



*C.M.A(MD)No.413 of 2014 &
Cros.Obj(MD)No.37 of 2022*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.04.2023
DELIVERED ON : 01.06.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.413 of 2014
and
Cros.Obj(MD)No.37 of 2022

C.M.A(MD)No.413 of 2014:

The Managing Director
M/s.Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
46, Railway Station Road,
Periyamilaguparai,
Tiruchirappalli – 620 001.

... Appellant/1st Respondent

Vs.

1.R.Mercy

2.R.Auron

3.R.Diana

4.R.Dhanalakshmi

5.M/s.Bajaj Allianz General Insurance
Company Limited,
Represented through it's Divisional Manager,
108, T.P.K.Main Road,
Madurai – 625 001.

... Respondents/Claimants 1-3/
Respondents 2 & 3



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to allow this appeal, set aside the judgment and decree, dated 16.10.2012 passed in M.C.O.P.No.929 of 2010 on the file of the Motor Accident Claims Tribunal / IV Additional District Court, Madurai.

For Appellant : Mr.P.Prabhakaran

For R1-R3 : Mr.M.Saravanan

For R4 : No Appearance

For R5 : Mr.S.Suresh

Cros.Obj(MD)No.37 of 2022:

1.R.Mercy

2.R.Auron

3.R.Diana ... Petitioners/Respondents 1-3

Vs.

1.The Managing Director
M/s.Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
46, Railway Station Road,
Periyamilaguparai,
Tiruchirappalli – 620 001. ... Respondent/Appellant

2.R.Dhanalakshmi



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3. M/s. Bajaj Allianz General Insurance

Company Limited,

Represented through its Divisional Manager,

108, T.P.K. Main Road,

Madurai – 625 001.

... Respondents/Respondents 4 & 5

PRAYER: Cross Objection is filed under Order 41 Rule 22 of Code of Civil Procedure, to set aside the award dated 16.10.2012 passed in M.C.O.P.No.929 of 2010 on the file of Motor Accident Claims Tribunal, IV Additional District Judge, Madurai in so far as the disallowed portion of compensation is concerned and allow the present cross appeal.

For Petitioners : Mr.M.Saravanan

For R1 : Mr.P.Prabhakaran

For R2 : No Appearance

For R3 : Mr.S.Suresh

COMMON JUDGEMENT

The present appeal has been filed by the transport corporation challenging the award of the Motor Accident Claims Tribunal, Madurai in M.C.O.P.No.929 of 2010 primarily on the ground of liability.



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2. According to the claimants, the deceased was travelling as a passenger in a Maruthi Omni van owned by the 2nd respondent and insured with the 3rd respondent. The driver of the said Maruthi van drove the vehicle in a rash and negligent manner and came on the wrong side and dashed against the transport corporation bus. According to the claimants, the accident took place only due to the rash and negligent driving of the driver of the Omni van. In paragraph 4 of the claim petition, they have pointed out that the transport corporation is impleaded only to get a binding adjudication.

3. According to the claimants, a criminal case was registered as against the driver of the 2nd respondent in Crime No.191 of 2005 on the file of Vennenthoo Police Station, Namakkal District. The claimants have further contended that the deceased was a television mechanic and service man who was earning a sum of Rs.20,000/- per month. The claimants are the wife and children of the deceased. The claimants prayed for a sum of Rs.10,00,00/- towards compensation.

4. The transport corporation had filed a counter contending that the accident has happened only due to the rash and negligent driving on the



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part of the driver of the Omni van. They have further contended that the Omni van was driven in a rash and negligent manner and it came on the right side of the road and dashed against the transport corporation bus. They have also questioned the quantum of compensation.

5. The owner of Maruthi van had remained ex parte and the insurance company of the said Maruthi van has filed a counter contending that the driver of the Maruthi van was not having an effective driving license on the date of accident. However, they have further contended that the accident has happened only due to the rash and negligent driving on the part of the driver of the transport corporation. They have also questioned the quantum of compensation as prayed for by the claimants.

6. The tribunal after considering the deposition of P.W.2 who was an occupant of the Omni van arrived at a conclusion that both the driver of the Omni van as well as the driver of the transport corporation bus had an opportunity to avoid the accident. Therefore, the accident has happened only due to the composite negligence between the said drivers and apportioned the negligence at 50:50.



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7. The tribunal had taken the notional income of the deceased at Rs.3,000/- per month after deducting 1/3rd towards his personal expenses and applied 13 as the multiplier and arrived at a sum of Rs.4,68,000/- as compensation under the head of loss of income. A sum of Rs.10,000/- was awarded under loss of consortium and another sum of Rs.15,000/- was awarded towards love and affection. A sum of Rs.5,000/- was awarded towards funeral expensaes, Rs.1000 was awarded towards transport to hospital charges and Rs.5,000/- was awarded towards loss of estate and Rs.500/- was awarded towards damages to cloth and Rs.30,135/- was awarded towards medical expenses based upon Exhibit P.8. Totally, a sum of Rs.5,35,000/- was awarded by the tribunal. The transport corporation as well as the insurance company of the Omni van were directed to deposit the amount. Challenging the said award, the present appeal has been filed by the transport corporation.

8. The learned counsel appearing for the appellant had contended that a perusal of the claim petition would clearly indicate that the claimants have made allegation of rash and negligent driving only on the part of the Omni van driver in which the deceased had travelled. There was no allegation whatsoever as against the driver of the transport



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corporation. In fact, the claim petition points out that transport corporation has been impleaded only for a binding adjudication. When there is no allegation of negligence on the part of the transport corporation driver, the tribunal was not right in arriving at a finding that the transport corporation has not let in any evidence to establish that there was no negligence on their part.

9. The learned counsel appearing for the appellant had further contended that without any pleading whatsoever, the claimants have let in evidence asserting that there was a composite negligence between the drivers of the Omni van and the transport corporation. When there is no pleading whatsoever, the tribunal ought not to have considered the said evidence. He further pointed out that P.W.2 who was one of the occupants of the Maruthi van has categorically admitted that the driver of the Maruthi van had driven the vehicle on the right side of the road and it has resulted in the accident.

10. The learned counsel appearing for the appellant had further contended that an F.I.R was registered only as against the driver of the Maruhti van in Crime No.191 of 2005. The driver of the Maruthi van was



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charge sheeted for the offence under Sections 279, 337, 304 (A) of I.P.C and Section 3 of the Motor Vehicles Act. The driver had admitted his guiltiness and paid the fine. Therefore, it is clear that the driver of the Omni van was not having any driving license at the relevant point of time and he had admitted his guiltiness and paid the fine before the criminal Court. Therefore, the tribunal was not right in fixing 50% of liability upon the transport corporation without any pleading whatsoever. If any award amount has to be paid to the claimants, the same has to be paid only by the respondents 2 and 3 in the claim petition and not by the transport corporation. Hence, he prayed for allowing the appeal and to exonerate the transport corporation.

11. Per contra, the learned counsel appearing for the claimants and the insurance company of the Maruthi van had contended that P.W.2 who is the eye witness has categorically deposed that the accident has happened only due to the composite negligence on the part of the transport corporation driver and the Omni van driver. He further contended that in his cross-examination, P.W.2 has admitted that only the transport corporation bus came in the wrong direction which resulted in the accident. The tribunal has properly appreciated the evidence of P.W.2



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and has arrived at a finding that the driver of the Omni van and the driver of the transport corporation were equally responsible for the accident and therefore, they have prayed for confirming the award passed by the tribunal with regard to the negligence.

12. I have carefully considered the submissions made on either side.

13. The deceased, namely Rajkumar was an occupant of the Maruthi van at the time of accident. The said Maruthi van was owned by the 2nd respondent and insured with the 3rd respondent in the claim petition. A careful perusal of the claim petition indicates that the claimants are categorical in their assertion that the accident has taken place only due to the rash and negligent driving on the part of the Omni van driver. In fact, in paragraph no.4 of the claim petition, they have specifically pointed out that the transport corporation has been added as a party only to get a binding adjudication. Nowhere in the claim petition, any allegation has been made as against the driver of the transport corporation alleging that he had driven the vehicle in a rash and negligent manner.



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14. The daughter of the deceased was examined as P.W.1. In paragraph no.4 of the proof affidavit, it is specifically pointed out that the accident has taken place solely due to the rash and negligent driving on the part of the driver of the Omni van. During her cross-examination also she has admitted that the accident has happened only due to the rash and negligent driving on the part of the driver of the Omni van.

15. One of the occupants of the said Omni van was examined as P.W.2. In his chief examination, he has deposed that the accident has happened due to the negligence on the part of the driver of the transport corporation as well as the driver of the Omni van. However, when he was cross-examined by the transport corporation, he had deposed that the Maruthi Omni van was driven on the wrong side, namely the right side of the road and it had dashed against the transport corporation bus.

16. An F.I.R has been registered only as against the driver of the Omni van in Crime No.191 of 2005 under Sections 279, 337 and 304 (A) of I.P.C by Vennandur police station, Namakkal. The driver was charge sheeted for the offence under Sections 279, 337, 304 (A) r/w Section 3 of Motor Vehicles Act. The driver of the Omni van had admitted his



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guiltiness and he has paid the fine. The judgment of the criminal Court has been marked as Exhibit P.7 on the side of the claimants.

17. The averments in the claim petition read with the deposition of P.W.1 and P.W.2 and the judgment of the criminal Court will clearly establish that the accident has happened solely due to the rash and negligent driving on the part of the driver of the Omni van. When there is no allegation whatsoever as against the driver of the transport corporation in the claim petition, the tribunal was not right in arriving at a finding that the transport corporation has not let in any evidence to discharge their burden. Though the motor accident claim petitions have to be tried in a summary nature, the Courts cannot give a go by to the pleadings. Therefore, the finding of the tribunal that the transport corporation driver is also responsible for the said accident and fixing 50% of the liability upon them is not legally sustainable and the same is liable to be set aside. The appellant / 1st respondent in the claim petition is exonerated from the liability to satisfy the award amount.

18. Admittedly, the Omni van was insured with the 3rd respondent insurance company. The counter filed by the insurance company reveals that the driver of the said van was not having driving license at the



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relevant point of time. The Motor Vehicle Inspector's report which is marked as Exhibit P.3 also reveals that the driving license was not produced along with the vehicle. A perusal of Exhibit P.7 judgment of the criminal Court also reveals that the driver has admitted his guiltiness and paid fine for the offences under Section 3 of the Motor Vehicles Act for driving the vehicle in a public place without possessing a valid driving license. Therefore, it is clear that at the time of accident, the Maruthi van owned by the 2nd respondent was driven by its driver who was not having a valid driving license and there was a violation of policy condition.

19. A careful perusal of the counter filed by the insurance company reveals that they have not disputed the policy or the coverage relating to the occupants of the Maruthi van. There is no contention whatsoever on the part of the insurance company, that the policy does not cover the occupants of the Maruthi van. Therefore, it is clear that the insurance company is liable to satisfy the award passed by the tribunal with regard to the death of the occupant of the Maruthi van and entitled to recover the same from the owner of the vehicle.



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20. The claimants have filed Cross Objection(MD) No.37 of 2022 seeking to enhance the compensation. According to the learned counsel appearing for the cross objector, the notional income fixed by the tribunal at Rs.3,000/- per month is not correct and it should have been fixed at Rs.6,000/- per month. He further contended that 30% should have been added to the monthly income towards future prospects. The learned counsel appearing for the appellant further contended that the tribunal has awarded very lesser amount towards loss of consortium and towards loss of love and affection. The tribunal has awarded very lesser amount towards transportation charges. Hence, he prayed for enhancement of compensation.

21. Per contra, the learned counsel appearing for the transport corporation and the insurance company had vehemently contended that already the award of the tribunal is on the excessive side and therefore, the question of enhancement of compensation would not arise. They further contended that the claimants have not produced any oral or documentary evidence whatsoever to establish that the claimant was a television mechanic and he was earning a sum of Rs.20,000/- per month. Therefore, the notional income as fixed by the tribunal at Rs.3,000/- is



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correct. They prayed for dismissal of the cross objection.

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22. I have carefully considered the submission made on either side with regard to the quantum of compensation.

23. In the claim petition, the claimants have contended that the deceased was a television mechanic and a service man and he was earning a sum of Rs.20,000/- per month. A perusal of the list of documents filed on the side of the petitioners indicates that the claimants have not chosen to file any documents whatsoever relating to the qualification, experience or income of the deceased person. The daughter of the deceased person has admitted in her cross-examination that her father has not undergone any special training for carrying out television repair. She has also admitted that there is no evidence to establish the quantum of income. Considering the fact that the accident has taken place in the year 2005, this Court is of the considered opinion that the notional monthly income of the deceased could be fixed at Rs.5,000/- per month. After adding 25% towards future prospects, the monthly income would be Rs.6,250/-. Since there are 3 dependents, 1/3rd of the income could be deducted towards personal expenses and ultimately, the total



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monthly income could be arrived at Rs.4,167/-.

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24. The age of the deceased is admittedly 48 years and the correct multiplier is 13. Therefore, the loss of income is (4167x13x12) Rs.6,50,052/- (Rupees Six Lakh Fifty Thousand and Fifty Two only) could be awarded. The claimants each one of them would be entitled to a sum of Rs.40,000/- (Rupees Forty Thousand only) towards loss of love and affection and therefore, totally a sum of Rs.1,20,000/- (Rupees One Lakh and Twenty Thousand only) could be awarded under the said head. The tribunal has awarded a sum Rs.5,000/- towards funeral expenses which the Court is inclined to enhance it to Rs.25,000/- (Rupees Twenty Five Thousand only). The tribunal has awarded a sum of Rs.1,000/- towards transport to hospital which the Court is inclined to enhance it to Rs.5,000/- (Rupees Five Thousand only). The award of the tribunal under the other heads, namely loss of estate, damage to cloth and medical expenses are hereby confirmed.

25. The award of the tribunal under various heads is modified as follows:



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Loss of income	=	Rs. 6,50,052/-
Loss of consortium to wife	=	Rs. 40,000/-
Loss of love and affection to both the children	=	Rs. 80,000/-
Funeral expenses	=	Rs. 25,000/-
Transport to hospital	=	Rs. 5,000/-
Loss of estate	=	Rs. 5,000/-
Damaged to cloth	=	Rs. 500/-
Medical expenses	=	Rs. 30,135/-
Total	=	----- Rs . 8,35,687/-

26. In view of the above said deliberations, the award amount of the tribunal, namely Rs.5,35,000/- (Rupees Five Lakh and Thirty Five Thousand only) is hereby enhanced to Rs.8,35,687/- (Rupees Eight Lakh Thirty Five thousand Six Hundred and Eighty Seven only). The enhanced amount will carry interest at 7.5% from the date of claim petition. The insurance company is directed to deposit the enhanced amount along with accrued interest within a period of eight (8) weeks from the date of receipt of copy of this order. The claimants are directed to pay the additional Court fee, if any, before drafting of the decree.



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27. In view of the above said deliberations, this Court passes the following orders:

(i) C.M.A(MD)No.413 of 2014 stands allowed and the appellant is exonerated from the liability.

(ii) The entire liability to satisfy the award is fixed on the insurance company which is arrayed as the 3rd respondent in the claim petition and after satisfaction, the insurance company is entitled to recover the same from the 2nd respondent in the claim petition.

(iii) The insurance company shall deposit the award amount along with accrued interest within a period of eight (8) weeks from the date of receipt of a copy of this order.

(iv) Cros.Obj(MD).No.37 of 2022 is partly allowed and the compensation amount is enhanced from Rs. 5,35,000/- (Rupees Five Lakh and Thirty Five Thousand only) to Rs.8,35,687/- (Rupees Eight Lakh Thirty Five thousand Six Hundred and Eighty Seven only).



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(v) Out of the enhanced amount of Rs.3,00,687/- (Rupees Three Lakh Six Hundred and Eighty Seven only), the 1st claimant shall be entitled to Rs.2,00,000/- (Rupees Two Lakh only) and the claimants 2 and 3 shall be each entitled to Rs.50,343.50/- (Rupees Fifty Thousand Three Hundred and Forty Three and Fifty Paise only).

(vi) The award amount, if any, deposited by the appellant, shall be refunded along with accrued interest.

28. C.M.A(MD)No.413 of 2014 is allowed and Cros.Obj(MD).No. 37 of 2022 stands partly allowed. No costs.

01.06.2023

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

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To

- 1.The Motor Accident Claims Tribunal /
IV Additional District Court,
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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Pre-delivery order made in
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