



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.11.2023

CORAM

THE HONOURABLE Mr. JUSTICE M.DHANDAPANI

C.M.A. NO. 987 of 2020

and

CROSS OBJECTION NO. 93 of 2023

C.M.A. NO. 987 of 2020

The Managing Director,
Metropolitan Transport Corporation Ltd.,
No.2, Pallavan Salai,
Chennai-2.

.. Appellant

- Vs -

1. T.A.Divya
2. T.A.Iswarya
3. T.A.Sakthi
4. T.A.Vasanthi
5. T.R.Sarojini

.. Respondents

CROSS OBJECTION NO. 93 OF 2023

1. T.A.Divya
2. T.A.Iswarya
3. T.A.Sakthi
4. T.A.Vasanthi
5. T.R.Sarojini
- T.R.Radhakrishnan (Deceased)

.. Cross Objectors

- Vs -



The Managing Director,
Metropolitan Transport Corporation Ltd.,
No.2, Pallavan Salai,
Chennai-2.

... Respondents

Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicles Act to set aside the fair and decretal order dated 24.03.2016 passed in MCOP.No.281 of 2006 by the learned II Additional District Judge, Motor Accident Claims Tribunal, Tiruppur.

Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure to enhance the compensation amount by allowing the cross appeal with 9% interest and cost.

For Appellant : Mr. S.S.Swaminathan
in CMA. No.987 of 2020
Mr.Ma.pa.Thangavel in X. Obj. 93 of 2021
For M/s.M.Lokesh

For Respondents : Mr. S.S.Swaminathan
in X. Obj. 93 of 2021
Mr.Ma.pa.Thangavel
For M/s.M.Lokesh
in CMA. No.987 of 2020

COMMON JUDGMENT

While the appeal has been filed by the insurance company questioning the negligence and challenging the quantum of compensation awarded by the Tribunal as excessive, the cross objection has been filed by the claimants



challenging the inadequate compensation awarded by the Tribunal.

WEB COPY

2. The deceased, aged 50 years, was working as Chartered Accountant, earning a sum of Rs.15,000/- per month, died in the accident that happened on 19.05.2005. The legal heirs of the deceased, viz., children, wife and parents have filed claim petition claiming compensation for a sum of Rs.40,00,000/-.

3. The Tribunal, considering the oral and documentary evidence, awarded a sum of Rs.19,61,000/- under various heads.

4. Questioning the liability and the quantum of compensation awarded by the Tribunal is under challenge by the Insurance company as well as by the claimants.

5. Learned counsel appearing for the Transport Corporation submits that there was no rash and negligent driving by the driver of the Corporation Bus. The bus driven by its driver has followed the traffic rules and regulations. At about 15.50 hours, when the bus was taking a right turn



from Usman Road to Prakasam Road, the deceased who was travelling in the bus, stepped down from the moving bus through the rear foot board and fell down on the road and sustained injuries and he was taken to the hospital for treatment. Later he died due to the injuries. The accident had happened due to negligence act of the deceased. The Tribunal failed to consider the same, awarded huge compensation and fastened the liability as against the transport Corporation, which is not sustainable. Hence, the learned counsel prays that this Court may interfere with the award and allow this petition.

6. Per contra, learned counsel appearing for the claimants/cross objectors contends that the deceased was practicing as a Chartered Accountant and earning a sum of Rs.15,000/- per month. The Tribunal has awarded compensation to the claimants, which is very low. Further, the Tribunal ought to have been awarded compensation towards loss of estate, funeral expenses and consortium to the wife. Therefore, this Court may interfere with the award and enhance the compensation.



7. This Court gave its anxious consideration to the arguments advanced by the learned counsel appearing on either side and also perused the oral and documentary evidence and the judgment passed by the Tribunal.

8. The facts of the case are not in dispute. When the deceased, aged about 50 years, at the time of accident, was travelling in the appellant Transport Corporation Bus bearing Reg. no. TN 01 N 2250, driven by its driver in a rash and negligent manner, due to which, the deceased died. The claimants, who are the dependents of the deceased, filed a claim petition claiming compensation. The Tribunal has awarded compensation to the claimants payable by the Transport Corporation. Challenging the said award, both the claimants and insurance company have come up before this Court.

9. The primary contention raised by the learned counsel appearing for the appellant is that the entire negligence is on the part of the deceased. When the bus was turning right side, the deceased was trying to step down from the bus and therefore, he fell down and sustained injuries and died. He



would therefore contend that the Tribunal erred in fastening the liability on the Transport Corporation.

10. Before the Tribunal, on the side of the claimants, PW2/ independent witness, who travelled along with the deceased, was examined. He clearly stated that due to rash and negligent driving of the driver of the bus, the deceased person thrown away from the bus and sustained fatal injuries and died in the hospital. In order to disprove the same, the Transport Corporation have examined the Conductor of the bus/RW1, who is interested witness. He stated that he has instructed the deceased to come inside the bus and without listening the same, the deceased was trying to step down when the bus was running.

11. It is pertinent to note that to prove the case of the appellant, the driver has to examined before the Tribunal and the appellant has not examined the driver as witness and the witness of the RW1 is not acceptable. PW2 who is the independent witness, specifically stated that due to rash and negligent driving of the driver of the bus, the deceased was fell down from the bus and the said PW2 is no way connected with the deceased



person.

WEB COPY

12. The Tribunal has elaborately assessed the issue and rightly awarded compensation in favour of the claimants, which cannot be interfered with in respect of negligent aspect. Insofar as the quantum is concerned, the Tribunal has wrongly awarded pain and sufferings and transportation and attender charges to the claimants, which they are not entitled to and therefore, this Court is inclined to remove the said heads from the award and this Court is inclined to modify the award of compensation under the head viz., funeral expenses, loss of estate and medical bills. Accordingly, the award passed by the Tribunal is modified as follows:



WEB COPY

Sl.No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of income	14,85,000/-	14,85,000/-
2	Loss of Love and affection to the wife	1,00,000	2,00,000 (5 persons * Rs.20,000/-)
3	Loss of Love and affection to the children	1,50,000	
4	Loss of Love and affection to the mother	20,000	
5	Funeral exp.	10,000	15,000
6	Medical exp.	1,06,000	1,96,900
7	Attender charges	20,000	
8	Pain & Sufferings	50,000	
9	Transportation	10,000	
10	Transportation to hospital	10,000	...
11	Future prospects		1,48,000
12	Loss of estate		15,000/-
	Total	19,61,000	20,59,000

13. In view of the above discussion and modification, both the civil miscellaneous appeal and the cross objection is disposed of. However, there shall be no order as to costs.



14. The Transport Corporation is directed to deposit the modified award amount along with interest at 7.5% p.a., from the date of claim petition till date of deposit, less the amount, if any, already deposited, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount as per the permissible apportionment to the bank account of the claimants through RTGS within a period of two weeks thereafter.

28.11.2023

Index : Yes / No

Internet : Yes / No

rli

To

The II Additional District Judge, Motor Accident Claims Tribunal, Tiruppur.



WEB COPY



10

M.DHANDAPANI, J.

rli

C.M.A. NO. 987 of 2020
CROSS OBJECTION NO. 93 of 2023

28.11.2023