Appellant : Mr.C.Gauthamaraj

For R1 to R3 : Mr.P.Parthikannan

For R4 : Died



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JUDGMENT

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This appeal has been filed by the appellant/Transport Corporation challenging the compensation awarded by the Tribunal in M.C.O.P. No.108 of 2021, dated 29.03.2022

2.The claim petition was filed stating that on 05.01.2021, at about 01.30 p.m., when the deceased was standing near a shop at Kulathur bus stop along with his motorcycle at the right side of the road, a bus bearing Registration No.TN-45-N-4271, belonging to the appellant/Transport Corporation came in a rash and negligent manner and while the driver of the bus tried to over take the lorry which was proceeding in front of the bus, hit against the deceased; that he was thrown out, sustained fatal injuries, died on the spot and that thus, the respondents/claimants are entitled for compensation.

3.The appellant/Transport Corporation filed a counter denying all the averments made in the claim petition and stated that the driver of the bus belonging to the appellant drove the bus by following the Motor Vehicles Rules stringently; that the deceased came in a wrong direction



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in his motorcycle bearing Registration No.TN-68-L-7803, without wearing helmet, lost his control and dashed against the bus and thus the accident took place; that the deceased did not possess valid driving license and did not wear helmet; that hence, the appellant is not liable to pay compensation to the respondents; that in any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

4.Before the Tribunal, the respondents/claimants examined three witnesses and marked Ex.P.1 to Ex.P.4 on their side. The appellant/Transport Corporation examined one witness on their side and did not mark any document.

5.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the appellant and directed the appellant to pay a sum of Rs.26,02,584/- as compensation to the respondents.

6.Aggrieved over the award passed by the Tribunal, the



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appellant/Transport Corporation has filed the present appeal challenging the finding on negligence as well as quantum of compensation awarded by the tribunal.

7(a).The learned counsel for the appellant submitted that the Tribunal ought to have fixed contributory negligence, since the deceased was not wearing helmet, at the time of accident.

7(b).The learned counsel further submitted that as regards quantum of compensation, the Tribunal had awarded compensation under the head loss of love and affection to all the four respondents at Rs.40,000/- each. However, another sum of Rs.40,000/- was awarded under the head filial consortium, which amounts to duplication. Therefore, learned counsel prayed for allowing the appeal.

8(a).The learned counsel for the respondents per contra submitted that the Tribunal based on the evidence of P.W.2 had held that the accident took place due to the rash and negligent driving by the driver of the bus belonging to the appellants-Transport Corporation and rightly



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rejected the evidence of R.W.1-bus driver. F.I.R was also lodged against the driver of the bus. The learned counsel further submitted that there is no evidence to show that the deceased died due to the head injuries. Therefore, the fact that the deceased did not wear helmet cannot be presumed. The compensation awarded by the Tribunal is just and reasonable and prayed for dismissal of the appeal.

8(b).Learned counsel for the respondent submitted that pending appeal the 4th respondent died and there is no legal representatives for the 4th respondent other than the respondents herein.

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

(i) Whether the Tribunal was right in fixing the entire negligence on the driver of the bus belonging to the appellant/Transport Corporation?

(ii) Whether the Tribunal was right in fixing the just and reasonable compensation?

10.The respondents examined P.W.2-eye witness to the occurrence



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and marked Ex.P1-F.I.R, to prove the manner in which the accident took place. The Tribunal based on the evidence had found that the deceased was standing near his bike and the driver of the offending vehicle, who came in a same direction rammed into the motorcycle of the deceased. The Tribunal also found that the accident took place entirely due to the rash and negligent act of the driver of the bus belonging to the appellant-Transport Corporation. Learned counsel for the appellant was unable to find out any infirmity in the said findings. As regards contributory negligence for not wearing helmet, the appellant had not let in any evidence to show that the deceased died only due to the head injury and hence not wearing of the helmet contributed to the death. In the absence of any such evidence, this Court cannot presume that the deceased did not wear helmet. Hence, the findings of the Tribunal fixing the entire negligence on the appellant-Transport Corporation cannot be faulted and hence the same is confirmed.

11.As regards the quantum of compensation, learned counsel for the respondents/claimants is unable to point out any reason for the compensation awarded under the head filial consortium as the



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respondents were already awarded Rs.40,000/- each towards love and affection. As rightly contented by the learned counsel for the appellant, the Tribunal ought not to have awarded compensation twice under the head love and affection as well as filial consortium. Hence, the award under the head filial consortium is set aside. The amounts awarded by the Tribunal under other heads is just and reasonable and hence the same are confirmed. 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	23,62,584	23,62,584	Confirmed
2.	Loss of Love and Affection	1,60,000	1,60,000	Confirmed
3.	Funeral Expenses	15,000	15,000	Confirmed
4.	Loss of Estate	15,000	15,000	Confirmed
5.	Filial Consortium	40,000	-	Set aside
6.	Transportation	10,000	10,000	Confirmed
	Total	26,02,584	25,62,584	Reduced by Rs.40,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.26,02,584/- is hereby reduced to Rs.25,62,584/- together with interest



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at 6% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant/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 a receipt of copy of this Judgment. On such deposit the respondents 1 and 2/claimants 1 and 2 are permitted to withdraw their share of the award amount, on the basis of apportionment fixed by the Tribunal along with proportionate interest and cost, less the amount already withdrawn, if any. The share of the minor 3rd respondent/3rd claimant is directed to be deposited in any one of the nationalised bank, till the minor attains majority. The mother of the 3rd respondent is permitted to withdraw the accrued interest once in three months. The appellant/Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P. No.108 of 2021 if the entire amount has already been deposited by them. No costs. Consequently, connected miscellaneous petition is closed

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rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To:

- 1.The Motor Accident Claims Tribunal,
Special Court-2, Jayankondam.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.
rst

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