



C.M.A. (MD)No.16 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.16 of 2023

and

C.M.P.(MD) No.81 of 2023

Tamil Nadu State Transportation
Corporation Limited,
Bye Pass Road,
Madurai,
Through its The Managing Director

... Appellant/ Respondent

Vs.

1.Tmt.Machammal
2.Ananthababu
3.Ganesan
4.Meenakshi

... Respondents / Petitioners

PRAYER: This Civil Miscellaneous Appeal is filed under Section 30 of the Employee Compensation Act, against the judgment and decree dated 19.08.2021 made in M.C.O.P.No.2079 of 2019 on the file of the Motor Accident Claims Tribunal (Special District Judge), (F.A.C.), Madurai.



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For Appellant : Mr.K.Sudalaiyandi
For Respondents : Mr.J.Barathan

JUDGMENT

Challenging the award passed by Motor Accident Claims Tribunal (Special District Judge), (F.A.C.), Madurai, in M.C.O.P.No.2079 of 2019 dated 19.08.2021, the appellant – Insurance Company has filed this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3. The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

The deceased Kanagarj was aged about 53 years at the time of accident. On 19.07.2019 at about 5.15 p.m., while he was standing on the southern side of the road, a bus bearing Registration No.TN-57-N-1855, belonged to the respondent – Transport Corporation, was driven by its driver in a rash and negligent manner and hit the deceased and as a result, he was thrown away and



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sustained injuries, later he died, despite the treatment given in the hospital. Hence, the petitioners have filed the claim petition.

4. The respondent – Transport Corporation has filed a counter affidavit stating that the driver of the respondent's bus driven the bus in cautious manner and the accident occurred only when the deceased tried to cross the road without observing the Bus coming from East to West. Therefore, the deceased was responsible for the accident and hence, the claim petition is liable to be dismissed.

5. Before the Tribunal, on the side of the petitioners, 2 witnesses were examined as P.W.1 and P.W.2 and 10 documents were marked as Ex.P.1 to Ex.P10. On the side of the respondent, one witness was examined as R.W.1 and no document was marked.

6. The Tribunal, after analyzing the entire evidence and materials available on record, has come to the conclusion that the accident was occurred due to the rash and negligent driving of the driver of the respondent bus and awarded a sum of Rs.10,69,200/- as compensation. As against the same, the respondent has filed the present appeal.



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7. The learned counsel appearing for the appellant / respondent – Transport Corporation submitted that the Tribunal ought to have fixed the contributory negligence on the part of the deceased, on the basis of Ex.P4-Rough sketch. He further submitted that the compensation awarded by the Tribunal under the various heads are also excessive and the interest awarded by the Tribunal at 9.5% p.a., is also very excessive and hence, the award of the Tribunal is liable to be interfered with.

8. The learned counsel appearing for the respondents / petitioners submitted that the Tribunal after analyzing the entire materials available on record, has rightly awarded the compensation and therefore, the same is not liable to be interfered with.

9. Heard the learned counsel appearing on either side and perused the materials available on record.

10. Though much emphasis has been made by the learned counsel for the appellant / respondent – Transport Corporation to Ex.P4-Rough sketch to show that the accident was occurred due to the negligent on the part of the deceased, it



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is relevant to note that merely on the basis of the Rough sketch, the contributory negligence cannot be presumed. Whether the Rough sketch was prepared on the spot or whether later it was a matter of evidence. However, the person prepared the Rough sketch not be examined before the Court. Therefore, merely on the basis of the Rough sketch, the contributory negligence cannot be presumed. The appellant, having taken a plea of contributory negligence on the part of the deceased, has not discharged the burden to prove the same. Whereas the trial Court has relied the evidence of P.W.2 as eyewitness and nothing has been elicited in the cross examination of P.W.2 to disprove the same. Such view of the matter, the contention of the learned counsel for the appellant / respondent – Transport Corporation with regard to the contributory negligence cannot be countenanced.

11. With regard to the quantum of compensation awarded by the Tribunal is concerned, this Court is of the view that the Tribunal has rightly fixed a sum of Rs. 8,000/- as notional income and deducted 1/4th towards personal expenses and applied correct multiplier of '11' and added 10% future prospects as per the dictum laid down by the Hon'ble Apex Court in ***National Insurance Insurance CO. Ltd. Vs. Pranay Sethi and others*** reported in ***2017(2) TNMAC 609 (SC)*** and finally awarded a sum of Rs.8,71,200/- towards loss of income, which is very



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reasonable. Further, the Tribunal has awarded a sum of Rs.16,500/- towards loss of estate, a sum of Rs.1,60,000/- towards loss of consortium to the spouse, children and parent and a sum of Rs.16,500/- towards funeral expenses and a sum of Rs.5,000/- towards transport expenses and finally awarded a sum of Rs. 10,69,200/- as compensation, which are also very reasonable.

12. In the above circumstances, this Court does not find any infirmity in the award passed by the Tribunal. However, with regard to the interest awarded by the Tribunal at 9.5% p.a. is concerned, this Court is of the view that the same is excessive and therefore, this Court is inclined to reduce the interest from 9.5% p.a., to 7.5% p.a. Accordingly, the interest awarded by the Tribunal at the rate of 9.5% p.a., is reduced to 7.5% p.a. All other aspects, the order of Tribunal is hereby confirmed.

13. Therefore, this Civil Miscellaneous Appeal is dismissed. The appellant / respondent – Transport Corporation is directed to deposit the entire award amount i.e., Rs.10,69,200/- (Rupees Ten Lakhs Sixty Nine Thousand and Two Hundred only) along with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit and costs within a period of eight weeks from the



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date of receipt of a copy of this judgment, if not already deposited. The excess amount, if any, shall be refunded to the appellant / respondent – Transportation Corporation. The respondents / petitioners are entitled to get the amount as per the apportionment made by the Tribunal. The respondents / petitioners may approach the Tribunal for withdrawal of the said amount, for filing necessary application and if such an application is filed, the Tribunal shall pass orders for withdrawal, after deducting the Court fees, if any payable by them. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Motor Accident Claims Tribunal (Special District Judge),
(F.A.C.), Madurai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR, J.



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