



C.M.A.(MD)No.150 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.150 of 2023

The Tamil Nadu State Transport Corporation,
Through its Managing Director,
Bye Pass Road, Ponmeni, Madurai.

...Appellant/respondent

Vs.

1.J.Ammaji
2.J.Sheik Abdullah
3.J.Santhi Nisha Banu

...Respondents/Petitioners

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order dated 03.03.2021 passed in M.C.O.P.No.358 of 2019 on the file of the Motor Accident Claims Tribunal (IV Additional District Court), Madurai.

For Appellant : Mr.K.Sudalaiyandi

For R1 to R3 : No Appearance

For R2 : No Appearance

JUDGMENT

Challenging the quantum and negligence fixed on the part of the driver of the appellant corporation by the Motor Accident Claims Tribunal/IV Additional



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District Court, Madurai in M.C.O.P.No.358 of 2019 dated 03.03.2021, the present Civil Miscellaneous Appeal is filed by the Transport Corporation.

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)On 11.07.2017 at about 05.20 p.m., the deceased was riding his bicycle in Madurai Kamarajar main road from east to west. In order to cross the road, he stopped his vehicle in the left side of the road. At that time, the bus bearing Registration No.TN-58-N-1973 came from the opposite direction in a rash and negligent manner and dashed against the bicycle of the deceased. As a result, the deceased succumbed to injuries.

(ii) The first claimant is the wife of the deceased. The second and third claimants are the children of the deceased. The deceased was aged about 82 years at the time of accident. He was working as an electrician and earning a sum of



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Rs.12,000/- per month. Hence, the claim petition was filed by the claimants seeking compensation.

(iii)The respondent before the tribunal has filed a counter affidavit stating that the driver of the bus drove the vehicle carefully by observing the traffic rules. But, the deceased road the bicycle carelessly and suddenly crossed the road. On seeing the same, though the driver of the bus applied break and stopped the bus, the deceased dashed against the bumper of the bus and fell down. The deceased was only negligent and not the driver of the bus. Hence, opposed the claim petition.

4. Before the Tribunal, on the side of the claimants P.W.1 to P.W.3 were examined and Ex.P1 and Ex.P11 were marked. On the side of the respondent R.W.1 was examined and documentary evidence had been marked.

5.The tribunal on appreciation of entire evidence available on record found that the accident had taken place only due to the rash and negligent driving on the part of the driver of the bus and awarded the compensation as follows:



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S.No.	Description	Amount
1.	Loss of income	Rs.3,19,980/-
2.	Funeral Expenses	Rs. 16,500/-
3.	Loss of Estate	Rs. 16,500/-
4.	Loss of Consortium to the first petitioner	Rs. 44,000/-
	Total	Rs.3,96,980/-

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

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

7.The point arise for consideration in this appeal is:

(1) Whether the Tribunal is right in fixing the negligence on the part of the appellant and the income of the deceased at Rs.8,000/- per month?

8.Perusal of the evidence of the eye witness clearly shows the manner in which the accident had occurred. It is to be noted that though the deceased was 82 years old at the time of accident, he was hale and healthy. He was regularly



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attending his duties in the cycle. While riding a heavy vehicle, which had a clear view of the road, particularly in a highly populated area, more caution should have to be taken up. It has not been done so in this case. Further, to prove the contributory negligence on the part of the deceased, there is no evidence whatsoever available on record. Hence, the contention of the Transport Corporation that there was negligence on the part of the cyclist cannot be countenanced.

9.To substantiate the income of the deceased, Ex.P3, salary certificate was issued. P.W.3 was also examined to show that the deceased was earning a sum of Rs.12,000/- per month as an electrician. However, the trial Court had disbelieved the same on the ground that no salary register had been produced. However, the trial Court had fixed the notional income of the deceased at Rs.8,000/- per month, since his profession is not disputed. It is relevant to note that the deceased was hale and healthy, though he was 82 years old at the time of accident and he was looking after his work and he was working as an electrician, which requires some skills. The person engaged in such skilled work certainly can earn more money. Hence, the income of the deceased fixed by the Tribunal cannot be found fault.



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10.For the reasons stated above, I do not find any error apparent in the compensation awarded by the Tribunal. Accordingly, the Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is confirmed.

11.The appellant is directed to deposit the compensation amount awarded by the Tribunal with interest and costs from the date of petition till the date of realization to the credit of M.C.O.P.No.358 of 2019, on the file of the Motor Accident Claims Tribunal/IV Additional District Court, 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. On such deposit, the claimants are permitted to withdraw the said amount as apportioned by the Tribunal, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

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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 Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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