



C.M.A.(MD)No.471 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 16.02.2023

Delivered On : 03.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.471 of 2020

The Branch Manager,

Tamil Nadu State Transport Corporation

3, Karaikudi Region, Karaikudi.

.. Appellant / Respondent

Vs.

Maragatham

.. Respondent / Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.123 of 2017, dated 07.03.2019, on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Ramanathapuram.

For Appellant

: Mr.P.M.Vishnuvarthanan

For Respondents

: Mr.M.S.Jeyakarthik



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No.123 of 2017, dated 07.03.2019, on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Ramanathapuram. The appellant herein is the respondent and the respondent herein is the claimant in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition, in M.C.O.P.No.123 of 2017, is as follows:

On 20.07.2016, at about 11.45 pm., the deceased – Mohandoss was travelling in a two wheeler, bearing Registration No.TN-65-L-6410 along the National Highway near Rameswaram bus stop, a bus bearing Registration No.TN-63-N-1472 came in a rash and negligent manner, applied sudden brake, thereby, the bike hit against the backside of the bus. The deceased sustained injuries, he was taken to Rameshwaram Hospital, he died on the way to the Hospital. The deceased was aged about 21 years and he was earning Rs.15,000/- by doing fishing business and he was earning Rs.5,000/- by doing part time construction work and at times he was doing the job of an acting driver. The petitioner is his dependant and she claim a sum of Rs.15,00,000/- as compensation.



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3. A brief substance of the counter filed by the respondent, in

M.C.O.P.No.123 of 2017, is as follows:-

The bus driver drove the bus in a slow and cautious manner. After all the passengers were boarded in front of the Rameshwaram temple, the driver of the bus drove the vehicle in a slow manner, to park the vehicle in the Rameshwaram Branch Office, when the bus was nearing Lakshmana Stop at about 11.45 pm., a two wheeler having three persons, hit against the back side of the bus. The rider of the two wheeler hit a pig and then he hit the bus from the back side. The bus driver is not responsible for the accident. F.I.R was registered only against the rider of the two wheeler. The owner of the two wheeler and the insurer of the two wheeler are necessary party to the case. Since the bus driver is not responsible for the accident, there is no need for the respondent to pay compensation. The petitioner has to prove the age and income of the deceased and the dependency of the petitioner. The claim is excessive.

4. Two (2) witnesses were examined, 9 documents were marked on the side of the petitioner. One (1) witness was examined and no document was marked on the side of the respondent. After considering both sides, the Tribunal awarded a sum of Rs.6,88,000/- as compensation to be paid by the first respondent.



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5. Against the award, the first respondent - appellant has filed this appeal on the following grounds:-

The Tribunal is wrong in fixing the entire negligence on the appellant – Transport Corporation, when it is a clear that the deceased, who drove the two wheeler along with two others, hit the rear side of the Corporation bus. Observation Mahazer - Ex.P2, F.I.R (Ex.P1), clearly reflect the same. It is an admitted fact that three persons travelled in a two wheeler and none of them were wearing helmet and it is a clear case of violation of Rules, for which all the Corporation cannot be held liable. The Tribunal fixed the monthly income as Rs.6,000/-, which is excessive.

6. On the side of the appellant, it is stated that three persons travelled in a two wheeler and the two wheeler hit the rear side of the bus. F.I.R was registered against the rider of the two wheeler.

7. On the side of the respondent - claimant, it is stated that the deceased and his friends went for fishing and they return back in a bike as Triples. The Government bus was proceeding in front of them. No indication was given by the bus driver, no signal was given and he suddenly stopped the bus, thereby, the bike that was following the bus dashed against the bus.



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8. On the side of the respondent - claimant, it is stated that having two pillion riders alone cannot be a disqualification for getting compensation for the claimant. A judgment of the Hon'ble Supreme Court reported in **CDJ-2020-SC-049 (Mohammed Siddique & another V. National Insurance Company Ltd.)**, wherein, it is stated as follows:-

“The deceased was riding on a motor cycle along with driver and another, may not, by itself, without anything more, make him guilty of contributory negligence – At the most it would make him guilty of being a party to violation of law – There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim – Finding of High Court that two persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record- In absence of any evidence to show that wrongful act on part of deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence – Hence reduction of 10% towards contributory negligence, is clearly unjustified.”



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9. On the side of the respondent - claimant, it is stated that F.I.R is not a conclusive proof to prove the negligence. The Tribunal has fixed the negligence based on the evidence before it. A judgment of this Court in C.M.A.(MD)No.1151 of 2020 (The Branch Manager V. Vembu), dated 30.03.2021, is cited. P.W.1 has deposed that it was the bus, which was proceeding in front of the two wheeler, all of a sudden stopped without giving any signal, thereby, the two wheeler dashed against the rear side of the bus.

10. On the side of the appellant, it is stated that it was the two wheeler, which came in a rash and negligent manner and not the bus. Copy of the F.I.R was marked as Ex.P1. Copy of the observation mahazer was marked as Ex.P2. Copy of rough sketch was marked as Ex.P3. M.V.I. Report was marked as Ex.P5. R.W.1 was the driver of the bus. No independent witness was examined on the side of the appellant. Considering the evidence of P.W.2, who was an independent witness, it is decided that the accident has happened due to the negligence of the bus driver. It is admitted on the side of the claimant that three persons travelled in a two wheeler at the time of accident. Hence, 15% contributory negligence is fixed on the part of the deceased.



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11. On the side of the appellant, it is stated that the Tribunal has fixed the monthly income as Rs.6,000/-, which is excessive. Considering the date of accident, it is decided that the income fixed by the Tribunal is reasonable. The deceased is a bachelor and hence 50% (Rs.3,000/-) is deducted. After deducting 50%, the deceased might have contributed Rs. 3,000/- to his family member. After adding 40% future prospects, the income is calculated as Rs.4,200/-. The age of the deceased at the time accident 21 years and after applying multiplier '18', the loss of income is calculated as Rs.9,07,200/- (Rs.4,200/- X 12 X 18)/- and the same is reasonable.

12. The Tribunal has awarded Rs.20,000/- towards funeral expenses and Rs.20,000/- towards loss of love and affection, which are all reasonable.

13. The total compensation is calculated as follows:-

Loss of income	:	Rs. 9,07,200/-
Funeral expenses	:	Rs. 20,000/-
Loss of love & affection	:	Rs. 20,000/
Total compensation	:	 Rs. 9,47,200/-



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14. After deducting 15% (Rs.1,42,080/-) towards contributory negligence, the claimant is entitled to Rs.8,05,120/- as compensation.

15. This Appeal is dismissed. No costs.

(i) The compensation is enhanced from Rs. 6,88,000/- to Rs.8,05,120/-.

(ii) The appellant - Transport Corporation, is directed to deposit the entire compensation of **Rs.8,05,120/** (less the amount if any already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with proportionate costs, within a period of eight weeks from the date of receipt of a copy of this order. Excess amount, if any, shall be refunded to the appellant – Transport Corporation.

(iii) On such deposit being made, the respondent herein / claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing proper petition before the Tribunal, less any amount, if already withdrawn by her. The claimant is not entitled for interest for the default period, if there is any.



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(iv) The claimant is **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.

03.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

1.The Motor Accidents Claims Tribunal /
Subordinate Court,
Ramanathapuram.

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



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.471 of 2020

03.04.2023