



C.M.A.(MD) No.68 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.68 of 2022

and

C.M.P.(MD)No.631 of 2022

and

Cross.Objection (MD)No.13 of 2022

C.M.A.(MD)No.68 of 2022:

The Tamil Nadu State Transport
Corporation (Madurai) Limited.,
Bye pass Road, Madurai,
Through its Managing Director.

...Appellant/1st Respondent

Vs.

1.L.Muthulakshmi
2.L.Chella Kumararaja
3.Lakshmanan

...Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order dated 27.11.2020 passed in M.C.O.P.No.1174 of 2010 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge), Madurai.



C.M.A.(MD) No.68 of 2022

CROSS OBJECTION (MD)No.13 of 2022:

1.L.Muthulakshmi

2.L.Chella Kumararaja

...Cross objectors/Respondents 1 & 2

vs.

1.The Tamil Nadu State Transport
Corporation (Madurai) Limited.,
Bye pass Road, Madurai,
Through its Managing Director.

...1st Respondent/ Appellant

2.Lakshmanan

...2nd Respondent/3rd Respondent

PRAYER: This Cross Objection is filed under Section 41 Rule 22 of the Civil Procedure Code, to modify the decree and judgment dated 27.11.2020 passed in M.C.O.P.No.1174 of 2010 on the file of the Motor Accident Claims Tribunal [IV Additional District Judge of Madurai] by allowing this Cross Appeal by enhancing the compensation amount of Rs.3,06,800/- in addition to the amount already awarded by the Tribunal towards compensation in favour of this cross objectors with costs.

In CMA(MD)No.68 of 2022:

For Appellant

: Mr.K.Sudalaiyandi

For R1 & R2

: Mr.V.Sakthivel



C.M.A.(MD) No.68 of 2022

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

WEB COPY

For Cross Objector : Mr.V.Sakthivel.

For Respondent : Mr.K.Sudalayandi

COMMON JUDGMENT

This Civil Miscellaneous Appeal and the Cross Objection have been filed challenging the compensation awarded by the Motor Accident Claims Tribunal/IV Additional District Court, Madurai in M.C.O.P.No.1174 of 2010, dated 27.11.2010.

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 is the son of the first claimant and brother of the second claimant. On 10.12.2009 at about 20.00 hours, while the deceased was riding his motorcycle near Thavittusandhai along with one Palanisamy, the bus bearing



C.M.A.(MD) No.68 of 2022

Registration No.TN-33-N-1209 came in the same direction in a rash and negligent manner hit the two-wheeler from behind. As a result, the deceased succumbed to injuries.

(ii) A case was also registered as against the driver of the bus/offending vehicle. The deceased was aged about 20 years at the time of accident and he was working as Merchandise in Team HR Services Pvt.,Ltd.. He was also drawing the salary of Rs.4,897/- per month. Hence, the compensation amount of Rs.6,00,000/- was claimed.

(iii) The first respondent/Transport Corporation has filed a counter affidavit before the Tribunal to the effect that the accident was occurred only due to the rash and negligent driving of the rider of the two-wheeler. While the rider of the motorcycle was overtaking the bus in a rash and negligent manner, the accident was occurred.

4. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 and Ex.P10 were marked. On the side of the respondents R.W.1 was examined and no documentary evidence had been marked.



C.M.A.(MD) No.68 of 2022

WEB COPY

5.The tribunal, considering the evidence of P.W.2, pillion rider of the two wheeler, fixed the negligence on the part of the driver of the bus and fixed the compensation as follows:

S.No.	Particulars	Amount
1.	Loss of Income	Rs. 7,56,000/-
2.	Loss of estate	Rs. 15,000/-
4.	Funeral Expenses	Rs. 15,000/-
	Total	Rs. 7,86,000/-

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 Tribunal has failed to note the fact that only the deceased had entered into the main road from the street negligently without noticing the crossing vehicle on



C.M.A.(MD) No.68 of 2022

the main road and invited the trouble. Hence, the Tribunal ought to have fixed 30% contributory negligence on the part of the deceased, whereas the Tribunal has fixed the negligence on the part of the driver of the bus and the same is to be set aside.

8.The learned counsel for the claimants/Cross Objectors would submit that though the occupation of the deceased was proved under Ex.P3, Identity Card and Ex.P4, course completion Certificate of Microsoft DOS, the Tribunal has fixed the notional income of the deceased at Rs.5,000/- and the same has to be enhanced. Further, the Tribunal had failed to consider the fact that the father of the deceased left the family even in the year 2001 and he is neither the legal heir nor the dependent of the deceased. Hence, the award of the tribunal in awarding a share to the father of the deceased has to be necessarily set aside.

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

(1) Whether the award passed by the Tribunal is sustainable in the eye of law?



C.M.A.(MD) No.68 of 2022

WEB COPY

10.On perusal of the award passed by the Tribunal, it is made clear that though the respondent Corporation had taken a stand that only the driver of the motorcycle was negligent in overtaking the bus, the driver of the bus has not been examined as witness. Hence, the Tribunal after analyzing the entire evidence available on record, had fixed the negligence on the part of the driver of the bus and the same cannot be found fault.

11.However, the Tribunal, while awarding compensation, had fixed the notional income of the deceased at Rs.5,000/-. Admittedly, the deceased was working as as Merchandise in Team HR Services Pvt.,Ltd.. Ex.B3, Identity Card of the deceased was also produced in this regard. He is has completed the microsoft course of DOS in the year 2000. Despite the above fact, the Tribunal has fixed the notional income of the deceased at Rs.5,000/-. It is relevant to note that in the claim petition filed by the claimants, the monthly income of the deceased was mentioned as Rs.4,897/-, but the fact remains that the deceased was aged about 20 years at the time of accident and he had also completed the microsof course of DOS in the year 2000 itself and he was working as Merchandise in Team HR Services Pvt.,Ltd.. Hence, this Court is of the view that the notional income



C.M.A.(MD) No.68 of 2022

of the deceased ought to have been fixed as Rs.6,500/- per month as per the dictum laid down by the Hon'ble Supreme Court in ***Syed Sadiq etc., vs. DM, United India Insurance Company Limited.***

12. Accordingly, the notional income of the deceased is fixed at Rs.6,500/- (Rupees Six Thousand Five Hundred only) and 40% 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. Further, the Tribunal has not awarded any compensation for the loss of love and affection to the claimants. Hence, this Court awards a sum of Rs.80,000/- (Rupees Eighty Thousand only) to the claimants towards loss of love and affection. It is also established before this Court that though the father of the deceased had been added as a party to the claim petition, he abandoned with the claimants 1 and 2 and the deceased in the year 2001 itself. Such view of the matter, this Court holds that the father of the deceased is not entitled to any share in the compensation.

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



C.M.A.(MD) No.68 of 2022

WEB COPY

S.No.	Particulars	Amount
1.	Loss of Income	Rs. 9,82,800/-
2.	Loss of estate	Rs. 15,000/-
4.	Funeral Expenses	Rs. 15,000/-
5.	Loss of love and affection	Rs. 80,000/-
	Total	Rs.10,92,800/-

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.7,86,000/- made by the Tribunal is modified as stated above.

15.The appellant is directed to deposit the compensation amount i.e., Rs.10,92,800/- (Rupees Ten Lakhs Ninety Two Thousand and Eight Hundred only) as modified by this Court to the credit of M.C.O.P.No.1174 of 2010, on the file of the Motor Accident Claims Tribunal /IV Additional District Judge, Madurai within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. The claimants are entitled to trinity interest to the above said amount from the date of petition till the date of



C.M.A.(MD) No.68 of 2022

realization. On such deposit, the first claimant is permitted to withdraw a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) and second claimant is permitted to withdraw a sum of Rs.3,92,800/- (Rupees Three Lakhs Ninety Two Thousand and Eight Hundred only), less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2023

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

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



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C.M.A.(MD) No.68 of 2022

N.SATHISH KUMAR, J.

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