



C.M.A. (MD)No.56 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.56 of 2023
and C.M.P.(MD)No.673 of 2023

The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Periyamilaguparai,
Trichy – 1.

... Appellant / Respondent

Vs.

1.Pappathi
2.P.Mariyappan

... Respondents / Petitioners

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 04.12.2020 made in M.C.O.P.No.1139 of 2014 on the file of the Motor Accident Claims Tribunal, (Special District Court), Tiruchirapalli.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondents : No Appearance



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JUDGMENT

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Challenging the award passed by the Motor Accident Claims Tribunal, (Special District Court), Tiruchirapalli, in M.C.O.P.No.1139 of 2014, dated 04.12.2020, the appellant – Transport Corporation 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 Murugesan is the only son of the petitioners, he was unmarried and he was Driver by profession. While he was driving the Mini Auto, bearing Registration No.TN-57-U-2452 at 5.15 p.m., towards Trichy, a bus bearing Registration No.TN-45-N-1210, belonging to the respondent Transport Corporation, which was driven by its driver in a rash and negligent manner, came in the opposite direction and dashed against the Mini Auto. As a result, the deceased succumbed to injuries. Hence, the petitioners have filed the claim petition.



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4. The respondent – Transport Corporation took a stand before the Tribunal that the bus was driven by its driver in a cautious manner. However, only the Auto Driver driven the Auto in a rash and negligent manner and invited the accident.

5. To substantiate the case before the Tribunal, on the side of the petitioners, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P10 were marked and on the side of the respondent – Transport Corporation, R.W.1 was examined and Ex.R1 was marked.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, has fixed the following compensation with interest at the rate of 7.5% per annum:

S. No	Heads	Amount
1.	Loss of dependency	Rs.10,71,000/-
2.	Filial Consortium	Rs. 70,000/-
3.	Transport Expenses	Rs. 7,000/-
4.	Funeral Expenses	Rs. 10,000/-
5.	Loss of Estate	Rs. 10,000/-
	Total	Rs.11,68,000/-



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Challenging the same, the present Civil Miscellaneous Appeal has been filed by the respondent – Transport Corporation.

7. The learned counsel appearing for the respondent – Transport Corporation submitted that there was negligence on the part of the deceased. According to him, FIR has been filed as against the deceased and therefore, it is clear that there was negligence on the part of the deceased. That apart, though there was no evidence to show that the deceased was a driver by profession, the tribunal fixed the notional income of the deceased at the rate of Rs.7,500/- per month, which is not according to law. He further submitted that the amount awarded under the various heads are also excessive and the same may be reduced.

8. Though notice has been served on the claimants, there is no representation on behalf of them.

9. I have perused the materials available on record.



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10. On a perusal of the records, it is seen that FIR has been filed at first instance as against the deceased. The Tribunal did not rely upon the FIR, since it has been filed by the Conductor of the bus. It is to be noted that the deceased was driving the Mini Auto alone and he succumbed to injuries on the spot. Therefore, filing of the FIR implicating the deceased by the Conductor of the bus is the normal conduct of the human being in order to avoid liability. Therefore, merely because the filing of the FIR by the driver of the offending vehicle or the conductor cannot be a determinative factor to assess the negligence. The Tribunal, by considering the evidence of the eyewitness, has come to the definite conclusion that the accident was occurred due to the rash and negligent driving of the bus driver. The accident had occurred in the Highways. The bus being a heavy vehicle and the feasibility of the road is also very clear and such being a position, certainly, the Court can hold that the accident occurred due to the negligent driving of the driver of the bus. The evidence of the eyewitness has clearly supported the case of the petitioners. Though in the counter affidavit the respondent - Transport Corporation stated that there was no negligence on their part, to prove the same, the driver of the offending vehicle or any of the passenger was not examined. Therefore, the finding the Tribunal, holding that the driver of



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the offending vehicle is responsible for causing accident, is supported by reasons and the same does not require for any interference. With regard to the notional income is concerned, the Tribunal, considering the fact that the deceased was a driver by profession and he was aged about 29 years, has correctly fixed the notional income at Rs.7,500/- per month. Further, The Tribunal has correctly added 40% future prospects, as per the judgment of the Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others* reported in *2017 (2) TNMAC 609 (SC)*. Further, the Tribunal has also deducted ½ towards personal expenses of the deceased, as per the judgment of the *Sarla Verma and others Vs. Delhi Transport Corporation and another* reported in *2009 (2) TN MAC (1) SC*, which is also reasonable.

11. In view of the above, this Court does not find any reason to interfere in the orders of the Tribunal and hence, this Appeal is dismissed and the award dated 04.12.2020, in M.C.O.P.No.1139 of 2014, on the file of the Motor Accident Claims Tribunal (Special District Court), Tiruchirapalli, is hereby confirmed.

12. The respondent / Transport Corporation is directed to deposit the compensation of Rs.11,68,000/- with accrued interest at the rate of 7.5% from the



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date of petition till the date of deposit and costs within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. No Costs.

Consequently, connected miscellaneous petition is closed.

08.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1.The Motor Accident Claims Tribunal,
(Special District Court), Tiruchirapalli.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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