



C.M.A. (MD)No.1099 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1099 of 2021

and

C.M.P.(MD) No.10511 of 2021

Tamil Nadu State Transport Corporation,
Bye Pass Road,
Madurai District,
Through it's the Managing Director.

... Appellant/ Respondent

Vs.

1.Annalakshmi
2.Minor Hansiha

(2nd respondent is represented through her
Natural guardian / mother of the 1st respondent)

3.Kulathaal

... Respondents / Petitioners

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.12.2020 passed in M.C.O.P.No.2268 of 2019 on the file of the Motor Accident Claims Tribunal, (VI Additional District Court), Madurai.



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C.M.A. (MD)No.1099 of 2021

For Appellant : Mr.K.Sudalaiyandi
For Respondents : Mr.V.Sakthivel

JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal, (VI Additional District Court), Madurai in M.C.O.P.No.2268 of 2019, dated 18.12.2020, the appellant – Transport Corporation has filed this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties are referred to herein, as per their ranking before the Tribunal.

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

On 05.11.2019, the deceased Kumaresan was riding his Motorcycle, bearing Registration No.TN-57-A-0880 in Palani to Dindigul Road from South to North, adhering the traffic rules. At that time, a bus bearing Registration No.TN-58-N-1100, belonging to the Transport Corporation, came in a rash and



C.M.A. (MD)No.1099 of 2021

negligent manner in the same direction and dashed against the Motorcycle from behind. As a result, the deceased sustained multiple injuries and rushed to the hospital and died on 09.11.2019. The claimants are the wife, minor child and mother of the deceased.

4. It is the case of the respondent before the Tribunal that the deceased was riding his Motorcycle without wearing the helmet and while applying the break of the Motorcycle, he lost his balance and fell down. Due to which, he sustained head injury. Hence, disputed the liability.

5. To substantiate the case before the Tribunal, on the side of the petitioners, two witnesses were examined as P.W.1 and P.W.2 and 11 documents were marked as Ex.P1 to P.11. On the side of the respondent, one witness was examined as R.W.1 and no document was marked.

6. The Tribunal, after considering the evidence of PW.2 eyewitness and also considering the fact that FIR has been filed as against the driver of the offending vehicle, had come to the conclusion that the driver of the offending vehicle driven the bus in a rash and negligent manner and awarded a sum of



C.M.A. (MD)No.1099 of 2021

Rs.25,99,500/- as compensation along with interest at the rate of 7.5% per annum

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the respondent – Transport Corporation.

7. The learned counsel appearing for the respondent / Transport Corporation / appellant submitted that since the deceased did not wear the helmet, some amount has to be deducted towards contributory negligence. Further, the Tribunal has fixed the monthly income of the deceased at Rs.14,110/-, which is highly excessive and the same has to be reduced.

8. The learned counsel appearing for the petitioners / respondents would submit that the Tribunal has clearly found that only due to the rash and negligent driving of the driver of the Bus, the accident had occurred. Further, the monthly income adopted by the Tribunal is well-balanced and therefore, it does not require any interference.

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



C.M.A. (MD)No.1099 of 2021

10. Now the points arise for consideration in this Civil Miscellaneous

Appeal are as follows:

1) Whether the Tribunal is correct in awarding the compensation? and

2) Whether the Respondent / Transport Corporation / appellant has proved the contributory negligence on the part of the deceased?

11. As far as the contributory negligence aspect is concerned, it is not the case that there was a head on collision. The evidence of the eyewitness clearly established the fact that the Motorcycle was proceeding in front of the bus and the bus dashed the Motorcycle from behind. It is clearly indicate the nature of negligence on the part of the driver. The driver of the bus had a clear vision of the road, since the bus is a heavy vehicle and the same clearly indicates the manner in which, the bus was driven in a reckless manner. Such view of the matter, this Court is of the view that the finding of the Tribunal that the driver of the bus driven the bus in a rash and negligent manner, does not require any interference.



C.M.A. (MD)No.1099 of 2021

12. It is also to be noted that normally the Court will find fault with the rider of the two wheelers for not wearing the helmet. However, in this case, there is no proximate theory that the death had occurred due to non-wearing of the helmet. In fact, the bus hit the Motorcycle from behind, which was the reason for causing multiple injury and death of the deceased. In the absence of causal connection between the violation and the accident or a causal connection between the violation and the impact of the deceased, as held by the Hon'ble Apex Court in a judgment in *Mohammed Siddique and Ors. Vs. National Insurance Company Limited and Ors.* in *Civil Appeal No.79 of 2020*, this Court is of the view that merely on the ground of non-wearing the helmet, contributory negligence cannot be fixed on the deceased. If the respondent / Transport Corporation / appellant relies upon the contributory negligence, they have to prove and establish the same. Therefore, this Court is of the view that the contention in this regard, cannot be countenanced.

13. As far as the quantum is concerned, the deceased was aged about 32 years at the relevant point of time and he was a fruit merchant. The Tribunal, taking notice of the judgment of Division Bench of this Court in *Andal and others Vs. Avinav Kannan, New India Assurance Co. Ltd.*, reported in *2019(1) TN*



C.M.A. (MD)No.1099 of 2021

TNMAC 54, has adopted the cost of inflation index theory and fixed the monthly income as Rs.14,110/- and adopted the relevant multiplier applicable to the age group of 32. Such view of the matter, when the trial Court has followed the dictum laid down by the Division Bench of this Court and fixed the monthly income by applying the cost inflation index theory by considering the age of the age of the deceased, this Court is of the view that the compensation awarded by the Tribunal is reasonable and cannot be found fault with. Even ordinary vendors and merchants are able to earn more than Rs.900/- per day. Such being the position, fixing the monthly income of the deceased on the basis of the cost of inflation index is quite reasonable to arrive at a just compensation. Therefore, I do not find any merits in this appeal.

14. In the result, the Civil Miscellaneous Appeal is dismissed and the award dated 18.12.2020, passed in M.C.O.P.No.2268 of 2019, on the file of the Motor Accident Claims Tribunal (VI Additional District Court), Madurai, is hereby confirmed.

15. The respondent / Transport Corporation is directed to deposit the compensation of Rs.25,99,500/- (Rupees Twenty Five Lakhs Ninety Nine



C.M.A. (MD)No.1099 of 2021

Thousand and Five Hundred only) with accrued interest at the rate of 7.5% from the date of petition till the date of deposit and costs within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. The petitioners / respondents are entitled to get the amount as per the apportionment made by the Tribunal. The petitioners may approach the Tribunal for withdrawal of the said amount, for filing necessary application and if such an application is filed, the Tribunal shall pass orders for withdrawal. No Costs. Consequently, connected miscellaneous petition is closed.

06.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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C.M.A. (MD)No.1099 of 2021

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To

- 1.The Motor Accident Claims Tribunal,
(VI Additional District Court), Madurai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A. (MD)No.1099 of 2021

N.SATHISH KUMAR, J.

vsm

C.M.A.(MD)No.1099 of 2021

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