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C.M.A(MD)No.343 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.08.2023

Pronounced On : 14.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.343 of 2019

Tamil Nadu State Transport Corporation,
(Madurai Limited),
represented through its
The Managing Director,
Vannarpettai, Tirunelveli-3.

: Appellant /Respondent

Vs.

1.S.Anthoniammal

2.Minor.Akilan

: Respondents/Petitioners

(2nd Respondent minor son represented by 1st respondent)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.08.2018 passed in M.C.O.P.No.14 of 2009 on the file of the Motor Accident Claims Tribunal/Sub-Judge, Sankarankovil.

For Appellant : Mr.K.Sudalaiyandi

For Respondents : No Appearance



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The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.14 of 2009, dated 16.08.2018 on the file of the Motor Accident Claims Tribunal/Sub-Judge, Sankarankovil.

2.The Appellant/Transport Corporation, who was made liable to pay compensation of Rs.7,42,000/- with interest at 7.5% per annum to the respondents/claimants for the death of Antonydas, consequent to an accident occurred on 26.08.2008, challenged the liability mulcted on it and also the quantum of compensation awarded at by the Tribunal.

3. The case of the claimants is that on 26.08.2008 at about 10.30 am, when the deceased Antonydas was proceeding in a Suzuki blue color two wheeler bearing Registration No.TN-45-4548, in Puliyangudi Main Road from west to east at distance of one kilometer from Vadakuputhur near Sankarankovil, a bus bearing Registration No.TN-67-N-0285, which came in a rash and negligent manner and dahsed against the two wheeler and as a result of which, the said Antonydas, sustained injuries and died on the spot and that the accident was occurred only due to the rash and negligent driving of the bus driver.



4. It is further case of the claimants that the deceased was aged 35 years at the time of accident and that he was working in a stone quarry at Kerala and was earning a sum of Rs.275/- per day and at Rs.8,250/- per month.

5. The defence of the appellant/respondent is that on 26.08.2008, the respondent's bus driver drove the vehicle from Shencottai to Sattur slowly, cautiously and observing all traffic rules; that when the bus reached near one kilometer south of Vadakkupudur, the bus driver noticed that a two wheeler came in the opposite direction in a terrific speed and without control and immediately, he drove the bus to the mud portion of the road and stopped the bus, but two wheeler rider without control had dashed against the the right side head light of the bus and fell down and as a result of which, he sustained injuries and that rash and negligent riding of two wheeler rider was responsible for the accident and the bus driver was not at all fault.

6. Admittedly, the first respondent/first claimant is the wife and the second respondent/second claimant is the son of the deceased- Antonysamy.



7. During trial, the claimants have examined the first claimant as P.W.1 and two other persons Thiru.Lakshmanan and Stephenraj as P.W.2 and P.W.3 respectively and exhibited seven documents as Ex.P.1 to Ex.P.7. The appellant/respondent transport corporation has examined its driver Thiru.Subburaj as R.W.1 and adduced no documentary evidence.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment, dated 16.08.2018, holding that the accident was occurred only due to the rash and negligent driving of the bus driver, mulcted liability on the appellant/transport corporation and directed them to pay compensation of Rs.7,42,000/- with interest and costs. Aggrieved by the said award, the Transport Corporation has preferred the present appeal.

9. The points for consideration are ;

(i) Whether the Tribunal erred in giving a finding that the accident was occurred only due to the rash and negligent driving of the bus driver, despite showing that the deceased proceeded in rash and negligent manner and went to the wrong side of the road and invited the accident.?



her from Sankarankovil and at the place near bricks chambers, a bus which came from west to east in a rash and negligent manner and without sounding horn, had dashed against her husband's two wheeler and as a result, he died on the spot itself.

13. P.W.2, who was allegedly working along with P.W.1 in TTV chambers would say that while he was loading sand in the tractor in Vadakkupudur main road, the deceased, who was coming from Sankarankovil towards west on the left side of the road, a bus, which came from west to east in a rash and negligent manner and without sounding horn, had dashed against the two wheeler and as a result of which, he died on the spot itself. P.W.2 in his cross examination would say that the Transport Corporation bus came from west -east with speed; that the occurrence road can permit two buses ply at the same time and that there was a curve in the occurrence place.

14.The bus driver/R.W.1 in his chief examination would say that he had taken the bus at Puliyangudi towards Sankarankovil and when he was proceeding near Vadakupudur from west – east, a two wheeler rider, who came from east-west in a negligent manner dashed against the bus and died in the spot and that the accident was occurred only due to the negligence of the deceased.



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15. R.W.1 in his cross examination would admit that the occurrence road can allow two buses to ply at the same time and that he denied the suggestion that the accident was occurred while he was turning the bus near TTV chamber curve road and that his negligence was entirely responsible for the accident.

16. P.W.1 and P.W.2 have given evidence reiterating the contentions raised in the claim petition with regard to the mode of accident and whereas, R.W.1 has given evidence reiterating the version raised in the counter statement. Though the said witnesses were subjected to cross examination, nothing was elicited by the other side in their favour.

17. But a cursory perusal of Ex.P.2/observation mahazar and Ex.P. 3/rough sketch prepared by the Police during investigation would reveal that the occurrence road is looking like 'Z' shaped road and that the accident was occurred on the eastern end of north-south curve portion of the road.

18. Admittedly, the two wheeler rider came from Sankarankovil towards Vadakupudur from east to west direction, whereas the bus was



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coming from Puliyangudi towards Sankarankovil in west to east direction. As rightly pointed out by the learned counsel for the appellant, the two wheeler rider, who was proceeding from east to west should have proceeded on the left side i.e., on the southern side of the said road. But, on the other hand, the accident was occurred on the northern side of road. It is also evident from the records that the bus driver has proceeded from west to east and while taking a turn for proceeding towards south side of the road, dashed against the two wheeler.

19. It is evident from Ex.P.4/Motor Vehicle Inspection Report with regard to the bus, there were damages to the right side head light brokened, bumper front RHS pressed, indicator RHS brokened, front RHS show set presses and front RHS white reflector store brokened.

20. On considering the above facts and circumstances and the lie of occurrence road and the way in which, the accident was occurred, this Court has no hesitation to hold that the deceased has also contributed to the accident and this Court fixes the contributory negligence at 40 % on the deceased.

21. Now turning to the quantum of compensation. Though the claimants have alleged that the deceased was working in a stone quarry at



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Kerala and was earning a sum of Rs.275/- per day and at Rs.8,250/- per month, they have not produced any evidence to substantiate the same. But, the learned trial Judge has fixed the monthly income at Rs.4,000/- and in my view, is very low. Hon'ble Apex Court in ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TN MAC 459*** has fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 and the Hon'ble Division Bench of this Court in ***Andal and others Vs. Avinav Kannan and another*** reported in ***2019 1 TN MAC 54 (DB)***, by taking into the amount fixed by the Hon'ble Supreme Court in ***Syed Sadiq's case*** at Rs.6,500/-, has applied the cost of inflation index issued by the Central Board of Direct Tax and fixed the notional monthly income of the deceased. As per the said index, the cost of inflation index for the year 2007 – 2008 is '129' and for the year 2008-2009 is '137', and taking notional income fixed by the Hon'ble Apex Court for the vegetable vendor at Rs.6,500/-, during the year 2007 – 2008, this Court fixes the monthly income of the deceased at Rs.6,900/- (Rs.6,500 x 137 /129).

22. The Tribunal, relying on the decision of the Hon'ble Supreme Court in ***National Insurance Company Ltd., vs. Pranay Sethi and others*** reported in ***2017 ACJ 2700***, has rightly added 40% of the income



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towards future prospects and on such addition, the income would be Rs.9,660/- (Rs.6,900 x 40/100). Considering the number of claimants, the Tribunal has rightly deducted 1/3 of income towards personal and living expenses of the deceased and after such deduction, the monthly income would be Rs.6,440/- (Rs.9,660 x 1/3).

23. The Tribunal, considering the Ex.P.5/postmortem certificate, has rightly fixed the age of the deceased as 37 years at the time of accident. As per the dictum laid down in *Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another* reported in *AIR 2009 SC 3104*, the Tribunal has rightly applied multiplier '15'. Hence, the loss of dependency would be Rs.11,59,200/- (Rs.6,440 x 12 x 15).

24. The Tribunal has awarded Rs.40,000/- towards spousal consortium for first claimant. Our Honourable Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently Honourable Supreme Court in **Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others** reported in **(2018) 18 SCC 130**, has held that the right to



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consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. The Honourable Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, the Honourable Apex Court in **The New India Assurance Company Ltd. Vs. Smt.Somwati and others**, in **Civil Appeal No.3093 of 2020 and batch, dated 07.09.2020**, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in **Pranay Sethi's** case. But, at the same time, they have specifically observed that no amount should be awarded under separate head of loss of love and affection.

25. Considering the above, the first claimant being the wife of the deceased is entitled to get Rs.40,000/- towards loss of spousal consortium and the second being the son of the deceased is entitled to get Rs.40,000/- towards parental consortium. The Tribunal has rightly awarded Rs.15,000/- towards funeral expenses and Rs.15,000/- under the conventional heads.



26. Considering the above, this Court decides that the claimants are entitled to get compensation under the following heads:

Head of compensation	Amount awarded by the tribunal	Amount confirmed/ modified by this Court
Loss of dependency	Rs. 6,72,000/-	Rs. 11,59,200/-
Loss of consortium (Spousal Consortium)	Rs. 40,000/-	Rs. 40,000/-
Parental Consortium (2 nd claimant)	-	Rs. 40,000/-
Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-	Rs. 15,000/-
Total	Rs. 7,42,000/-	Rs. 12,69,200/-

27. Since this Court has fixed the contributory negligence at 40% on the part of the deceased, the claimants are entitled to get a sum of **Rs.7,61,520/-**. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

28. In view of the above, the compensation awarded by the tribunal is modified **from Rs.7,42,000/- to Rs.7,61,520/-**. The Appellant/Transport Corporation is directed to deposit the modified amount with interest at 7.5% per annum, within a period of four weeks



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from the date of receipt of a copy of this judgment, if not already deposited. Out of the said compensation amount, the first claimant is entitled to get **Rs.5,00,000/-**, with accrued interest and costs and the second claimant is entitled to get **Rs.2,61,520/-**. The Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalized Bank in a fixed deposit scheme, till he attain majority. The mother and guardian of the minor claimant is permitted to withdraw the accrued interest once in three months directly from the Bank only for the welfare of the minor. Parties are directed to bear their own costs.

14.09.2023

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

- 1.The Motor Accident Claims Tribunal/Sub-Judge,
Sankarankovil.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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