



C.M.A. (MD)No.4 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.4 of 2023

and

C.M.P.(MD) No.28 of 2023

The Managing Director,
Kumbakonam Division,
Tamil Nadu State Transport Corporation,
Managiri,
Karaikudi Taluk,
Sivagangai District.

...Appellant/ Respondent

Vs.

1.Dhivya
2.Minor Yojana
3.Seemaichamy
4.Annapoorani

...Respondents/Petitioners

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the impugned award passed in M.C.O.P.No. 112 of 2018 on the file of the MACT (District and Sessions Court), Ramanathapuram dated 10.12.2019.



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For Appellant : Mr. P.M.Vishunvarthanan

For R3 & R4 : Mr.J.Jeyakumaran

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal/ District and Sessions Court, Ramanathapuram in M.C.O.P.No.112 of 2018 dated 10.12.2019.

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:-

(ii) the deceased Soundarapandian is the husband of the first petitioner and father of the second petitioner and son of the third and fourth petitioners. While he was riding his motor cycle on 11.10.2016 at 04.00 p.m., the bus belonging to the respondent corporation bearing Registration No.TN 63 N 1706



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driven in a rash and negligent manner, dashed against the deceased and as a result, the deceased succumbed to injuries. At the time of accident, the deceased was only aged about 34 years and he was earning a sum of Rs.30,000/- per month. He was running an institution regarding Marine Engineering.

4.The respondent filed counter affidavit stating that there was no negligent on the part of the driver of the bus belonging to the appellant corporation and the deceased was only rash and negligent in driving his vehicle. On the other hand, the deceased while overtaking a car proceeding in front of him, suddenly took a turn to the left side and fell down, at that time, the car that was coming behind the deceased ran over him and thereby, the deceased succumbed to injuries.

5.To substantiate the case, before the Tribunal on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P14 were marked and on the side of the respondent R.W.1 and R.W.1 were examined and no documentary evidence was marked.



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6. On careful appreciation of evidence and materials, the Tribunal has concluded that the accident had taken place in the left side of the highway and the evidence of P.W.1 also clearly speaks about the rash and negligent driving on the part of the driver of the bus. Considering the factual aspects and the evidence adduced, the Tribunal has fixed the following compensation with interest at the rate of 7.5% per annum:

S. No	Heads	Amount
1.	Loss of income	Rs.24,00,000/-
2.	Funeral expenses	Rs. 15,000/-
3.	Loss of belongings	Rs. 15,000/-
4.	Loss of Consortium to the first petitioner	Rs. 40,000/-
4.	Loss of guardianship	Rs. 40,000/-
5.	Loss of heir to the third and fourth respondents	Rs. 80,000/-
6.	Medical expenses	Rs. 48,000/-
	Total	Rs.26,38,000/-

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



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7.The main ground urged by the learned counsel for the appellant is that the accident was not occurred due to the rash and negligent driving on the part of the driver of the bus and the deceased himself made an attempt to overtake a car proceeding in front of his vehicle, while he was riding his motorcycle, without any caution. Thereafter, on seeing the opposite vehicle, viz., the bus of the appellant corporation, the deceased took a sudden turn to his left side. Therefore, he fell down as he left the control over his vehicle and the unknown car that was coming behind him ran over the deceased. Accordingly, the entire negligence is only on the part of the deceased. Further, he contended that there is an ample evidence and record to show that the driver of the bus belonging to the first respondent corporation was not negligent.

8. I have heard the learned counsel appearing on either side and perused the entire materials placed on record.

9.Admittedly, the evidence of P.W.2 clearly shows that P.W.2 was coming behind the deceased in another motor cycle. At that time, the bus driven in a rash and negligent manner dashed against the motor cycle. Thereafter, the deceased was taken to various hospitals.



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10.A case was also registered on the next day of the accident. The tribunal considering all the facts, particularly the evidence of P.W.2 brother of the deceased, has concluded that the delay in filing FIR is normal in such circumstances and held that the same cannot be used against the deceased. The tribunal also concluded that the place of accident and the death of the petitioner is not disputed by the corporation.

11.Except R.W.1, no other evidence was adduced on the side of the appellant to disprove the contention of the claimants before the tribunal. Therefore, the appellant shall not have a stand that the driver of the bus is not responsible in causing such accident being an interested party. Unless his evidence is corroborated with any other evidence, the same cannot be given much importance. Perusal of the evidence and the reasonings given by the tribunal, this Court is of the view that the contention of the learned counsel for the petitioner that there was no negligent on the part of the driver of the transport corporation cannot be countenanced.



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12.In respect of other aspects, namely the age of the deceased, the same is not disputed by the appellant herein. Even the postmortem report also clearly substantiate the age of the deceased. The tribunal has considered the document under Ex.B14 to show that the deceased was running a provisional store in the name of Dhivya Store. Further, the deceased is graduate in Engineering and he had other extra curricular activities. To substantiate the same, Ex.P9 to Ex.P11 were filed.

13.The Tribunal has also considered the judgment rendered by the ***Hon'ble Supreme Court in Oriental Insurance Compnay Ltd., vs. Manimekalai*** and others reported in ***2016 (2) TN MAC 109 (DB)*** and ***R.Mallika vs. A.Babu*** reported in ***2015 (2) TN MAC (171)*** to fix the notional income of the deceased at Rs.12,000/-. Thereafter applying the ratio laid down by the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd., vs. Pranay Sethi and others*** in ***CDJ 2017 SCC 1220***, the Tribunal has taken note of the future prospects at the rate of 40% considering the age of the deceased and fixed the total income of the deceased at Rs.16,800/- per month.



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14. In such view of the matter, this Court is of the view that the compensation awarded by the Tribunal cannot be faulted and the appeal preferred by the transport corporation has to be necessarily failed. Accordingly, this Civil Miscellaneous Appeal is dismissed.

15. At this juncture, it is represented that the wife of the deceased, namely, the first claimant/ first respondent died leaving behind her minor child second respondent herein. Since the Tribunal has already apportioned the compensation to the third and fourth respondents at the rate of Rs.2,50,000/- each, the amount apportioned to the first claimant, ie., Rs.11,38,000/- shall go to the minor child of the first claimant. In all other aspects, the award of the tribunal is confirmed.

16. The appellant is directed to deposit the entire compensation amount as awarded by the Tribunal with accrued interest and costs to the credit of M.C.O.P.No.112 of 2018, on the file of the Motor Accident Claims Tribunal / District and Sessions Court, Ramanathapuram within a period of one month from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the major claimants are permitted to withdraw the



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award amount as apportioned by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. The Tribunal shall deposit the share of the minor claimant in a Fixed Deposit in any one of the Nationalized Banks, till he attains majority. Since the only natural guardian/mother of the minor child died, the third and fourth claimants shall file an application before the Tribunal for appointing them as guardian to the minor. In the event of such application is filed and allowed, the guardian appointed by the Tribunal is permitted to withdraw the interest accrued thereon once in three months directly from the bank only for the education purpose of the minor. No costs. Consequently, connected miscellaneous petition is closed.

07.03.2023

Index : Yes/No
Internet : Yes/No
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To

- 1.The Motor Accident Claims Tribunal,
District and Sessions Court, Ramanathapuram.
- 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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