



C.M.A.(MD)No.244 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.02.2023

Delivered On : 28.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.244 of 2020

Tamil Nadu State Transport Corporation
through its Managing Director,
Having its office at Bye pass Road,
Madurai – 625 016.

.. Appellant / Respondent

Vs.

1.Devi

2.Muthukrishnan

3.Minor.Priyanka

(3rd respondent is minor rep. by her mother

and natural guardian the first respondent) .. Respondents 1 to 3 /Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.113 of 2016, dated 02.04.2019, on the file of the Motor Accidents Claims Tribunal / Special District Court, Madurai.



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C.M.A.(MD)No.244 of 2020

For Appellant

: Mr.P.Prabhakaran

For Respondents

: Mrs.M.Krishnaveni,

legal aid counsel for R3

: No appearance for R1 & R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No.113 of 2016, dated 02.04.2019, on the file of the Motor Accidents Claims Tribunal / Special District Court, Madurai. The appellant herein is the respondent and the respondent herein is the claimant in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition, in M.C.O.P.No.113 of 2016, is as follows:

On 08.03.2016, at about 02.30 pm., when the deceased – Ragul krishnan was travelling as pillion rider, in a two wheeler, bearing Registration No.TN-58-AF-6518, near Nagamalai Pudukkottai Cremation ground, a bus bearing Registration No.TN-58-N-0626 came in a rash and negligent manner, dashed against the two wheeler from behind. The deceased sustained injuries, he was taken to Government Rajaji Hospital, Madurai and he died on his way



C.M.A.(MD)No.244 of 2020

to the Hospital. The deceased was a Student, studying first year Degree course. He was a part time employee in C.M.Medical Star Institution and he was earning Rs.7,000/- per month. The petitioners are his dependants and they claim a sum of Rs.15,00,000/- as compensation.

3. A brief substance of the counter filed by the respondent, in M.C.O.P.No.113 of 2016, is as follows:-

The bus was driven by its driver in a careful and cautious manner. It was the deceased, who drove the two wheeler in a rash and negligent manner and dashed against the bus. Three persons travelled in a two wheeler and the rider of the two wheeler could not control the vehicle. The rider was not having valid driving licence. The owner and the insurance company of the two wheeler are necessary parties to the case. The age and income of the deceased are to be proved.

4. Two (2) witnesses were examined, 10 documents were marked on the side of the petitioners. One (1) witness was examined and no document was marked on the side of the respondent. After considering both sides, the Tribunal awarded a sum of Rs.15,11,800/- as compensation and after deducting 30% (Rs.4,53,540/-) towards the contributory negligence of the



C.M.A.(MD)No.244 of 2020

deceased, the Tribunal awarded a sum of Rs.10,58,260/- is awarded to the claimants..

5. Against the award, the respondent - appellant has filed this appeal on the following grounds:-

The Tribunal is wrong in fixing the entire negligence on the appellant – Transport Corporation. It was the rider of the two wheeler, who was rash and negligent and he was not having a valid driving licence. The vehicle was driven with two pillion riders, which is against the motor vehicle Rules. The Tribunal wrongly fixed 70% responsibility on the driver of the Corporation, which is wrong. Without any specific proof of income, the Tribunal has fixed the monthly income as Rs.9,000/-, which is excessive.

6. The Tribunal has awarded Rs.1,20,000/- towards loss of love and affection, Rs.15,000/- towards funeral expenses, Rs.15,000/- towards transport expenses, Rs.1,000/- towards loss of articles, which are all excessive.

7. On the side of the appellant, it is stated that the deceased travelled as a pillion rider, in a vehicle was driven by one-Muthukrishnan and that there was one more person travelled in the two wheeler. Three persons



C.M.A.(MD)No.244 of 2020

travelled in a two wheeler is against the motor vehicle Rules. Due to overspeed, one of the pillion riders fell down and he succumbed to the injuries. The rider was not having valid driving licence, but, the Tribunal is wrong in fixing 70% negligence on the part of the Corporation bus driver.

8. On the side of the appellant, it is stated that the rider and the pillion riders are all responsible for the accident. To substantiate this claim, the appellant counsel cited the following judgments:

(i) Judgment of this Court reported in **2003-1-MLJ-482**

(Sasikala Ramalingam V. Sami Iyhia Nattar)

(ii) Judgment of the High Court of Kerala reported in

2017-1-TNMAC-484 (Oriental Insurance Company V. Johnson)

9. On the side of the respondents, it is stated that it is the duty of the appellant to prove that the rider of the two wheeler was not having valid driving licence. The bus hit the two wheeler from behind and there is no contributory negligence on the part of the rider of the two wheeler.

10. P.W.2 was examined as an eye witness. Copy of the F.I.R was marked as Ex.P1. The driver of the bus was examined as R.W.1. Copy of



C.M.A.(MD)No.244 of 2020

rough sketch or observation mahazer was not marked on the side of the claimant or the appellant. P.W.2 has deposed that the bus hit the two wheeler from behind. It is seen that three persons travelled in a two wheeler at the time of accident and the deceased was not wearing helmet. In the above circumstance, it is decided that 75% negligence is fixed on the part of the bus driver and 25% negligence is fixed on the part of the deceased.

11. On the side of the appellant, it is stated that in the claim petition, it was mentioned that the deceased was earning Rs.7,000/- per month. No proof of income was filed on the side of the claimants. Even then, the Tribunal has fixed the monthly income as Rs.9,000/-, which is excessive.

12. On the side of the respondents, it is stated that only based on the notional income prevailing at the time of accident, the Tribunal has fixed the monthly income as Rs.9,000/- and the same is to be confirmed.

13. It is seen that in the claim petition itself it was mentioned that the income of the deceased was Rs.7,000/- p.m.. Hence, the monthly income of the deceased is fixed as Rs.7,000/-. The age of the deceased at the time of accident was 18 years and being a Bachelor, 50% towards his own expenses is



C.M.A.(MD)No.244 of 2020

to be deducted. After deducting 50% (Rs.3,500/-), the deceased might have contributed Rs.3,500/- per month to his family members.

14. Considering the age of the deceased, future prospects of 40% is to be added and after adding 40% (Rs.1,400/) towards future prospects and after applying multiplier '18', the loss of income is calculated as Rs. 10,58,400/- (Rs.4,900/- X 12 X 18).

15. On the side of the appellant, it is stated that the sister of the deceased is not a dependant, but, the Tribunal has awarded Rs.40,000/- towards loss of love and affection for each of the claimant, which is excessive. On the side of the respondents, it is stated that the siblings are also entitled to claim compensation under the head of loss of love and affection. As per the dictum of the Hon'ble Supreme Court in **Pranay Sethi's** case, the claimants are entitled to Rs.70,000/- as conventional charges.

16. The total compensation is calculated as follows:-

Loss of income	:	Rs. 10,58,400/-
Conventional charges	:	Rs. 70,000/-
Total compensation	:	Rs. 11,28,400/-



C.M.A.(MD)No.244 of 2020

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17. After deducting 25% (Rs.2,82,100/-) towards contributory negligence, the claimants are entitled to **Rs.8,46,300/-** as compensation.

18. This Appeal is partly allowed. No costs.

(i) The compensation is reduced from Rs.10,58,260/- to Rs.8,46,300/-.

(ii) The first claimant – mother of the deceased is entitled to Rs.3,00,000/- as compensation with proportionate interest and costs; The second claimant – father of the deceased is entitled to Rs.2,46,300/- as compensation with proportionate interest; The third claimant (minor)- sister of the deceased is entitled to Rs.3,00,000/- as compensation with proportionate interest;

(iii) The appellant - Transport Corporation, is directed to deposit the entire compensation of **Rs.8,46,300/-** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. **Excess amount, if any, shall be refunded to the appellant – Transport Corporation.**



C.M.A.(MD)No.244 of 2020

WEB COPY

(iv) On such deposit being made, the respondents 1 & 2 herein / major claimants are permitted to withdraw their share with proportionate interest and costs as apportioned by this Court, on filing proper petition before the Tribunal, less any amount, if already withdrawn by them. The Tribunal is directed to deposit the compensation amount of the third respondent herein/ minor claimant in any one of the Nationalised Banks, in a Fixed Deposit scheme, till she attains majority. The mother and guardian of the minor claimant-first respondent herein, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The Claimants are not entitled for interest for the default period, if there is any default. No costs.

28.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1.The Motor Accidents Claims Tribunal /
Special District Court, Madurai.



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C.M.A.(MD)No.244 of 2020

R. THARANI, J.

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2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.244 of 2020

28.03.2023