



C.M.A.(MD) No.1072 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1072 of 2022

and

C.M.P.(MD)No.10816 of 2022

and

Cross.Objection (MD)No.6 of 2023

C.M.A.(MD)No.1072 of 2022:

The Managing Director,
State Express Transport Corporation
Tamil Nadu Ltd.,
Thiruvalluvar, Pallavan Salai,
Chennai.

...Appellant/Respondent

Vs.

1.Thavamani
2.Karnan
3.Kamal
4.Kennedy

...Respondents/Petitioners

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order dated 10.03.2022 in M.C.O.P.No. 393 of 2015 on the file of the Special District Court Motor Accident Claims Tribunal, Trichy.

CROSS OBJECTION (MD)No.6 of 2023:

1.Thavamani
2.Karnan



C.M.A.(MD) No.1072 of 2022

3.Kamal
4.Kennedy

...Cross objectors/Respondents/Petitioners
vs.

The Managing Director,
State Express Transport Corporation
Tamil Nadu Ltd.,
Thiruvalluvar, Pallavan Salai,
Chennai.

...Respondent/Appellant/Respondent

PRAYER: This Cross Objection is filed under Section 41 Rule 22 of the Civil Procedure Code, to modify the award passed in M.C.O.P.No.393 of 2015 on the file of the Motor Accident Claims Tribunal (Special District Judge), Tirchirppalli, dated 13.03.2022 and enhance the compensation amount.

In CMA(MD)No.1072 of 2022:

For Appellant : Mr.K.A.Thirumaliappan
For Respondents : Mr.N.Sudhagar Nagaraj

In Cross.Obj.(MD)No.13 of 2022:

For Cross Objectors : Mr.N.Sudhagar Nagaraj
For Respondent : Mr.K.A.Thirumalaiappan

COMMON JUDGMENT

This Civil Miscellaneous Appeal and the Cross Objection have been filed challenging the compensation awarded by the Motor Accident Claims



C.M.A.(MD) No.1072 of 2022

Tribunal/Special District Court, Tiruchirappalli in M.C.O.P. No.393 of 2015, dated 10.03.2022.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i) The deceased was aged about 27 years bachelor. He was running a brick kiln on his own. On 17.01.2014 at about 03.30 a.m., while the deceased was standing in the road, the bus bearing Registration No.TN-01-AN-0160 came in a rash and negligent manner from north to south, dashed against the deceased. As a result, he succumbed to injuries there itself. FIR was also registered against the driver of the Transport Corporation. Hence, compensation of Rs.25 lakhs was claimed.

(ii)The first and second claimants are the parents of the deceased and the third and fourth claimants are the brothers of the deceased.

(iii) The respondent/Transport Corporation had contended that the bus was driven in a cautious manner and the driver of the Eicher Lorry, which was



C.M.A.(MD) No.1072 of 2022

proceeding ahead the bus, applied sudden break and hence, the accident was occurred.

4. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.4 were examined and Ex.P1 to Ex.P7 were marked. On the side of the respondent R.W.1 was examined and Ex.R1 was marked. Ex.C1 was also marked.

5. The tribunal, considering the evidence of the eye witness and FIR filed against the driver of the bus, found that the negligence is on the part of the driver of the bus and the contention of the respondent that the accident was occurred only by the Eicher lorry had not been established. Hence, the tribunal had fixed the compensation as follows:

S.No.	Particulars	Amount
1.	Loss of Dependency	Rs.6,42,600/-
2.	Transport Charges	Rs. 7,000/-
3.	Loss of Estate	Rs. 10,000/-
4.	Loss of Filial Consortium for first claimant	Rs. 35,000/-
5.	Loss of Filial Consortium for the claimants 2 to 4	Rs.1,05,000/-
6.	Funeral Expenses	Rs. 10,000/-
	Total	Rs.8,09,600/-



C.M.A.(MD) No.1072 of 2022

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the Transport Corporation. The claimants have also filed Cross Objection seeking enhancement of compensation.

6.I have heard the learned counsel appearing on either side and also perused the materials available on record.

7.The learned counsel for the appellant/Transport Corporation submits that the accident was not occurred due to the negligence on the part of the driver of the Transport Corporation. The tribunal has erred in awarding compensation for loss of consortium to the first claimant.

8.The learned counsel for the claimants/Cross Objectors would submit that the Tribunal having rightly assessed the negligence on the part of the driver of the bus, had adopted monthly income of the deceased only at Rs.4,500/-, which is very low. The deceased was aged about 27 years. Even the concept of minimum wages is applied, he could have earned as sum of Rs.12,000/- per month. Therefore, the income fixed by the tribunal has to be enhanced.



C.M.A.(MD) No.1072 of 2022

9. In view of the above submission, now the point arises for consideration in this appeal is:

1. Whether the Tribunal is right in awarding compensation and adopting monthly income of the deceased at Rs.4,500/-?

2. Whether the claimants are entitled to enhanced compensation?

10. The Tribunal after considering the evidence of P.W.2 and FIR, found that the driver of the bus was rash and negligent in driving the bus, which resulted in the accident. Though it is the contention of the learned counsel for the Transport Corporation that the accident was due to the negligent driving of the Eicher lorry, the Tribunal disbelieved the said stand taking note of the conduct of the driver of the bus that he remained silent and he had not taken any steps to inform the same to the Investigation Officer even at the relevant point of time. The investigation was also proceeded only against the driver of the bus and the name board of the bus was also seized from the place of occurrence. The Motor Vehicle Inspection report also proves that there was a damage in the bus. Considering all these facts, the Tribunal rightly came to the conclusion that only the driver of the bus was negligent in driving the vehicle and caused the accident and said finding does not warrant any interference.



11.The Tribunal had fixed only Rs.4,500/- as monthly income. It is relevant to note that the deceased was aged about 27 years and was running a brick kiln of his own. Though the said fact had not been established, the fact remains that the deceased was a bachelor and he was hale and healthy. Even by doing any other works, he could have earned a sum of Rs.12,000/- per month. The Tribunal had not taken the same into account. Accordingly, the notional income of the deceased is fixed at Rs.12,000/- (Rupees Twelve Thousand only) and 40% of the income (i.e.,Rs.3,000/-) is added towards future prospects. Considering the fact that the deceased was a bachelor at the time of accident, 1/2 of the income is deducted towards his personal expenses. Hence, the monthly income of the deceased is fixed at Rs.7,500/- (Rupees Seven Thousand Five Hundred only).

12.Further, the Tribunal had awarded a sum of Rs.10,000/- towards loss of estate, Rs.35,000/-, each under the head of loss of filial consortium and Rs.10,000/- towards funeral expenses, which are also very meager. Hence, this Court awards a sum of Rs.15,000/- (Rupees Fifteen Thousand only) towards loss of estate, Rs.40,000/- (Rupees Forty Thousand only) to each claimants towards loss of filial consortium and Rs.15,000/- (Rupees Fifteen Thousand only) towards funeral expenses.



C.M.A.(MD) No.1072 of 2022

13.In fine, the claimants are entitled to the compensation as stated below:

S.No.	Particulars	Amount
1.	Loss of Dependency	Rs.15,30,000/-
2.	Transport Charges	Rs. 7,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Loss of Filial Consortium for first claimant	Rs. 40,000/-
5.	Loss of Filial Consortium for the claimants 2 to 4	Rs. 1,20,000/-
6.	Funeral Expenses	Rs. 15,000/-
	Total	Rs.17,27,000/-

14.In fine, this Civil Miscellaneous Appeal filed by the Transport Corporation is dismissed and the Cross Objection filed by the claimants is allowed and the award granting compensation of Rs.8,09,600/- made by the Tribunal is modified as stated above.

15.The appellant is directed to deposit the compensation amount i.e., Rs.17,27,000/- (Rupees Seventeen Lakhs Twenty Seven Thousand only) as modified by this Court with interest at the rate of 7.5%, to the credit of M.C.O.P.No.393 of 2015, on the file of the Motor Accident Claims Tribunal /Special District Court, Trichy within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited.



C.M.A.(MD) No.1072 of 2022

On such deposit, the first claimant is permitted to withdraw a sum of Rs.10,00,000/- (Rupees Ten Lakhs only), second claimant is permitted to withdraw a sum of Rs.3,27,000/- (Rupees Three Lakhs Twenty Seven Thousand only) and the third and fourth claimants are permitted to withdraw a sum of Rs.2,00,000/-, each (Rupees Two Lakhs only), less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

06.04.2023

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

1.The Motor Accident Claims Tribunal/
Special District Court, Trichy.

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



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C.M.A.(MD) No.1072 of 2022

N.SATHISH KUMAR, J.

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C.M.A.(MD)No.1072 of 2022
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