



C.M.A. (MD)No.699 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.09.2023

Pronounced on : 29.09.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.699 of 2019

Branch Manager,
Tamil Nadu State Transport Corporation,
Pudukottai.

... Appellant/
Respondent

Vs.

1. Ponnalagu

2. Minor Rahul
represented by his Mother and Natural Guardian
1st Respondent

... Respondents/
Claimants

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the impugned award passed in M.C.O.P.No.698 of 2015 on the file of Motor Accidents Claims Tribunal (Additional District cum Special Judge), Pudukottai dated 21.03.2019.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.R.Bala Krishnan



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JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.698 of 2015 dated 21.03.2019 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court, Pudukkottai.

2. The appellant/Transport Corporation, who was made liable to pay compensation of Rs.7,79,000/- (Rupees Seven Lakhs and Seventy Nine Thousand only) with interest at 7.5% per annum to the respondents/claimants for the death of Arumugam, consequent to an accident occurred on 22.01.2015, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.

3. The case of the respondents/claimants is that on 22.01.2015, the first respondent/first claimant's husband Arumugam, after visiting his sister's house at Uyyakudipatti, was returning along with his relative Jegan in a bus bearing Registration No.TN-55-N-0474 No.5 Town bus from Uyyakudipatti towards Pudukkottai, that the said Arumugam was sitting near the front footboard and whereas, his relative Jegan was sitting behind



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him, that the bus driver has been driving the bus rashly and negligently since the commencement of the journey, that though the passengers had shouted at the bus driver, without caring for the same he had driven the bus in the same way, that while the bus was proceeding in Perumanadu to Pudukkottai road and at the place near Sellukudi bus stop at about 01.30 p.m. a cow had intervened and the bus driver had suddenly turned the bus rashly and as a result of which, the said Arumugam was thrown out of the bus, that the said Arumugam's relative Jegan and other passengers had shouted and stopped the bus and they had taken the injured Arumugam in the same bus to Government Headquarters Hospital, Pudukkottai and subsequently, he was referred to Medical College Hospital, Thanjavur and despite treatment, he succumbed to the injuries on 25.01.2015 and that the bus driver alone was responsible for the accident.

4. It is their further case that the deceased Arumugam was aged 45 years at the time of accident, that he was working as a sanitary worker in Kannanur Panchayat and was also working as part time LIC agent and that he was getting monthly income of Rs.30,000/-.



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5. The defence of the appellant/Transport Corporation is that when the bus driver was driving the bus bearing Registration No.TN-55-N-0474 in Perumanadu – Pudukkottai road with medium speed by following the traffic rules and by sounding horn and at about 01.30 p.m., before halting the bus at Sellukudi bus stop, the deceased jumped out of the bus through the front footboard and sustained slight injuries, that the bus driver had absolutely no connection with the accident, that one Rajesh-passenger of that bus and relative of the deceased Arumugam has informed that his uncle Arumugam was a mentally challenged person and that he was accompanying him in the bus and he jumped out of the bus by shouting, that another passenger Ravi, S/o.Chidambaram has also informed that the deceased Arumugam was a mentally challenged person and that he himself jumped out of the bus and that since the accident was not occurred due to the driving of the bus driver, the appellant/ Transport Corporation is not liable for the claim.

6. During trial, the respondents/claimants have examined the first respondent/first claimant as P.W.1 and their relative Jegan as P.W.2 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The appellant/Transport



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Corporation has examined its bus driver and Branch Manager as R.W.1 and R.W.3 respectively and also examined the Sub Inspector of Police attached to Thirukkokarnam Police Station as R.W.2 and exhibited one document as Ex.R.1.

7. 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 award dated 21.03.2019 by holding that though the bus driver was not responsible, the appellant/Transport Corporation was liable to pay compensation and directed the appellant/Transport Corporation to pay compensation of Rs.7,79,000/- with interest and costs. Aggrieved by the impugned award, the Transport Corporation has come forward with the present appeal.

8. The learned counsel appearing for the appellant/Transport Corporation would submit that the trial Court has failed to consider the crucial evidence under Ex.R.1, duly supported by the oral evidence of R.W.1 to R.W.3, which would say about the negligence of the deceased and absolutely there is no negligence on the part of the bus driver and that



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therefore, the impugned award mulcting liability on the appellant/
Transport Corporation is liable to be set aside.

9. The learned counsel appearing for the appellant/Transport Corporation would further submit that the Tribunal has awarded a higher compensation of Rs.7,79,000/- without any material evidence to prove the income of the deceased, that the respondents/claimants have not produced any evidence to show that the deceased was working as a LIC agent, that the amount awarded under the various heads are also on higher side and that therefore, the impugned award is liable to be interfered with.

10. The points that arise for consideration are :

- 1) *Whether the Tribunal erred in mulcting liability on the appellant/Transport Corporation, despite showing that the deceased alone had jumped out of the bus and invited the accident and that the bus driver was not at fault?*
- 2) *Whether the quantum of compensation arrived at by the Tribunal is just and proper and is in accordance with law?*

11. It is the specific contention of the respondents/claimants that due to the rash and negligent driving of the bus driver, the deceased was



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thrown out of the bus and sustained serious injuries and that therefore, the bus driver alone was responsible for the accident. On the other hand, it is the specific case of the appellant/Transport Corporation that the deceased, who was a mentally challenged person, has jumped out of the bus and invited the accident by himself. The respondents/claimants, in order to prove the mode of accident, have examined P.W.2-Jegan alleged to be the occurrence witness, who had accompanied the deceased in the bus.

12. It is not in dispute that on the basis of the complaint lodged by the first respondent/first claimant Ponnalagu, FIR under Ex.P.1 came to be registered in Crime No.25 of 2015 for the offence under Section 174 Cr.P.C. In Ex.P.1, it has been stated that when the deceased was returning from his sister's house with Jegan in Town bus No.5 towards Pudukkottai, that the deceased suddenly went to the front footboard and the same was enquired by Jegan, he replied that he was looking for a person known to him and that while he was looking out from the bus, he slipped and fell down. But according to the first respondent/first claimant-P.W.1, she has not given such a complaint before the police.



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13. It is the specific contention of the respondents/claimants that the first respondent/first claimant has sent a complaint to the Inspector of Police, Thirukkokarnam Police Station and copies were forwarded to the Deputy Superintendent of Police and the Superintendent of Police, Pudukkottai, wherein, it has been stated that the FIR was registered with false particulars, that the accident was not occurred as stated in the FIR and that they are producing the statements of the first respondent/first claimant and also the said Jegan, who had accompanied the deceased. But the said notice was refused to be received by the Inspector of Police, Thirukkokarnam Police Station, as evident from Ex.P.5.

14. P.W.2, in his chief examination, would reiterate the mode of accident as alleged by the respondents/claimants in the claim petition. In cross-examination, P.W.2 would say that the accident was occurred while returning to Sellukudi, that they boarded the bus at Uyyakudipatti for returning to Pudukkottai and that the complaint was lodged by his aunt-wife of the deceased and the relevant portions of his evidence are extracted hereunder:-

□..... விபத்து சமயத்தில் உய்யக்குடி 5 எண் பஸ், TN 55
0474. செல்லுகுடி வரும்போது விபத்து நடந்தது.



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உய்யக்குடியில் பேருந்து நிறுத்தத்தில் ஏறி
புதக்கோட்டைக்கு வந்தேன். காவல் நிலையத்தில்
எனது அத்தை தான் புகார் கொடுத்தார்
பஸ்ஸில் இருந்து தவறி கீழே விழுந்துவிட்டதாக
சொல்லப்பட்டது தவறு. விபத்தை நான் நேரடியாக
பார்க்கவில்லை என்றும், முதல் தகவல் அறிக்கைக்கு
எதிராக சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல.□

15. The appellant/Transport Corporation, in an attempt to prove their defence, has examined their bus driver as R.W.1 and R.W.1, in his chief examination affidavit, would reiterate the contentions raised in their counter statement in respect of the mode of accident. It is pertinent to mention that in the counter statement as well as in the chief examination affidavit of R.W.1, they have referred the statements alleged to have given by one Rajesh relative of the deceased and another passenger Ravi, S/o.Chidambaram, who had travelled in the bus to the effect that the deceased was a mentally challenged person and that the deceased himself had jumped out of the bus and caused the accident. In cross-examination, R.W.1 would say that he has preferred a complaint before the Police Station, that he has not produced the copy of the complaint before the Tribunal and that he has not informed to his higher official about the



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accident. R.W.1 would admit that they have not produced any documents to show that the deceased was a mentally challenged person and that they have not produced any documents to show that Rajesh and Ravi have given such statements. Admittedly, the appellant/Transport Corporation has not chosen to examine the above said material witnesses Rajesh and Ravi and they have not offered any reason or explanation for non-examining the said witnesses. Though the appellant/Transport Corporation has taken a stand that the deceased was a mentally challenged person, they have not taken any steps to substantiate the same.

16. R.W.3-Branch Manager of the Transport Corporation would only say that he visited the occurrence place directly and came to know that his bus driver was not responsible, that the police has filed a report as action dropped under Ex.R.1 and that therefore, they are not liable for the claim. R.W.3, in cross-examination, would say that the deceased had travelled in their bus and denied the suggestions made on behalf of the respondents/claimants.

17. R.W.2-Sub Inspector of Police would say that the deceased had



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invited the accident by himself and that since the deceased was responsible for the accident, further action was dropped and the case was closed. In cross-examination, she would say that the accident was occurred at 01.30 p.m. on 22.01.2015 and the FIR was registered at 07.30 a.m. on 25.01.2015, that the FIR was registered only after the death of the said Arumugam and that no reason was assigned for registering the FIR belatedly. But admittedly, R.W.2 was not the investigating officer and the appellant/Transport Corporation has not taken any steps to examine the police officer, who investigated the above case.

18. According to the appellant/Transport Corporation, P.W.2-Jegan had not accompanied the deceased, but on the other hand, the deceased's relative Rajesh alone had accompanied the deceased in the bus. It is pertinent to note that in Ex.P.8-Accident Register, it has been specifically shown that P.W.2-Jegan alone had accompanied the injured Arumugam to the hospital at 01.50 p.m. on 22.01.2015, immediately after the accident, which was occurred at 01.30 p.m. on that day.

19. As rightly pointed out by the learned counsel appearing for the



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appellant/Transport Corporation, in Ex.R.1-Action dropped report of the Inspector of Police, Thirukkokarnam Police Station, it has been stated that the deceased alone while looking out slipped and injured and that the bus driver had not driven the bus rashly and negligently. In Ex.R.1-report, the Inspector of Police has nowhere whispered that the deceased was a mentally challenged person and he jumped out of the bus, but on the other hand, in Ex.R.1, it has been stated that while the deceased was looking out, got slipped and fell down. As already pointed out, P.W.2-Jegan, who had accompanied the deceased, has given categorical evidence that due to the rash and negligent driving of the bus driver, the deceased was thrown out and as a result of which, he sustained injuries and that despite cross-examination, his evidence with regard to the mode of accident was not at all shaken.

20. Considering the entire evidence available on records, this Court has no hesitation to hold that the appellant/Transport Corporation has miserably failed to prove the mode of accident as canvassed by them, but on the other hand, the respondents/claimants through the evidence of P.W.2, Ex.P.1 and Ex.P.4 to Ex.P.8 has proved that the deceased fell down



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from the bus due to the rash and negligent driving of the bus driver and as such, the finding of the Tribunal mulcting liability on the appellant/ Transport Corporation cannot be found fault with.

21. Now turning to the quantum of compensation, as already pointed out, according to the respondents/claimants, the deceased was working as a sanitary worker in Kannanur Panchayat and was also working as part time LIC agent and that he was earning Rs.30,000/- per month. But admittedly, the respondents/claimants have not produced any iota of evidence to prove the same. The Tribunal, taking note Ex.P.2-postmortem certificate, has fixed the age of the deceased as 51 years at the time of accident. Considering the age of the deceased and also the fact that the accident was occurred on 22.01.2015, this Court fixes the notional monthly income of the deceased at Rs.7,000/-.

22. The Tribunal has not added any amount towards future prospects. The Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others* reported in **2017 (2) TN MAC 609 (SC)**, has concluded that if the deceased was self-employed or on a fixed



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salary, an addition of 40% of the established income should be the warrant, where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. Applying the above decision of the Hon'ble Apex Court, 40% of the income is to be added towards future prospects and after such addition, it comes to Rs.9,800/- (Rs.7,000/- + Rs.2,800/- (40% of the income)).

23. The Tribunal, taking note of the number of the claimants, has rightly deducted 1/3rd of the income towards personal and living expenses of the deceased and after such deduction, the monthly income would come to Rs.6,533/- (Rs.9,800/- - Rs.3,267/-).

24. As per the decision of the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104***, the Tribunal has rightly applied the multiplier 11 and hence, the loss of dependency would be Rs.8,62,356/- (Rs.6,533/- x 12 x 11).



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25. The Tribunal has awarded Rs.40,000/- towards loss of spousal consortium, Rs.10,000/- towards loss of estate, Rs.10,000/- towards transport expenses and Rs.15,000/- towards funeral expenses. Our Hon'ble Supreme Court in ***Pranay Sethi's case*** has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, the Hon'ble 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 consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. The Hon'ble 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 Hon'ble Apex Court in ***The New India Assurance Company Ltd. Vs. Smt.Somwati and others***, 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



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Pranay Sethi's case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

26. The first respondent/first claimant being the wife of the deceased is entitled to get Rs.40,000/- towards spousal consortium and the second respondent/second claimant being the son of the deceased is entitled to get Rs.40,000/- towards parental consortium. The respondents/claimants are also entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads.

27. No doubt, the respondents/claimants have not challenged the quantum of compensation. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Surekha and others Vs. Santosh and others (C.A.No.476 of 2020 dated 21.01.2020)*** wherein, the Hon'ble Apex Court has held as follows:-

“2. This appeal takes exception to the judgment and order dated 04.01.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No.2564 of 2016, whereby the High Court, even



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though agreed with the stand of the appellants that just compensation amount ought to be Rs.49,85,376/- (Forty-Nine Lakh Eighty-Five Thousand Three Hundred Seventy-Six Only), however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.

3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants.”

28. Considering the above, the respondents/claimants are entitled to get total compensation of Rs.9,72,356/-. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	7,04,000	8,62,356	Enhanced
2.	Spousal consortium	40,000	40,000	Confirmed
3.	Loss of estate	10,000	15,000	Enhanced
4.	Transport expenses	10,000	Nil	Nil
5.	Funeral expenses	15,000	15,000	Confirmed
6.	Parental Consortium	Nil	40,000	Granted



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29. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

30. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.7,79,000/- (Rupees Seven Lakhs and Seventy Nine Thousand only) is hereby enhanced to **Rs.9,72,356/- (Rupees Nine Lakhs Seventy Two Thousand Three Hundred and Fifty Six only)** together with interest at 7.5% per annum and costs. The appellant/Transport Corporation is directed to deposit the modified enhanced amount with interest and costs from the date of petition till the date of realization to the credit of M.C.O.P.No.698 of 2015 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court, Pudukkottai, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent/first claimant is entitled to get **Rs.6,72,356/- (Rupees Six Lakhs Seventy Two**



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Thousand Three Hundred and Fifty Six only) and the second respondent/second claimant is entitled to get **Rs.3,00,000/- (Rupees Three Lakhs only)**. Accordingly, the first respondent/first claimant is permitted to withdraw her shares along with interest and costs and the share of the minor second respondent/second claimant shall be deposited in any one of the Nationalised Banks till he attain majority. The first respondent/first claimant, who is the mother of the minor second respondent/second claimant is permitted to withdraw the interest of minor once in three months directly from the Bank. Parties are directed to bear their own costs. The respondents/claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

29.09.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The Motor Accident Claims Tribunal/
Additional District and Sessions Court, Pudukkottai.



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2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.699 of 2019

Dated : 29.09.2023