



C.M.A.(MD)No.726 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)Nos.726 and 729 of 2022

Tamil Nadu State Transport Corporation
(Kumbakonam Division III) ltd,
represented by its Managing Director
having its Head Office at
Maruthupathi Managiri Road,
Karaikudi, Sivagangai District.

...Appellant/Respondent
in both appeals

Vs.

1.M.Muthulakshmi
2.M.Regan
3.S.Kalpana

...Respondents/Petitioners
in C.M.A.(MD)No.726 of 2022

1.M.Selvi
2.M.Vaishnavi
3.M.Vasanthakumar
4.K.Lakshmi

...Respondents/Petitioners
in C.M.A.(MD)No.729 of 2022

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, to set aside the award and decree made in M.C.O.P.Nos.2 and 3 of 2020 dated 24.01.2022 on the file of the Motor Accident Claims Tribunal / Sub Court, Mana Madurai.



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C.M.A.(MD)No.726 of 2022

In both Appeals:

For Appellant : Mr.P.Prabhakaran
For Respondents : Ms.N.Juliet Latha

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed by the transport corporation challenging the compensation awarded by the Motor Accident Claims Tribunal/Sub Court, Mana Madurai in M.C.O.P.Nos.2 and 3 of 2020 dated 24.01.2022.

2.For the sake of convenience, the parties herein are referred to as per their rank before the Tribunal.

3.The brief facts, leading to the filing of the claim petitions, are as follows:-

(i)Both the deceased were travelling in a two wheeler bearing Registration No.TN-64-T-1757 on 30.10.2019 at about 08.30 a.m, keeping left side of the road at Madurai- Rameshwaran national highways. They were waiting in the service road to cross the main road. At the time, the bus bearing



C.M.A.(MD)No.726 of 2022

Registration No.TN-63-N-1996 driven by its driver in a rash and negligent manner, hit against the motorcycle. As a result, the rider Moorthy and the pillion rider Murugan were succumbed to injuries.

(ii)The rider Moorthy was aged about 54 years and the pillion rider Murugan was aged about 43 years and both are mason by profession. They are earning a sum of Rs.27,000/- per month. The legal heirs of both the deceased filed claim petitions seeking compensation.

(iii)It is the contention of the respondent before the Tribunal that the rider of the motorcycle came in a rash and negligent manner and suddenly crossed the main road without noticing the vehicle crossing in the highway, as a result, the accident had taken place. Therefore, it is the contention that the accident was only due to the rash and negligent driving of the two wheeler by its rider.

4.Both the claim petitions were decided together. Before the tribunal, on the side of the claimants P.W.1 to P.W.4 were examined and Ex.P1 to Ex.P11 were marked. On the side of the respondents R.W.1 was examined and no documentary evidence was marked.



C.M.A.(MD)No.726 of 2022

WEB COPY

5. Based on the materials and evidence particularly, the oral evidence of the eye witnesses and FIR filed against the driver of the offending bus, the trial Court found that the bus was driven in a rash and negligent manner. Considering the age of the deceased Moorthy had fixed the notional income at Rs.12,000/- and awarded the compensation as follows:

S.No.	Head of Compensation	Award amount
1.	Loss of dependency	Rs.11,61,600/-
2.	Loss of consortium to the 1 st petitioner	Rs. 40,000/-
3.	Loss of parental consortium to the 2 nd and 3 rd petitioners	Rs. 80,000/-
4.	Funeral expenses	Rs. 20,000/-
5.	Loss of estate	Rs. 10,000/-
6.	Transport expenses	Rs. 2,000/-
	Total	Rs.13,13,600/-

Similarly, the Tribunal had fixed the notional income of Rs.15,000/- in respect of the deceased Murugan and awarded the compensation as follows:



C.M.A.(MD)No.726 of 2022

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S.No.	Head of Compensation	Award amount
1.	Loss of dependency	Rs.25,31,340/-
2.	Loss of consortium to the 1 st petitioner	Rs. 40,000/-
3.	Loss of parental consortium to the 2 to 4 petitioners	Rs. 1,20,000/-
4.	Funeral expenses	Rs. 20,000/-
	Total	Rs.27,11,340/-

Challenging the same, the present Civil Miscellaneous Appeals are filed by the Transport Corporation.

6.The main contention of the learned counsel for the appellant is that the deceased rider viz., Moorthy was not having any valid driving license at the relevant point of time. Further, the notional value fixed by the Tribunal is not proper and without any basis. The multiplier adopted in respect of Moorthy is also not correct. The age of the deceased rider is 48 years as per the postmortem report. The Tribunal ought to have fixed the multiplier 11, whereas the Tribunal had fixed the multiplier 13. In the case of pillion rider, the Tribunal had fixed the notional income Rs.15,000/- per month, whereas Rs.12,000/- was fixed by the Tribunal in respect of the deceased rider, despite the fact that both the deceased are



C.M.A.(MD)No.726 of 2022

mason by profession. Hence, submitted that the award passed by the Tribunal in both claim petitions has to be interfered with.

7.The learned counsel for the respondents submitted that both the deceased are Mason by profession. They were earning a considerable amount. Though the claimants have pleaded that both the deceased were earning a sum of Rs.27,000/- per month, the Tribunal had only fixed only a sum of Rs.12,000/- and Rs.15,000/- respectively as notional income and the same has to be enhanced. Apart from that, the award passed by the Tribunal is just and reasonable and the same does not require any interference.

8.In view of the above submissions, now the points arise for consideration in this appeal are:

- (1) Whether the appellants had established the fact that the deceased rider did not possess valid driving license to drive the two wheeler?;***
- (2)Whether the notional income fixed by the Tribunal is proper?; and***
- (3)Whether the multiplier method adopted by the Tribunal in respect of the rider of the two wheeler is proper?***



C.M.A.(MD)No.726 of 2022

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9. With regard to the contention of the learned counsel for the appellant that the deceased rider did not have any valid driving license at the relevant point of time, absolutely there is no material on record except the pleading in the counter and no steps have been taken by the appellant to establish the said contention. Even the concerned Regional Transport Officer was not examined before the Court of law to substantiate the stand of the appellant. Therefore, merely on the ground that the driving license of the deceased has not been produced by the petitioners, it cannot be held that the deceased did not have valid driving license at the time of accident. If the appellant asserts that the deceased rider did not have valid driving license at the relevant point of time, the burden lies on the appellant to establish the same. However, no steps have been taken in this regard. Therefore, the contention of the learned counsel for the appellant cannot be countenanced.

10. As far as the negligence aspect is concerned, the eye witness had clearly spoken about the rash and negligent driving of the offending vehicle. The Tribunal had not only considered the evidence of the witnesses, but also considered FIR filed against the driver of the bus. No contrary evidence is



C.M.A.(MD)No.726 of 2022

available, except the testimony of the driver of the bus. It is normal that the person, who arrays as an accused, supports his case. Therefore, the negligence fixed on the driver of the bus cannot be found fault.

11.The deceased Moorthy was aged about 53 years at the time of accident. The claimants/ legal heirs of Morrthy claimed that the deceased was earning a sum of Rs.27,000/- per month. But no other documents were filed to prove the exact monthly income of the deceased. Hence, the Tribunal considered the profession of the deceased rider as Mason and fixed the monthly income of the deceased at Rs.12,000/-. Considering the age of the deceased 10% future prospects was added and multiplier 11 was adopted by the Tribunal and the total compensation of Rs.13,13,600/- was awarded. Therefore, this Court is of the view that the compensation awarded by the Tribunal is quite reasonable and does not require any interference. Accordingly, the award passed by the Tribunal in M.C.O.P.No.2 of 2022 is hereby confirmed. The appellant/Transport Corporation is directed to deposit the entire compensation amount as awarded by the Tribunal with interests and costs to the credit of M.C.O.P.No.2 of 2020 on the file of the Motor Accident Claims Tribunal /Sub Court, Manamadurai within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any



C.M.A.(MD)No.726 of 2022

already deposited. On such deposit, the claimants are permitted to withdraw the same as apportioned by the Tribunal, less the amount if any already withdrawn, by making necessary application before the Tribunal.

12.Insofar M.C.O.P.No.3 of 2020 is concerned, the Tribunal considering the death certificate of the deceased pillion rider, namely Muruga, under Ex.P10, fixed the age of the deceased at 43 and the same cannot be found fault. However, the Tribunal had fixed the notional income of the deceased pillion rider at Rs. 15,000/-. Admittedly, both the deceased are mason by profession. Hence, the Tribunal had erred in fixing the notional income of the deceased at Rs.15,000/-. Therefore, this Court is of the view that the same has to be reduced to Rs.12,000/-. Accordingly, the income fixed by the Tribunal at Rs.15,000/- per month is reduced to Rs.12,000/- (Rupees Twelve Thousand only). Considering the age of the deceased 25% (Rs.3,000/-) future prospects is added. Since there are four claimants 1/4 of income is deducted towards his personal expenses. Hence, the notional income of the deceased pillion rider is fixed at Rs.11,250/-(Rupees Eleven Thousand Two Hundred and Fifty only).



13.Further, the Tribunal had erred in adopting the multiplier '15'. For the age of 43, the correct multiplier is '14' as per the dictum laid down by the Hon'ble Supreme Court in ***Sarala Varma and Others vs. Delhi Transport Corporation and another*** reported in **2009 6 SCC page [2]**, in which it had been held as follows:

*“We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, **M-14 for 41 to 45 years**, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”*

In view of the above dictum, the multiplier '14' is adopted in this case. If multiplier 14 is adopted the total loss of dependency would be at Rs.18,90,000/- (Rupees Eighteen Lakhs and Ninety Thousand only). The compensation awarded under other conventional heads are confirmed. The claimants are entitled to the total compensation of Rs.20,70,000/- (Rupees Twenty Lakhs and Seventy Thousand only). The Appellant Transport Corporation is directed to deposit the compensation as modified by by this Court with interests and costs to the credit of



C.M.A.(MD)No.726 of 2022

M.C.O.P.No.3 of 2020, on the file of the Motor Accident Claims Tribunal /Sub Court, Manamadurai within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the first claimant is entitled withdraw a sum of Rs.8,00,000/- (Rupees Eight Lakhs only), the second and third claimants are equally entitled to withdraw a sum of Rs.4,00,000/- each (Rupees Four Lakhs only) and the fourth claimant is entitled to withdraw a sum of Rs.4,70,000/-(Rupees Four Lakhs Seventy Thousand only), less the amount already withdrawn, if any, by making necessary application before the Tribunal.

14.For the reasons stated above, the compensation awarded by the Tribunal in M.C.O.P.No.2 of 2022 is confirmed and **C.M.A.(MD)No.726 of 2022** is **dismissed** and M.C.O.P.No.3 of 2022 is reduced to the extent stated above and **C.M.A.(MD)No.729 of 2022** is **allowed**. No costs. Consequently, connected miscellaneous petitions are closed.

20.04.2023

NCC : Yes / No
Index : Yes/No
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C.M.A.(MD)No.726 of 2022

To

- 1.The Motor Accident Claims Tribunal,
Sub Court, Manamadurai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.726 of 2022

N.SATHISH KUMAR, J.

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C.M.A.(MD)Nos.726 and 729 of 2022

20.04.2023