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*C.M.A.(MD).No.156 of 2023
and
Cross Objection (MD).No.14 of 2023*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

**C.M.A.(MD).No.156 of 2023
and
Cross Objection (MD).No.14 of 2023
and
C.M.P.(MD).Nos.5173 and 1507 of 2023**

C.M.A.(MD).No.156 of 2023

Tamil Nadu State Transport Corporation
represented by its Managing Director,
having office at
Kumbakonam Division IV,
Pudukottai.

... Appellant

-Vs-

- 1.Yasmin
- 2.Minor Aneesh Fathima
- 3.Minor Ameerkhan
- 4.Minor Asmabenazir
- 5.Nagoorbeevi

The respondents 2 to 4 are declared as major
as per the order of this Court dated 20.04.2023
in C.M.P.(MD).No.5175 of 2023 in
C.M.A.(MD).No.156 of 2023.

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The first respondent is discharged from the guardianship of the respondents 2 to 4 as per the order of this Court dated 20.04.2023 in C.M.P.(MD).No.5176 of 2023 in C.M.A.(MD).No.156 of 2023.

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order passed in M.C.O.P.No.1496 of 2009 on the file of Motor Accident Claims Tribunal, VI Additional District Court, Madurai, dated 21.08.2019.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.P.Selvakamatchi

Cross Objection No.14 of 2023

- 1.Yasmin
- 2.Minor Aneesh Fathima
- 3.Minor Ameerkhan
- 4.Minor Asmabenazir
- 5.Nagoorbeevi (died)

The petitioners 2 to 4 are declared as major as per the order of this Court dated 20.04.2023 in C.M.P.(MD).No.5175 of 2023 in C.M.A.(MD).No.156 of 2023.

The first petitioner is discharged from the



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guardianship of the petitioners 2 to 4
as per the order of this Court dated 20.04.2023
in C.M.P.(MD).No.5176 of 2023 in
C.M.A.(MD).No.156 of 2023.

...Petitioners

-Vs-

Tamil Nadu State Transport Corporation
represented by its Managing Director,
having office at
Kumbakonam Division IV,
Pudukottai.

... Respondent

PRAYER: The Cross Objection is filed under Order 41 Rule 22 of C.P.C., to allow this Cross Objection and modify the award passed in M.C.O.P.No.1496 of 2009 on the file of Motor Accident Claims Tribunal, VI Additional District Judge, Madurai dated 21.08.2019 and enhance the compensation amount.

For Cross Objector : Mr.P.Selvakamatchi

For Respondents : Mr.P.M.Vishnuvarthanan

COMMON JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal, VI Additional District Judge, Madurai in M.C.O.P.No.1496 of 2009, granting Rs. 12,00,000/- as compensation, the State Transport Corporation has filed this appeal



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and the claimants have filed this Cross Objection challenging the award passed by the Tribunal, on the ground that the Tribunal has not awarded any amount towards conventional damages and the Tribunal has restricted the claim at Rs.12,00,000/-, despite the compensation arrived at Rs.12,84,000/-.

2. The brief facts leading to the filing of the claim petition before the Tribunal are as follows:

The deceased Abdul Khadar is the husband of the first petitioner, father of the petitioners 2 to 4 and son of the fifth petitioner. At the time of accident, he was aged about 38 years and working as a Clerk in the Rural Development Department and drawing a sum of Rs.6,000/-. On 03.06.2009, at about 4.50 p.m., while he was riding a motorcycle from Manakatoor, Dindigul District in a cautious manner, the offending vehicle bearing Registration No.TN55N 0540 driven by the driver in a rash and negligent manner and dashed against the two wheeler driven by the deceased. As a result, the deceased succumbed to injuries.



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3. The contention of the State Transport Corporation is that the driver of the bus driven the vehicle in a cautious manner. However, the deceased drove the vehicle in a rash and negligent manner and dashed against the bus. Hence, the liability has been disputed.

4. Before the Tribunal, on the side of the claimants, P.Ws.1 and 2 examined and Exs.P1 to P8 were marked and on the side of the respondent, the driver of the bus was examined as R.W.1. After considering the evidence of P.Ws. 1 and 2, particularly P.W.2, eyewitness and the documentary evidence / Ex.P1/First Information Report, Ex.P4/MV Report and Ex.P5/ Copy of the final report, the Tribunal has come to the conclusion that only the driver of the offending vehicle driven the bus in a rash and negligent manner, which resulted in accident and fixed the compensation at Rs.12,00,000/-. Challenging the same, the present appeal has been filed by the Transport Corporation and the Cross Objection has been filed by the claimants.



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5. The only contention of the learned counsel for the appellant/Transport Corporation is that the Tribunal has not considered the stand of the Transport Corporation that there was no negligence on the part of the driver of the bus.

6. In the light of the above submission, the points for consideration in this appeal are (i) Whether the Tribunal is right in fixing the negligence on the part of the driver of the bus? (ii) Whether the compensation fixed by the Tribunal is just and reasonable and required to be enhanced ?

7. The evidence of P.Ws.1 and 2 indicate that the deceased was travelling in a motorcycle and the accident took place in the main road. P.W.2, the eyewitness to the occurrence also clearly spoken about the manner in which the offending vehicle was driven by the driver. Besides that, Ex.P1 / First Information Report is also filed against the driver of the bus and the final report also filed against him. Considering the probabilities, the Tribunal has come to the conclusion that only the driver of the bus drove the vehicle in a rash and negligent



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manner and dashed against the two wheeler of the deceased. This Court is of the view that merely on the basis of the oral testimony of R.W.1, who is already arrayed as accused, it cannot be presumed that the accident had occurred due to rash and negligent driving of the deceased, when all other documents clearly established that the accident was occurred only due to the rash and negligent driving of the driver of the bus. Hence, the finding of the Tribunal against the driver of the offending vehicle does not require any interference.

8. As far as the compensation is concerned, admittedly the deceased was aged about 38 years, which is not disputed and he was also drawing a sum of Rs. 6,000/- working as a Clerk in Rural Development Department, which is also not disputed and the Tribunal has fixed a sum of Rs.6,000/- as monthly income and added 40% towards future prospects, as per the dictum laid down by the Hon'ble Apex Court and deducted 1/5th share towards his personal expenses and applied '15' multiplier and arrived a sum of Rs.12,09,600/- towards loss of dependency. Further, the Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium to the first petitioner, Rs.15,000/- towards loss of estate, Rs.4,000/-



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towards transportation charges, Rs.2,000/- towards damages to the property and Rs.15,000/- towards funeral expenses and arrived a total compensation of Rs. 12,84,600/-. However, the Tribunal has restricted the claim at Rs.12,00,600/-, since the respondents have claimed only a sum of Rs.12,00,000/- as compensation in the claim petition.

9. This Court is of the view that merely claiming Rs.12,00,000/- as compensation may not be a ground to reject the just compensation arrived as per law. Accordingly, Rs.12,84,600/- originally fixed by the Tribunal is liable to be paid by the Transport Corporation. That apart, the Tribunal has not awarded any amount towards conventional damages to the children of the deceased viz., the claimants 2 to 4. Accordingly, a sum of Rs.1,20,000/- is awarded towards conventional damages and the total compensation payable would be Rs. 14,04,600/- (Rs.12,84,600 + 1,20,000/-). The respondent/Transport Corporation is directed to deposit the entire award amount within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the first claimant is entitled for Rs.2,04,600/- and the claimants 2 to 4 are entitled for Rs.4,00,000/- each.



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10. In the result, the Civil Miscellaneous Appeal filed by the Transport Corporation is dismissed and the Cross Objection filed by the claimants is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

20.04.2023

akv

To

The Motor Accident Claims Tribunal,
VI Additional District Court,
Madurai.



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N.SATHISH KUMAR, J.

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