



C.M.A.(MD).No.807 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 08.11.2023

Delivered on: 13.12.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

C.M.A.(MD).No.807 of 2023

and

C.M.P.(MD)No.11408 of 2023

The Managing Director,

M/s. Tamil Nadu State Transport Corporation Ltd.,

(Kumbakonam Division),

Periyamilaguparai, Trichy.

... Appellant / Respondent No.1

Vs.

1.Vijayalakshmi

... Respondent No.1 / Petitioner No.1

2.Minor Sanjai

... Respondent No.2 / Petitioner No.2

3.Minor Maithili

... Respondent No.3 / Petitioner No.3

(Minors 2 and 3 are represented
through mother and next friend
Vijayalakshmi - 1st Respondent herein)

4.R.Punithavathi

... Respondent No.4 / Respondent No.2

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order, made in M.C.O.P.No.4 of 2018 dated 20.07.2021 on the file of the Motor Accidents Claims Tribunal – Sub Court, Thuraiyur.



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For Appellant : Mr.K.Ramaiah
For Respondents : Mr.N.Sudhagar Nagarajan for R1 to 3
: No appearance for R4

JUDGMENT

P.B.BALAJI,J.

The State Transport Corporation, aggrieved by the award of compensation in M.C.O.P.No.4 of 2008, before the Motor Accidents Claims Tribunal – Sub Court, Thuraiyur, is the appellant before us.

2. The claimants approached the Tribunal seeking compensation for the death of one Raja, who was driving a Car, when, the appellant's bus was driven by its driver, in a rash and negligent manner, came from the opposite direction and dashed against the Car, resulting in fatal injuries. The amount claimed by the respondents herein was a sum of Rs.75,00,000/-.

3. The Transport Corporation filed a counter denying the allegations in the claim petition. According to the appellant, the deceased alone drove his car in a rash and negligent manner and he was the cause for the accident. Moreover it is alleged that the deceased was under the



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influence of Alcohol and therefore, the claimants were not entitled to claim any compensation.

4. The claimants are the wife, minor children of the deceased. Mother of the deceased, was impleaded as the second respondent before the Tribunal. Before the Tribunal, the wife of the deceased examined herself as P.W.1 and 2 witnesses, namely, Pitchaivel and Ramesh, were examined as P.W.2 and P.W.3 and 5 documents were marked on the side of the claimants. On the side of the appellant / Transport Corporation, the driver of the Transport Corporation bus, viz., Krishnamoorthy was examined as R.W.1 and the investigating officer – Alaudheen was examined as R.W.2 and 2 documents were marked as Ex.R1 and Ex.R2. Pay slip of the deceased was marked as a Court document – Ex.X1.

5. The Tribunal, believing the evidence of occurrence witness P.W.2, proceeded to hold that the accident occurred only because of the rash and negligent driving of the driver of the Corporation bus. At the same time, the Tribunal also found that since the deceased was under the influence of Alcohol, 15% would have been deducted from the total

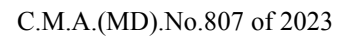


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compensation towards contributory negligence. Proceeding to fix the compensation, the Tribunal considering Ex.C,1 arrived at the monthly income of the deceased at Rs.27,373/- and awarded 30% towards future prospects and applied a multiplier of “14” and deducted 1/4th towards personal expenses of the deceased and awarding Rs.70,000/- under conventional heads and arrived at a total compensation of Rs.34,89,443/-, which was after deduction of 15% towards contributory negligence. Insofar as the allegation of rash and negligent driving on the part of the deceased, the Tribunal found that the driver of the Transport Corporation was the cause for the accident.

6. The appellant / Transport Corporation has preferred the above Civil Miscellaneous Appeal on the grounds that the Tribunal failed to see that the accident had occurred only because of the deceased being under the influence of Alcohol and also rash and negligent driving on his part; the Tribunal has not appreciated the evidence R.W.1 and R.W.2 in a proper prospective; The Tribunal ought to have rejected the evidence of P.W.2, which was untrustworthy; the Tribunal failed to see that the F.I.R which was registered against the driver of the bus was closed as “mistake of fact”



9. Per contra, the learned counsel for the respondents 1 to 3 / claimants would submit that the Tribunal has rightly appreciated the



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evidence on P.W.2 - the occurrence witness and finding the same to be believable, the Tribunal has held that the accident occurred only because of the rash and negligent driving of the Transport Corporation driver.

10. We have carefully gone through the evidence. The Tribunal has relied on the *post mortem* report, which is silent about the possibility of the deceased being under the influence of Alcohol, which would have resulted in the accident and consequently his demise and that there was no contra evidence on the side of the appellant, to rebut the *post mortem* report. The Tribunal has also discussed the closure of the F.I.R against the driver of the appellant / Corporation bus as 'mistake of fact' and held that as seen from the evidence of occurrence witness - P.W.2 proceeded to reject Section 161 (3) Cr.P.C statement, which were given by passengers, who were travelling in the appellant's Corporation bus.

11. We have also independently gone through the oral examination of the witnesses, namely, P.W.2 as well as R.W.1 and R.W.2. There is nothing on record to discredit the oral evidence of the occurrence witness, P.W.2. The Tribunal has rightly rejected the evidence of R.W.1



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and R.W.2, especially since it was referring to Section 161 (3) Cr.P.C

statement impermissible to be treated as evidence in a Court of law.

At the same time, the Tribunal has also held that the deceased was liable for contributory negligence and fixed the percentage as 15 for the same.

We do not see any reason or ground to interfere with the finding of the Tribunal, which is based the oral and documentary evidence adduced by the parties before it.

12. Coming to the question of quantum, the Tribunal has fixed the income of the deceased on the basis of pay-slip, which is marked as Ex.X1. The Tribunal has also applied future prospects based on the decisions of the Hon'ble Supreme Court in *Pranay Sethi's* case and in multiplier in judgment of the *Sarla Verma's* case and the same do not warrant any interference. The Tribunal also deducted 1/4th towards personal expenses and 10% towards the income tax and therefore, on these grounds also, we do not wish to interfere with the findings of the Tribunal.

13. We also do not find that the award of compensation under the various heads being inconsistent with the leading cases *Pranay Sethi*



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and **Sarla Verma**. The Tribunal has applied the principles laid down by the Hon'ble Supreme Court in the right form and perspective and therefore, the quantum arrived at by the Tribunal also does not deserve any modification in the above Civil Miscellaneous Appeal.

14. In fine, the Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is hereby confirmed.

15. The appellant / Transport Corporation is directed to deposit the award amount of Rs.34,89,443/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, together with costs awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment.

16. On such deposit being made, the first respondent herein/ first claimant is permitted to withdraw her respective award amount along with interest and costs as apportioned by the Tribunal, less the amount if any already withdrawn by her, after filing appropriate application before the



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Tribunal. In respect of the share of minors - respondents 2 & 3, the Tribunal is directed to deposit their share amount in any one Nationalised Banks till they attained majority. Till then, the first respondent - mother of the minors shall be permitted to withdraw the interest accrued thereon, once in three months in order to maintain the minors. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
13.12.2023

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
Ls

To

1.The Motor Accidents Claims Tribunal –

Sub Court,

Thuraiyur.

2.The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.



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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

Ls

judgment in
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