



C.M.A(MD)Nos.309 and 310 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)Nos.309 and 310 of 2021

and

C.M.P.(MD) Nos.2550 and 2551 of 2021

M/s.Tamil Nadu State Transport Corporation Limited,
rep by its Managing Director,
Door. No.2, South Bypass Street,
Vannarapettai,
Tirunelveli 627 003.

... Appellant in both CMAs.,

.vs.

Venkatraman

... Respondent in C.M.A(MD)No.309 of 2021

1.Venkatraman

2.Minor.Kishore Santhosh

3.Minor.Suba Sobika

... Respondents in C.M.A(MD)No.310 of 2021

COMMON PRAYER: Civil Miscellaneous Appeals filed under
Section 173 of the M.V.Act, 1988, to call for the records relating to the



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order and decretal order dated 03.12.2019 passed in MCOP.Nos.488 and 491 of 2017 by the Motor Accident Claims Tribunal (Special Sub Court dealing with MCOP Cases), Tirunelveli and to set aside the same.

For Appellant
in both CMAs., :Mr.R.Rajamohan

For Respondent
in both CMAs., :Mr.T.Lenin Kumar

COMMON JUDGMENT

These appeals have been directed against the compensation awarded in MCOP.Nos.488 and 491 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Court dealing with MCOP Cases), Tirunelveli, questioning the liability fixed on the appellant corporation and the quantum of compensation awarded.

2.On 30.04.2017 at about 09.00 pm., the claimant, Venkatraman along with his wife, Usha, the deceased and his son, Kishore Santhosh and Daughter, Subashobika had been travelling in a two wheeler bearing Reg.No.TN 57 AK 9370 in Palayamkottai-Tiruchendur Main Road. When they were going near Government Law College from west to east, the bus bearing Reg.No.TN 72 N 1110 had been driven by its driver in a rash and negligent manner and dashed against the two wheeler. As a



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result, all the four persons sustained serious injuries. As a result of the injuries sustained, Venkatraman's wife, Usha, died. Therefore, four claim petitions have been filed. The claimant, Venkatraman, claimed compensation of Rs.25,00,000/- for the disability suffered by him and Rs. 1,00,00,000/- for the death of his wife.

3.The deceased Usha was a Graduate and completed Diploma in computer course and beautician course. She was also running a Beauty Parlour and was earning a sum of Rs.50,000/- per month. After her death, Venkatraman and his children lost the company of Usha, love and affection and the income generated by her for the welfare of the family. The claimant, Venkatraman, suffered extensive injuries and disability to the tune of 52%.

These claim petitions were resisted by the appellant corporation stating that Venkatraman had driven the two wheeler with 3 persons and that contributed to the accident and that the claim made is also excessive.

A joint trial was conducted in MCOP.Nos.488 to 491 of 2017. In the joint trial, P.W1 to P.W5 were examined and Ex.P1 to Ex.P41 were



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marked. No oral and documentary evidence was produced on the side of the appellant. The learned Tribunal had awarded compensation of Rs. 7,21,960, Rs.33,613/-, Rs.80,933/- and Rs.16,82,800/- in the respective MCOPs.

5.Challenging the liability to pay the compensation on the ground that it is a case of contributory negligence and the quantum of compensation awarded, these appeals are filed.

6.The learned counsel appearing for the appellant submitted that the learned Tribunal has not given any valid reason for fixing the responsibility for the accident on the appellant corporation driver. It was just observed that P.W1's evidence is corroborated by Ex.P1, FIR. The FIR is not a substantive piece of evidence and therefore, it is not enough to conclude on the basis of P.W1's evidence that the appellant corporation driver was responsible for the accident.

7.In reply to this submission, the learned counsel for the respondents submitted that P.W1 is the victim and also the eye witness to the accident. He was riding the two wheeler. He had clearly given the



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evidence as to the manner in which the accident had happened. FIR was registered against the appellant transport corporation driver. When P.W1 clearly narrated the manner in which the accident had happened, as reflected in the FIR, there was no effort made by the appellant even to cross-examine the P.W1 on these aspects. No witness was examined on the side of the appellant to counter the evidence of the respondents with regard to the manner in which the accident had happened. Not even the bus driver was examined.

Considered the rival submissions and perused the records.

8.On going through the oral and documentary evidence, especially the evidence of P.W1 and the averments in the FIR, this Court finds that the transport corporation driver, in an effort to overtake the vehicle, which was going in front of the bus, had dashed against the two wheeler driven by the claimant, Venkatraman. FIR was registered on the basis of the information provided by one Kannan. A combined reading of the evidence of P.W1 and the allegations made in the FIR, clearly establishes the fact that the transport corporation driver was responsible for the accident while trying to overtake the vehicle, which was going in front of



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him. When it is clearly established that the accident had happened while trying to overtake the vehicle, merely because the claimant had travelled in the two wheeler with his wife and two small children, it cannot be concluded that four persons travelling in a two wheeler had contributed to the accident. In this view of the matter, this Court finds that there is no reason to take a different view of the matter with regard to the findings recorded by the learned Tribunal that the appellant corporation driver was responsible for the accident.

9.Coming to the quantum of compensation awarded and challenged in CMA(MD) No.309 of 2021 in MCOP.No.488 of 2017, this Court finds that total compensation of Rs.7,21,960/- was awarded. Claimant, Venkatraman, suffered injuries on his face and legs. His medical treatment records are produced as Ex.P20, 21, 26, 27, 28 and his disability certificate is produced as Ex.P35. Ex.P20, copy of the accident register shows that he had bleeding on his right ear, swelling and tenderness in his right leg and contusion in his right cheek. Initially, he took treatment at Tirunelveli Medical College Hospital and then, moved to Rosemary Mission Hospitals, Tirunelveli. The accident report issued by the Rosemary Mission Hospitals, Tirunelveli shows the following



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injuries:-

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“i) Bleeding from right ear noted.

ii) Swelling and Tenderness over right cheek and around right eye.

iii) Swelling and Tenderness over right leg and right knee.

iv) Tenderness over right side chest.

Generalized Abarasions (front) seen over following areas:

v) 8 x 5 cm – Front of right knee

vi) 5 x 4 cm – Right let below knee

vii) 2 x 1 cm – Front of left knee

viii) 2 x 1 cm– Right little finger.”

10.He was treated as inpatient in Rosemary Mission Hospitals and Research Centre, Tirunelveli. He was treated for the following injuries:-

“i) Fracture Mandible – ORIF done on 04.05.2017.

ii) Right Hemothorax ICD was done on 09.05.2017.

iii) Left ICD was done on 12.05.2017 – minimal drainage.”

11.Based on these medical records, P.W4, the Doctor assessed the disability at 52%. The claimant spent a sum of Rs.3,80,960/- towards



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medical expenses. On the basis of these medical records and disability certificate, the learned Tribunal awarded a sum of Rs.2,08,000/- towards disability compensation at Rs.4,000/- for 52%. Apart from this amount, the Tribunal awarded Rs.3,80,960/- towards medical expenses, Rs. 3,000/- towards attendance charges, Rs.35,000/- towards pain and sufferings, Rs.5,000/- towards transportation to hospital, Rs.30,000/- towards extra nourishment, Rs.35,000/- towards loss of convenience and Rs.25,000/- towards loss of income. When the claimant, Venkatraman, was awarded a sum of Rs.2,08,000/- towards disability, granting of Rs. 35,000/- towards loss of convenience is not appropriate and therefore, the sum of Rs.35,000/- awarded under the head of loss of convenience is set aside. In respect of the amounts awarded in all other heads, they are confirmed.

12.This Court finds from the records that the deceased Usha was a Graduate and a holder of computer course and beautician course certificates. It was submitted that she was working as a Beautician, was running Beauty Parlour and was earning Rs.50,000/- per month. However, the Tribunal had taken the notional income at Rs.9,000/- and added 40% towards future prospectus and arrived at the monthly income



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of Rs.12,600/- (Rs.9,000 + Rs.3,600/-). 1/3 of this amount was deducted towards personal expenses and loss of income was arrived at Rs.8,400/-.

On the basis of the decision made in *Smt.Sarala Varma and others Vs. Delhi Transport Corporation and another* reported in **2009 (2) TNMAC 1 (SC)**, multiplier was adopted and the compensation under the head of loss of dependency and future income was arrived at Rs.16,12,800/- (Rs. 8,400/- x 12 x 16). That apart, the Tribunal awarded a sum of Rs.40,000/- towards loss of consortium towards the claimant, Venkatraman, Rs. 15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses and awarded total compensation of Rs.16,82,800/-. Considering the qualification possessed by the deceased Usha, this Court is of the view that the compensation awarded for the death of the deceased Usha, cannot be held to be excessive and it is just and appropriate. In the said circumstances, this Court confirms the award passed in MCOP.No.491 of 2017.

13.In the result,

i) CMA(MD)No.310 of 2021 is dismissed and the award passed by the Tribunal in MCOP.No.491 of 2017 is confirmed.

ii) CMA(MD)No.309 of 2021 is partly allowed and the award passed by the Tribunal in MCOP.No.488 of 2017 is modified to the



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extent that the compensation of Rs.35,000/- ordered towards loss of convenience alone is set aside. The compensation ordered under the remaining heads at Rs.6,86,960/- stands confirmed.

The apportionment and withdrawal of the award amount shall be as per the order of the Tribunal. Since the 2nd petitioner in MCOP.No.491 of 2017, namely Subashobika, has now attained majority, she is permitted to withdraw her respective share along with accrued interest and costs, on filing of appropriate petition before the Tribunal. Since the appellant Corporation has already deposited the entire award amount, as ordered by the Tribunal, they are permitted to withdraw the sum of Rs.35,000/- [ordered towards loss of convenience], which has now been set aside by this Court, along with the respective accrued interest and costs.

14.No costs. Consequently, connected Miscellaneous Petitions are closed.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No

08.11.2023

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To
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The Special Subordinate Judge,
Tirunelveli.



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G.CHANDRASEKHARAN,J.

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