



C.M.A.No.4501 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.4501 of 2019,
Cross Objection No.9 of 2023
and
C.M.P.No.25451 of 2019

The Managing Director, APSTRC,
Rep. by Depot Manager,
APSRTC, Sri Kaalahasti,
Chittoor District, AP.

...Appellant in CMA.No.4501/19
Respondent in Cross Obj.No.9/23

Vs.

- 1.M.Chittamma
- 2.K.Saiprakash
- 3.Minor K.Sureka
- 4.Minor K.Vihnuprasad
- 5.K.Ranamma

[Minors 3 and 4 are represented by
their mother/ 1st respondent]

...Respondents in CMA.No.4501/19
Cross Appellants in Cross Obj.No.9/23



C.M.A.No.4501 of 2019

Prayer in C.M.A.No.4501 of 2019: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the order/ decree passed by the subordinate Judge, Motor Accident Claims Tribunal, Tirutani, in M.C.O.P.No.89 of 2016 dated 13.10.2017.

Prayer in Cross Objection No.9 of 2023: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure to set aside the award passed in M.C.O.P.No.89 of 2016 dated 13.10.2017 on the file of the subordinate Judge, Motor Accident Claims Tribunal, Tirutani,

For Appellant in CMA.No.4501 of 2019 and

Respondent in Cross Obj.No.9 of 2023 : Mrs.G.V.Shoba

For Respondents in CMA.No.4501 of 2019 and

Cross Appellants in Cross Obj.No.9 of 2023 : Mr.K.R.Ponnusamy
for M/s.Anand & Suryas

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Transport Corporation is on appeal aggrieved by the award of the Motor Accident Claims Tribunal, Tirutani granting a sum of Rs.28,78,000/- for the death of one Venkatesh in a road accident that occurred on 05.03.2016.



2. According to the claimants, the bus belonging to the appellant

Transport Corporation bearing Reg.No.AP-29-Z-0021 driven by its driver in a rash and negligent manner came in opposite direction and dashed against the deceased who was riding the two wheeler. Claiming that the accident occurred due to the rash and negligent driving of the driver of the bus and that the deceased was earning a sum of Rs.25,000/- per month, the claimants, who are the parents, wife and children of the deceased sought for compensation of Rs.36,00,000/-.

3. The claim was resisted by the Corporation contending that the accident did not occur in the manner suggested by the claimants. The deceased who was riding the two wheeler also contributed to the accident. The quantum of compensation claimed was termed as excessive.

4. Before the Tribunal, the 1st claimant was examined as PW.1, one Umapathy, eye witness was examined as PW.2 and the employer of the deceased was examined as PW.3. Exs.P1 to P11 were marked on the side of the claimants. The driver of the bus was examined as RW1. The judgment of the criminal Court acquitting the driver was marked as Ex.R1.



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5. The Tribunal upon consideration of the evidence placed before it concluded that the accident occurred due to the rash and negligent driving of the driver of the bus. The Tribunal relied upon the evidence of PW.2 and the contents of Ex.P1 - First Information Report, Ex.P2 - charge sheet and Ex.P5 - Rough Sketch to conclude that the negligence was on the part of the driver of the bus.

6. On the quantum, the Tribunal took the income of the deceased at Rs.750/- per day, as deposed by PW.3 employer. It took the total number of working days at 24 days per month and arrived at the monthly income at Rs.18,000/-, it adopted a deduction of 1/4th towards personal expenses and a multiplier of '14'. On the said basis, the Tribunal arrived at the loss of dependency at Rs.22,68,000/-. The Tribunal awarded a sum of Rs.1,00,000/- for loss of consortium for the wife / 1st claimant and Rs.5,00,000/- for loss of love and affection for all the five claimants, at Rs.1,00,000/- each. It also awarded a sum of Rs.10,000/- towards funeral expense. Thus, the total compensation awarded by the Tribunal worked out



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to Rs.28,78,000/-. Aggrieved by the award, the Transport Corporation filed an appeal and the claimants have filed a cross objection seeking enhancement.

7. We have heard Mrs.G.V.Shoba, learned counsel appearing for the Transport Corporation and Mr.K.R.Ponnusmy for M/s.Anand and Suryas, learned counsel appearing for the claimants.

8. Mrs.G.V.Shoba, learned counsel appearing for the Transport Corporation would draw out attention to the contents of the First Information Report to contend that the deceased came out of the petrol bunk which was situate on the left suddenly and crossed over to the right side, resulting in the bus driver being unable to control the vehicle and thus caused the accident due to his own negligence. She would also contend that from the evidence, some negligence should have been apportioned to the driver of the two wheeler. She would also submit that the Tribunal ought not to have adopted Rs.750/- per day as income, in the absence of any documentary evidence to establish such income.



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9. Contending contra Mr.K.R.Ponnusamy, learned counsel appearing for the claimants would submit that though in the First Information Report it is stated that the deceased came out from the petrol bunk, the other evidence on record particularly Ex.P5 sketch and the evidence of the eye witness PW.2 would demonstrate that the accident occurred only due to the negligence of the driver of the bus. He would also point out that the contention now urged by the Transport Corporation to the effect that the deceased two wheeler rider emerged from the petrol bunk all of a sudden, was never put forth before the Tribunal. In order to buttress his contention he would refer to the evidence of the driver who was examined as RW1.

10. On the quantum, the learned counsel for the claimants would submit that the Tribunal having accepted the evidence of the owner that he is paying Rs.750/- per day to the deceased ought to have fixed the monthly income at Rs.25,000 /- and not at Rs.18,000/-.



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11. We have considered the rival submissions. True there is a statement in the First Information Report that the deceased came out of the petrol bunk, but, it does not say that the deceased suddenly came out of the petrol bunk. Ex.R5 sketch shows that the accident has occurred on the extreme right side of the road, which is wrong side for the bus. If the contention of the Transport Corporation that the two wheeler emerged from the petrol bunk which is on the left side of the road and collaied with the bus, the accident must have happened on the left side of the road and damage would have caused to the left side of the bus.

12. The MV Report marked as Ex.P6 shows that the damage to the bus was on the right side only. Further the evidence of PW.2 is to the effect that the deceased was riding the two wheeler from Tirupathi to Pallipat and the bus was proceeding in the opposite direction. The spot where the accident occurred is shown in Ex.P5 plan is the proper side for the two wheeler and wrong side for the bus.



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13. Additional factor that should be pointed out is that the evidence of the driver of the bus was RW1, he had never spoken about the two wheeler coming out of the petrol bunk suddenly. His proof affidavit is to the effect that the deceased drove his two wheeler in the opposite direction and dashed against the bus. Even in the cross examination of PW.2 no suggestion has been put by the learned counsel for the Transport Corporation to the effect that the two wheeler emerged from the petrol bunk suddenly, thereby causing the accident. In the absence of any suggestion to PW.2 and in the light of the evidence of PW.1 we are unable to accept the counsel for the Transport Corporation to the effect that the emergence of two wheeler from the petrol bunk suddenly was the cause of the accident. We are therefore unable to fault the Tribunal for having come to the conclusion that the driver of the bus was responsible for the accident.

14. Adverting to the quantum, the Tribunal has accepted the evidence of PW.3 employer to the effect that he was paying Rs.750/- per day as wages to the deceased who was working as a painter. The accident has



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occurred during the year 2016 and the wages of Rs.750/- to a skilled worker is very reasonable. However, it cannot be taken that a skilled worker works for all 30 days. There must be some allowance for holidays. Therefore, the Tribunal was justified in fixing 24 working days per month. We do not see any reason to interfere with the discretion exercised by the Tribunal.

15. While the Tribunal has rightly deducted 1/4th towards personal expenses and applied multiplier '14', it had not added any amount towards future prospects as mandated by the Hon'ble Supreme Court in ***National Insurance Co. Ltd Vs. Pranay Sethi and others*** reported in **2018 (1) LW 331**. As per the judgment of the Hon'ble Supreme Court 25% has to be added towards future prospect on the facts of this case. If 25% is added to Rs.18,000/-, the monthly income would be Rs.22,500/-. If we are to deduct 1/4th towards personal expenses and adopt a multiplier '14',

$$22,500 \times \frac{1}{4} = 5625 \quad [22500 - 5625 = 16875]$$

$$16875 \times 12 \times 14 = 28,35,000$$



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16. As already pointed out, the Tribunal has awarded a sum of Rs.1,00,000/- to the claimant for loss of consortium and another Rs.5,00,000/- to the claimants 1 to 5 for loss of love and affection. This is clearly against the dictum of Hon'ble Supreme Court. Thus, the 1st claimant would be entitled to Rs.40,000/- towards loss of consortium. The claimants 2 to 5 would be entitled to Rs.40,000/- each towards loss of love and affection. The Tribunal has not awarded anything towards loss of estate and transportation. A sum of Rs.15,000/- towards loss of estate and Rs.5,000/- towards transportation is awarded. The award of Rs.10,000/- towards funeral expenses is confirmed. Thus, the compensation is worked out as follows:-

<i>Heads</i>	<i>Award Amount</i>
Loss of Dependency	Rs.28,35,000/-
Loss of Consortium	Rs. 40,000/-
Loss of Love and Affection (Rs.40,000/- for each claimants 2 to 5)	Rs. 1,60,000/-
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 10,000/-
Transportation	Rs. 5,000/-



<i>Heads</i>	<i>Award Amount</i>
Total	Rs.30,65,000/-

17. In fine, the **Civil Miscellaneous Appeal is dismissed** and the **cross objection is allowed in part** fixing the compensation payable at Rs.30,65,000/-. The award will carry interest at 7.5% per annum. The compensation is apportioned as follows:-

The 1st claimant would be entitled to Rs.11,87,000/- with proportionate interest.

The claimants 2 to 4 would be each entitled to Rs.5,00,000/- with proportionate interest and

The 5th claimant would be entitled to Rs.3,78,000/- with proportionate interest.

18. It is stated that the Corporation has deposited 50% of the award amount. The Corporation is granted eight (8) weeks time to deposit the balance amount as per the enhanced award. The shares of the minor claimants is directed to be deposited in an interest bearing Fixed Deposit in



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any Nationalized Bank with auto renewal clause, till they attain majority.

On attaining majority, the minor claimants are permitted to withdraw their shares upon production of proof for attaining majority before the Tribunal.

The other claimants are permitted to withdraw their respective shares. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) (S.S.K.,J.)
03.02.2023

dsa

Index : No
Internet : Yes
Neutral Citation : No
Speaking order



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To:-

WEB COM The Subordinate Judge,
Motor Accident Claims Tribunal,
Tirutani.



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R.SUBRAMANIAN, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

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Cross Objection No.9 of 2023**

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