



C.M.A.(MD).No.257 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**CMA(MD) No.257 of 2019
and CMP(MD) No.3504 of 2019**

Tamilnadu State Transport Corporation Ltd.,
Rep. by its General Manager
Pudukottai District

...appellant/
respondent No.1

Vs.

1.Kamala

2.Janani

3.Sidharthgautham

4.M/s.United India Insurance Company Ltd.,
No.1A Thanjavur Main Road
Thiruverambur
Trichy 13.

... Respondents 1 to 4/
petitioners Nos.1 to 3 and R1

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree order dated 27.01.2017 in MCOP No.54 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Judge, Tiruchirappalli.



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For Appellant : Mr.AVB.Krishnakanth
For Respondents : Mr.D.Boopal for R1 to R3
Mr.A.Ilango fr R4

J U D G M E N T

RMT.TEEKAA RAMAN, J.

This Civil Miscellaneous Appeal is directed against the award and decree dated 27.01.2017 made in MCOP No.54 of 2013 by the Motor Accident Claims Tribunal, Special District Judge, Tiruchirappalli.

2. The State Transport Corporation is the appellant herein. The respondents 1 to 3 are the legal heirs of the deceased Selvaraj. They filed a claim petition before the tribunal in MCOP No.54/2013 claiming compensation for the death of Selvaraj in a road transport accident, that was occurred on 20.05.2009.

3. In the said accident, when the deceased was driving the car bearing Registration No.TN45 AY 1960 in Pudukottai – Aranthangi Road, near Sunaiyakkadu Pirivu, the bus bearing Registration No.TN 55



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N 0374 belong to the appellant corporation, which was driven in a rash and negligent manner, dashed the car, as a result of which, the deceased sustained fatal injuries and died on the spot.

4. Before the tribunal, both the transport corporation as well as the second respondent, who is the insurer of the car, filed a counter statement. The first respondent in the counter statement stated that the accident had taken place due to the negligence on the part of the driver of the car. The car dashed against the parked bus on the left hand side of the road and also disputed the claim of compensation.

5. Before the trial Court, during trial, the widow of the deceased was examined as P.W.1 and son in law of the deceased, who had travelled along with the deceased in the said car also sustained injuries, was examined as P.W.2 and P.W.3 is the colleague of the deceased in the BHEL Company.

6. On the side of the respondent transport corporation, they examined the driver of the bus as R.W.1. The Manager, who had



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conducted the spot inspection and conducted domestic enquiry against R.W.1 is examined as R.W.2 and Sub Inspectors of Police, who had investigated the case, were examined as R.W.3 and R.W.4. On the side of the claimants, they have exhibited Ex.P.1 to Ex.P.20. On the side of the respondents, Ex.R1 to Ex.R10 were marked. The Court has marked Ex.X1 to Ex.X6 relating to pay particulars of the deceased Selvaraj and the CD file in connection with Crime No.281/2009 on the file of the Aranthangi Police Station.

7. Based on the oral and documentary evidence adduced, the tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the bus, R.W1 and accordingly held that the transport corporation is liable to pay the compensation and exonerated the insurance company of the car and hence, the appeal by the transport corporation.

8. Heard the learned counsel for the parties and perused the materials available on record.



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9. It is brought to our notice that P.W.2, who was examined as an occurrence witness, viz., Madhavan, has filed a claim petition and compensation has been awarded by the tribunal. As against the said award passed by the tribunal, the transport corporation has filed CMA (MD) No.243/2021 on the point of quantum and negligence. By judgment dated 08.03.2021, the learned Judge of this Court has held that the accident had taken place due to the rash and negligent driving of the driver of the transport corporation bus and also confirmed the quantum.

10. The learned counsel for the appellant transport corporation would contend that on the point of negligence and quantum, the award passed by the tribunal needs to be interfered with.

11. It is pertinent to note that considering the evidence of P.W.2 – Madhavan, coupled with Ex.R5 and R6, the tribunal has come to the conclusion that the negligence is on the part of the driver of the transport corporation, viz., R.W.1. Our attention was drawn to the evidence of R.W.1-the driver of the bus. Ex.R1 to Ex.R5 were marked on his side. After perusing the chief and cross examination of the driver of the bus -



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R.W.1, we find that his version is inconsistent with regard to the manner of the accident and taking into consideration the fact that arising out of the very same accident, in the appeal filed by P.W.2-injured witness, the learned Judge of this Court was of the view that the accident had taken place due to the rash and negligent driving of the driver of the bus. After considering the oral evidence of P.W.2 coupled with the documentary evidence of Ex.P1 – FIR and Ex.P14 - charge sheet coupled with the evidence of R.Ws.3 and 4 – investigating officers, we find that the finding rendered by the tribunal do not warrant interference.

12. Moreover, after perusing the evidence of R.W.1-the driver of the bus and his chief and cross-examinations, it appears to be a self-saving statement in order to escape from the criminal proceedings and hence, finding of the tribunal that the accident had taken place on the part of the driver of the bus is hereby confirmed.

13. On the point of quantum, as per Ex.P12, Ex.X1 and Ex.X2, the salary of the deceased is fixed at Rs.56,768/-; after deducting 1/3rd i.e., Rs.18,922/-, the net salary is rounded off to Rs.37,846/-



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(Rs.56768-18922). As per Ex.P7, on the date of accident, the deceased was aged about 53 and hence, we find that as per the decision in Pranoy Sethi, only 15% has to be added ie., $\text{Rs.}37846 \times 15/100 = \text{Rs.}5,677$ and according to the decision in Sarla Varma, the multiplier would be '11'. Accordingly, the pecuniary loss sustained by the family of the deceased is re-assessed at $\text{Rs.}57,45,036/-$ ($37846 + 5677 \times 11 \times 12$).

14. With regard to funeral expenses $\text{Rs.}15,000/-$, transport expenses $\text{Rs.}15,000/-$; for loss of love and affection for the respondents 2 and 3, it is calculated at $\text{Rs.}40,000 \times 2 = \text{Rs.}80,000/-$; for loss of consortium to the first respondent - $\text{Rs.}40,000/-$ and for loss of estate - $\text{Rs.}15,000/-$ would be just and proper. Thus, the award of compensation is reduced from $\text{Rs.}78,18,508/-$ to $\text{Rs.}59,10,036/-$ (Rupees fifty nine thousand ten thousand and thirty six only)

12. In fine, the award of the tribunal is reduced from $\text{Rs.}78,18,508/-$ (Rupees seventy eight lakhs eighteen thousand five hundred and eight only) to $\text{Rs.}59,100,36.00/-$ (Rupees fifty nine thousand ten thousand and thirty six only) as follows:



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Heads	Awarded by the tribunal (Rs.)	Modified/reduced	Final Compensation (Rs.)
Loss of dependency and future prospects	74,93,508	(reduced)	57,45,036.00
Loss of consortium to the 1 st respondent	1,00,000	(reduced)	40,000
Loss of estate	-	Granted	15,000
Funeral expenses and transportation	25,000	(enhanced)	30,000
Loss of love and affection to the respondents 2 and 3	2,00,000	Reduced	80,000.00 (2 x 40,000)
Total	78,18,508	(reduced)	59,10,036.00

13. Accordingly, the civil miscellaneous appeal is partly allowed as follows:

(i) The respondents/claimants 1 to 3 are entitled for compensation at Rs.59,10,036/- (Rupees fifty nine lakhs ten thousand and thirty six only) along with interest at 7.5% from the date of petition till the date of realization;

(ii) The appellant transport corporation is directed to deposit the entire award amount with accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any;



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(iii) On such deposit being made, the claimants/respondents 1 to

3 are permitted to withdraw their respective shares as apportioned by the tribunal with accrued interest and costs.

No costs. Consequently connected Miscellaneous Petition is closed.

(T.K.R.,J.) (P.B.B.,J.)
20.11.2023

NCC : Yes/No

Index : Yes/No

RR

To

1.The Motor Accident Claims Tribunal,
Special District Judge, Tiruchirappalli.

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



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