



C.M.A.(MD)Nos.1088 of 2022 and 92 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

**C.M.A.(MD)Nos.1088 of 2022 and 92 of 2023 and
CMP(MD).Nos.11062 and 1052 of 2023**

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Thanjavur.

...Appellant in both CMAs

Vs.

1.Santhosam
2.Murugeshwari
3.Ganesan

.. Respondents in CMA(MD).No.1088 of 2022

Bose

.. Respondent in CMA(MD).No.92 of 2023

COMMON PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and Judgment, dated 03.01.2022 made in MCOP.Nos.204 and 205 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Madurai.

For Appellant in both CMAs : Mr.D. Venkatachalam

For respondents in both CMAs : No appearance



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COMMON JUDGMENT

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Challenging the compensation awarded and also the common Judgment passed in respect of MCOP.Nos.204 ad 205 of 2018, on the file of the Motor Accidents Claims Tribunal, Special District Judge, Madurai, the present Civil Miscellaneous Appeals have been filed by the appellant / Transport Corporation.

2. Challenge in these appeals is that the deceased drove the motorcycle in a rash and negligent manner and dashed against the bus and that a case has been registered against the deceased. The Tribunal fixed the negligence on the driver of the bus. Hence, on the negligence aspect, the present appeals have been filed.

3. The learned counsel appearing for the appellant submits that as far as the quantum of compensation is concerned, it is only reasonable and that there is no grievance over them. Challenge is only in respect of negligence aspect.

4. The brief facts leading to the above appeals are as follows:

On 22.04.2017, the deceased Muruganantham and the injured are travelling in a motorcycle bearing Regn.No.TN 64 M 9382 at about



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12.30 am after finishing the construction work in the nearby school.

While the persons nearing Rengasamipuram keeping extreme left side of the road, the bus belonging to the appellant / Transport Corporation bearing Regn.No.TN 68 N 0553 came from opposite direction in a rash and negligent manner without head light and dashed against the motorcycle, as a result, the deceased Muruganantham was succumbed to injuries there itself. The pillion rider has sustained various fractures and shifted to the hospital and the Criminal case has been registered against the rider of the motorcycle for the offences under Sections 279, 337 and 304(A) IPC in Crime No.214 of 2017.

5. In MCOP.No.204 of 2018, the first petitioner, who is the mother of the deceased was awarded a compensation of Rs.15,87,000/-. It is the contention that the deceased was earning a sum of Rs.18,000/- per month. Similarly, MCOP.No.205 of 2018 has been filed by the pillion rider, who has travelled along with the deceased Muruganantham and the Tribunal has awarded as sum of Rs.2,78,700/- as compensation.

6. Before the Tribunal, the pillion rider was examined as PW.1 and the mother of the deceased was examined as PW.2. After



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considering all the findings, the Tribunal found that the accident had occurred only due to rash and negligent driving of the driver of the bus and fixed the compensation at Rs.15,87,000/- to the mother of the deceased in MCOP.No.204 of 2018 and awarded a compensation of Rs.2,78,700/- towards the injury sustained by the petitioner in MCOP.No.205 of 2018. Challenging the same, these appeals have been filed.

7. The main contention of the appellant is that an FIR was registered against the rider of the motorcycle and therefore, the Tribunal fixing the negligence on the driver of the bus is not proper. In the light of the above submissions, now the point arise for consideration in this appeal is as follows:

Whether the Tribunal is right in fixing the negligent on the part of the driver of the appellant / Transport Corporation?

8. The accident took place at about 12.30 am. PW.1 was examined as the witness, who was travelling as a pillion rider in same motor vehicle along with deceased. The evidence of PW.1 is that the bus driver drove the bus in a rash and negligent manner without floating



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headlight, which resulted in accident. Though RW1 was examined, the Tribunal had considered the evidence RW.1 and came to the conclusion that the driver of the bus was negligent in driving vehicle. It is relevant to note that the bus is a heavy vehicle and it has a clear view of the road and the visibility is more clear than that of the other small vehicles. It is not established by the respondents that the bus was stopped despite the same motorcycle came and hit against the bus. Further, no evidence whatsoever to show that the accident was occurred either in the middle of the road or in the wrong side, but, none of the records like rough sketch and other records have been filed by the appellant / Transport Corporation.

9. It is relevant to note that the First Information Report has been filed against the deceased. The deceased succumbed to injuries and the pillion rider has sustained serious injuries and immediately, he has been shifted to hospital. In such being a position, the driver of the bus in order to avoid the criminal prosecution lodging the First Information Report implicating the deceased is normal human conduct and therefore, merely on the basis of FIR has been lodged against the person, the said FIR cannot be given much importance to prove the same as evidence to substantiate the contributory negligence. When the appellant takes a plea



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that the rider of the motorcycle came in a rash and negligent manner and hit against the bus, nothing prevented the appellant to examine any of the eye witness, who travelled in the bus at the relevant point of time, but no one was examined. In such view of the matter, this Court is of the view that PW.1 who was the pillion rider, is not only an eye witness but also suffered injuries in the accident his evidence cannot be disbelieved. Accordingly, this point is answered.

10. Insofar as the quantum of compensation is concerned, the Tribunal fixed the notional income of the deceased at Rs.10,000/- per month and applied multiplier “18” after adding future prospectus at 40% as per the dictum of the Hon'ble Supreme Court reported in **Pranay Sethi's** case (**National Insurance Company Ltd., Vs. Pranay Sethi and others**) reported in **2017(2) TNMAC 609**. Therefore, the compensation awarded to the parents of the deceased is reasonable and does not require any interference. As far as the compensation awarded to the injured is concerned, considering the medical report and nature of the disability awarded compensation in a percentage method. It also appears to be very reasonable. Accordingly, this Court does not find any reason to interfere



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with the award passed by the Tribunal.

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11. In the result, these Civil Miscellaneous Appeals are dismissed. The appellant / Transport Corporation is directed to deposit the amount awarded before the Tribunal in both the MCOP.Nos.204 and 205 of 2018 on the file of the Motor Accidents Claims Tribunal / Special District Judge, Madurai within a period of two months from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw the award amount by filing necessary application before the Tribunal. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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Index : Yes/No

Internet : Yes/No

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To

The Motor Accidents Claims Tribunal, Special District Judge, Madurai.



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N.SATHISH KUMAR, J.

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