



C.M.A.(MD).No.940 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**CMA(MD) No.940 of 2022 and
CMP(MD) No.9339 of 2022**

State Express Transport Corporation Ltd.,
Chennai through its Managing Director
having office at Thiruvalluvar House
Pallavansalai, Chennai 600 002.

...appellant/
respondent No.1

Vs.

1.Maria Pooranam

2.Eritto Baburaj

3.Ajay Ranjith Singh

4.Merlin Sinduja

5.R.Devaraj

6.Royal Sundaram Alliance Insurance Company Ltd.,
through its Branch Manager
Salem, Office at 8/111
Mangalam Building, 4 roads,
Salem 636 009.

... Respondents/
claimants



C.M.A.(MD).No.940 of 2022

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 23.01.2021 in MCOP No.1532 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tirunelveli.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.R.Balakrishnan for R1 to R6
Mr.S.Srinivasa Raghavan for R7

J U D G M E N T

RMT.TEEKAA RAMAN, J.

This Civil Miscellaneous Appeal is directed against the award and decree dated 23.01.2021 made in MCOP No.1532 of 2015 by the Motor Accident Claims Tribunal, Special Sub Court, Tirunelveli.

2.The legal heirs of the deceased Anthony Xavier filed MCOP No.1532/2015 before the Special Sub Court, Tirunelveli, seeking compensation for the pecuniary loss sustained by the claimants/petitioners in a road transport accident.



C.M.A.(MD).No.940 of 2022

WEB COPY

3. Before the tribunal, the respondents 1 and 3 have filed counter statements. During trial, the claimant/petitioner No.1 examined herself as P.W.1 and marked Ex.P1 to Ex.P7. The occurrence witness, viz., Moses was examined as P.W.-2. On the side of the respondents, the driver of the bus was examined as R.W.1 and R.W.2 was also examined. Copy of the claim petitions in MCOP Nos.1964/2013 and 86/2014 were also marked during the cross-examination of R.W.1. Certified Lok Adalat award copy was marked as Ex.R5. Based upon the oral and documentary evidence, the tribunal has held that the accident had taken place due to the rash and negligent driving of the driver of the transport corporation and also awarded a compensation of Rs.37,48,324/- with interest at 7.5% from the date of petition till the date of realization. Aggrieved by the same, the transport corporation is before this Court with this appeal.

4. Learned counsel for the appellant would contend that on the point of negligence, ie., in the nature of contributory negligence, the appeal has been filed.



C.M.A.(MD).No.940 of 2022

WEB COPY

5. We have heard the learned counsel for the appellant, the learned counsel for the respondents/claimants 1 to 4 and the learned counsel for the respondent insurance company/R6 and perused the materials available on record.

6. With regard to the plea raised by the appellant, we have perused the oral evidence of P.W.2, viz., the occurrence witness and also Ex.P1-FIR and Ex.P5-charge sheet. It remains to be stated that R.W.1 is the driver of the transport corporation bus. During the cross-examination of R.W.1, he has categorically admitted that after enquiry, he was placed under suspension, which has also resulted in stoppage of income. In the connected MCOP Nos.1964/2013 and 86/2014, the tribunal has held that the driver of the transport corporation was at fault and accordingly, fixed the negligence on the part of the driver of the offending vehicle and the transport corporation have also settled the amount during the Lok Adalat, as could be seen from the judgment in respect of the cases marked before the tribunal, namely, Ex.R2, R3, R4 and R5. On appreciation of the oral and documentary evidence, we find that the evidence adduced by P.W.2 –



C.M.A.(MD).No.940 of 2022

occurrence witness duly corroborated the documentary evidence of
Ex.P5.

7.It is to be stated that as per the charge sheet, it is categorically admitted that while the driver of the tipper lorry drove the lorry on the bye-pass fly-over, the tyre punctured and hence, he parked the vehicle on the left hand side of the road and the cleaner of the lorry was doing puncturing work and at the time, the bus driven by the transport corporation came and dashed against the lorry. So also the evidence of P.W.2. Taking into consideration the admission made by the driver of the offending bus, R.W.1, in the connected matters, a finding was also rendered by the competent tribunal with regard to negligence on the part of the driver, which was not appealed by the transport corporation coupled with the evidence of P.W.3, which clearly indicates negligence on the part of the driver, we find that the finding rendered by the tribunal need not be interfered with. Accordingly the finding given by the tribunal with regard to negligence on the part of the driver of the bus is hereby confirmed.



C.M.A.(MD).No.940 of 2022

WEB COPY

8. As far as the quantum of compensation is concerned, in **2018 (1) TN MAC 592 (DB), [Managing Director, State Express Transport Corporation Limited, Vs. Radha and others]**, the Division Bench has held that though the appeal has been preferred by the Transport Corporation, considering the facts and circumstances of the case, the Court could take *suo motu* decision for enhancing the compensation amount awarded by the Tribunal, by re-appreciating the evidence on record and applying the correct position of law, as on date and by invoking Order 41, Rule 33 C.P.C. and Section 151 CPC as well as Article 227 of the Constitution of India.

9. By relying upon the aforesaid decision, though this Appeal has been preferred by the Transport Corporation, on considering the facts and circumstances of the case, we find that with regard to loss of love and affection for the children, namely, the respondents/claimants 2 to 4, no award has been passed and hence, by invoking the *suo motu* powers, if compensation is awarded towards loss of love and affection, it would meet the ends of justice. Accordingly, an amount of Rs.40,000/- is fixed to each claimants/respondents 2 to 4, who are the children of the



C.M.A.(MD).No.940 of 2022

deceased. Accordingly, the amount of Rs.1,20,000/- is awarded on the head of loss of love and affection.

10. In fine, the award of the tribunal is partly modified and enhanced from Rs.37,48,324/- to Rs.38,68,324/-. However, as far as the other heads, the amount awarded remains unaltered.

11. Accordingly, the award amount granted by the tribunal is enhanced as follows:

Heads	Awarded by the tribunal (Rs.)	Modified/reduced	Final Compensation (Rs.)
Loss of income, future prospects, 1/4 th deduction, multiplier 13, loss of consortium to the first claimant, loss of estate and funeral expenses	37,48,324/-	(confirmed)	37,48,324/-
Loss of love and affection	-	40,000 x 3 (awarded)	1,20,000/-
Total	37,48,324/-	Enhanced	38,68,324/-

12. The compensation is enhanced from Rs.37,48,324/- to Rs.38,68,324/-. The respondents 1 to 4 are entitled for the compensation



C.M.A.(MD).No.940 of 2022

of Rs.38,68,324/- (Rupees thirty eight lakhs sixty eight thousand three hundred and twenty four only) with interest at 7.5% from the date of petition till the date of realization.

13. The appellant Transport Corporation is directed to deposit the entire award amount along with interest within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants/respondents, namely, the respondents 1 to 4 are permitted to withdraw their respective shares with proportionate interest and costs as apportioned by the Tribunal. The appellant Transport Corporation or the respondents/claimants 1 to 4 are liable to pay Court fee for the enhanced compensation awarded.

14. In the result, the civil miscellaneous appeal is allowed in part with the above modifications. No costs. Consequently connected Miscellaneous Petition is closed.

(T.K.R.,J.) (P.B.B.,J.)
24.11.2023

NCC : Yes/No
Index : Yes/No
RR



C.M.A.(MD).No.940 of 2022

WEB COPY

To

1.The Motor Accident Claims Tribunal,
Special Sub Court, Tirunelveli

2.The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD).No.940 of 2022

RMT.TEEKAA RAMAN,J.
AND
P.B.BALAJI, J.

RR

CMA(MD) No.940 of 2022

24.11.2023