



C.M.A.(MD)No.1231 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 17.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1231 of 2022
and
C.M.P(MD)No.12624 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation,
Periyamilaguparai,
Trichirappalli.

...Appellant/Respondent

Vs.

Kulunthan(Died)
1.Pitchaiammal
2.Kulunthayee

...Respondents/Respondents2&3

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, set aside the award dated 09.02.2022 passed in M.C.O.P.No.587 of 2016 on the file of the Motor Accidents Claims Tribunal/Special District Court, Trichirappalli.

For Appellant : Mr.P.Prabhakarn

For R1 & R2 : Mr.C.Ezhilarasu



C.M.A.(MD)No.1231 of 2022

JUDGMENT

WEB COPY

Challenging the award passed by the Motor Accidents Claims Tribunal granting compensation of a sum of Rs.1,96,400/- and deducting 25% towards contributory negligence on the part of the claimants/respondents and fixing liability on the side of the appellant/Transport Corporation, the present appeal came to be filed.

2. The claimants are the father, mother and sister of the deceased. Though the claim petition was filed by the appellant, during the pendency of the trial, the father of the deceased died.

3. On 25.02.2016, while the deceased was riding a motorcycle bearing Registration No.TN-48-S-0762 from east to west direction at the extreme left side of the road, a bus bearing Registration No.TN-45-N-2592 belonging to the Transport Corporation came in an opposite direction driven by its driver in a rash and negligent manner and dashed against the motorcycle, as a result, the deceased fell on the road with severe head injuries and he was taken to the hospital, but the deceased died on the way to hospital. A case was registered in respect of the



C.M.A.(MD)No.1231 of 2022

accident. Hence, the compensation of Rs.30,00,000/- was claimed by the claimants.

4. The respondent took a stand that the insurer of the motorcycle has not been impleaded as parties to the proceedings. Besides, the accident had occurred, only due to the rash and negligent driving of the deceased. The driver of the bus has driven the bus in a cautious manner.

5. Before the Tribunal, on the side of the claimants/petitioners, P.W.1 to P.W.4 were examined and Ex.P.1 to Ex.P.21 were marked. On the side of the respondent, R.W.1 and R.W.2 were examined and Ex.R.1 and Ex.E.2 were marked.

6. The Tribunal, after analyzing the evidence, has deducted 25% towards contributory negligence and awarded the compensation as follows:

S.No.	Description	Amount
1.	Loss of dependency	Rs.4,99,400/-
2.	Transportation Charges	Rs. 10,000/-
3.	Loss of Estate	Rs. 10,000/-
4.	Filial Consortium	Rs. 35,000/-
5.	Funeral Expenses	Rs. 10,000/-
	Total	Rs.15,96,400/-



C.M.A.(MD)No.1231 of 2022

7. The Tribunal had deducted 25% towards contributory negligence and directed the appellant/Transport Corporation to pay a sum of Rs.11,97,300/- (Rupees Eleven Lakhs and Ninety Seven Thousand Three Hundred only) to the claimants.

8. The learned counsel appearing for the appellant would mainly contend that the fixation of 25% towards contributory negligence by the Tribunal, is not proper. The quantum awarded by the Tribunal is also excessive.

9. The learned counsel appearing for the respondents would submit that there is no negligence on the part of the rider of the motorcycle. However, the Tribunal has fixed the contributory negligence of 25% , merely on the basis of the registration of FIR. Hence, he opposed the appeal.

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

(i)Whether the Tribunal was right in fixing the contributory negligence on the part of the deceased at 25%?

(ii)Whether the quantum fixed by the Tribunal is proper?



C.M.A.(MD)No.1231 of 2022

WEB COPY

11. It is not in dispute that the accident took place on 25.02.2016. The Tribunal, considering the age of the deceased and based on the records, has applied the multiplier. The only question that remains for answer in this appeal is whether the percentage of the contributory negligence fixed by the Tribunal is proper?

12. The Tribunal has wrongly fixed the percentage towards contributory negligence, based on the FIR filed against the deceased. Perusal of Ex.P.1-FIR would reveal that FIR has been registered against the deceased on the basis of the complaint given by the Village Administrative Officer, after one hour of the accident. The information provided in the FIR clearly indicates that the V.A.O., is not an eyewitness and only based on the information received by him, he lodged a complaint. Therefore, merely on the basis of FIR, it cannot be stated that due to negligence on the part of the deceased, the accident occurred. However, the Tribunal has fixed 25% towards contributory negligence, by taking note of the damages made on the motorcycle.



C.M.A.(MD)No.1231 of 2022

13. Further, on seeing the photographs filed on the side of the respondents, the alleged road is having a small width. Such being the position, when the heavy vehicle was driven, the driver ought to have taken much care on seeing the vehicle on opposite direction in the wrong side. The driver could have taken steps at least to stop the bus, which is not the case of the respondent that the bus was stopped thereafter and the motorcycle hit the bus. Therefore, it is clear that the negligence is only on the part of the driver of the bus. Therefore, the finding of the Tribunal fixing the liability at 75% towards contributory negligence on the part of the driver cannot be found fault with.

14. As far as the quantum is concerned, the deceased was aged about 28 years at the relevant point of time and the same has been proved before the Tribunal under Ex.P.2-Postmortem certificate. The Tribunal has fixed the notional income of the deceased at Rs.10,500/- and added 40% towards future prospects and deducted 1/2 towards personal expenses, since the deceased was a bachelor and correctly applied the multiplier as '17'. Therefore, the award of the Tribunal is just and proper.

15. In view of the above, this Court does not find any infirmity in the



C.M.A.(MD)No.1231 of 2022

award passed by the Tribunal. Accordingly, this Civil Miscellaneous Appeal stands dismissed and the judgment of the Tribunal is confirmed. The appellant/Transport Corporation is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization, within a period of two months from the date of receipt of a copy of this judgment, less the amount, if any already deposited. No costs. Consequently, connected miscellaneous petition is closed.

17.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
NS

To

1.The Motor Accidents Claims Tribunal/
Special District Court,
Trichirappalli.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.1231 of 2022

N.SATHISH KUMAR, J.

NS

C.M.A.(MD)No.1231 of 2022
and
C.M.p(MD)No.12624 of 2022

17.03.2023