

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.621 of 2022

The Tamil Nadu State Transport Corporation Limited,
Thondi Road,
Sivagangai.
Through its Branch Manager. :Appellant/second respondent

.vs.

1.Umamaheswari

2.Minor Vibin :Respondents 1 and 2/
Petitioners
(2nd respondent represented through his mother, guardian and the
first respondent herein, Uma Maheswari)

3.Kamatchi Raj :Third Respondent/First
Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act against the order passed in M.C.O.P.No.231 of
2018, dated 16.2.2021, on the file of the Motor Accidents Claims
Tribunal(Principal District Court),Sivagangai.

For Appellant :Mr.P.M.Vishnu Varthanan

For Respondents :Mr.P.Selvakamatchi
1 and 2

For Respondent-3 :No appearance

JUDGMENT

Challenging the quantum of compensation and also questioning the liability fixed on the appellant/Transport Corporation, the present Civil Miscellaneous Appeal came to be filed.

2.The deceased husband of the first petitioner and father of the second petitioner, was riding his two-wheeler bearing Registration No.TN 63 AH 0544 along with the Petitioners and while returning from Sivagangai Government Hospital to his native village Illupakudi in Sivagangai District and at that time, on 29.6.2014 at about 9.00 p.m., the first respondent drew the Corporation bus bearing Registration No.TN 63 N 1528 in a rash and negligent manner, coming from the opposite direction, dashed against the two-wheeler. As a result, the deceased succumbed to injuries.The deceased was an agricultural coolie, earning a sum of Rs.10,000/-p.m. Hence the Petitioners/claimants have filed a claim petition claiming a sum of Rs.25 lakhs as compensation.

3.The first respondent remained exparte before the Tribunal

4.It is the case of the second respondent that his driver drove

the Corporation bus in a cautious manner and the deceased drove the two wheeler without wearing helmet and without noticing the vehicle coming in front of him, the accident had occurred only due to the negligence on the part of the motor vehicle driven by the deceased.

5.Before the Tribunal, on the side of the Petitioner, P.W.1 was examined and Ex.P1 to ExP10 were marked. On the side of the respondents, R.W.1 was examined and no documentary evidence was marked.

6.The Tribunal, on considering the evidence of P.W.1 eye-witness and also Ex.P3-First Information Report as against the driver of the corporation bus and another ExP6, found that the driver of the Corporation bus had driven the bus in a rash and negligent manner and caused the accident.

7.The first respondent remained exparte before the Tribunal.

8.The Tribunal has considered the entire evidence and found that only the driver of the Corporation bus was negligent enough in driving the bus, particularly, the bus is a heavy vehicle and mere

non-wearing of helmet, as stated in the counter, cannot be a determinative factor to shift the entire liability on the deceased. The driver of the bus, which is a heavy vehicle, has a clear view of the road, who ought to have driven the bus in a cautious manner. Therefore, this Court is of the view that without any evidence, particularly, except the interested witnesses of driver himself, the negligence cannot be inferred as against the deceased. The Tribunal has fixed the notional income at Rs.8,000/-p.m., and awarded the compensation as follows:

1.For loss of dependancy	-Rs.15,23,268/-
2.For funeral expenses	-Rs.15,000/-
3.For loss of love and affection to the wife/first Petitioner	-Rs.50,000/-
4.For loss of love and affection to the second Petitioner	-Rs.50,000/-
5.For loss of estate	-Rs.6,000/-

total	-Rs.16,44,268/-

9.On a perusal of the entire award, this Court does not find any infirmity in fixing the notional income at Rs.8,000/- as the deceased was aged 26 years at the relevant point of time. In such view of the matter, except awarding Rs.50,000/- each to the first and second petitioners towards loss of love and affection and amount awarded under the loss of estate , other heads of the award does not require any interference.This Court awards a sum of Rs.

40,000/- each to the first and second petitioners towards loss of love and affection and for loss of estate, it is enhanced to Rs. 15,000/- from Rs.6000/- as awarded by the Tribunal and accordingly, the compensation awarded by this Court is as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of dependency	Rs. 15,23,268	Rs. 15,23,268/-	same
2	For funeral expenses	Rs.15,000/-	Rs.15,000/-	same
3	For loss of love and affection to the first petitioner/wife	Rs.50,000/-	Rs.40,000/-	modified
4.	For loss of love and affection to the second petitioner/son	Rs.50,000/-	Rs.40,000/-	modified
5	For loss of estate	Rs,6,000/-	Rs.15,000/-	Enhanced
6	Total	Rs. 16,44,268/-	Rs. 16,33,268/-	Reduced

10.In fine, the Civil Miscellaneous Appeal is partly allowed reducing the compensation from Rs.16,44,268/- to Rs.16,33,268/- with interest at the rate of 7.5%p.a., from the date of claim petition till the date of realization. The appellant/Transport Corporation is directed to deposit the modified award amount with proportionate accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a

copy of this order. On such deposit being made, the first Petitioner/wife is permitted to withdraw her share in the award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, by filing necessary application before the Tribunal. As far as the share of the minor claimant/second respondent is concerned, the same shall be deposited in an interest bearing fixed deposit, in any one of the nationalised bank, initially for a period of three years, renewable thereafter, till the minor attains majority. The first respondent, mother and guardian of the minor claimant is permitted to withdraw the interest from the said deposit once in three months directly from the bank and utilize the same for the welfare of the minor child. If the Transport Corporation has already deposited the entire award amount, as ordered by the Tribunal, the Tribunal is permitted to refund the excess award amount, if any, to the appellant. No costs.

28.03.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Motor Accidents Claims Tribunal,
(Principal District Court),
Sivagangai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.621 of 2022

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