



C.M.A(MD)No.43 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2023

CORAM:

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

**C.M.A(MD)No.43 of 2022
and
C.M.P(MD)Nos.438 and 3239 of 2022**

M/s.Tamil Nadu State Transport Corporation Limited,
Rep. by its Managing Director,
Thingal Nagar Depo,
Nagercoil (PO),
Kanyakumari District. ...Appellant/Respondent

.VS.

1.M.Antoni Arul Geetha
2.M.Maria Antoni Reeta
3.Minor M.Kirubakar
4.Minor M.Santhosh
(Minor respondents 3 & 4 represented
through their mother and next friend
1st respondent)
5.V.Irudhayasamy (Died)
6.I.Jeyamary (Died) ...Respondents/Claimants

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to call for the records relating to the award dated 25.01.2021 passed in M.C.O.P.No.1789 of 2017 by the Motor



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Accident Claims Tribunal (I Additional District Court) Tirunelveli and to set aside the same.

For Appellant
For R1 to R4

:Mr.R.Rajamohan
:Mr.S.Sivathilakar

JUDGMENT

[Judgment of the Court was made by **RMT.TEEKAA RAMAN.,J.**]

The Transport Corporation has filed this appeal challenging the award granted in M.C.O.P.No.1789 of 2017 on the ground of liability and quantum. The legal representatives of the deceased Maria Francis Xavier, who died in the road transport accident on 13.06.2017, filed the above claim petition claiming compensation of Rs.50,00,000/- for the death of the said person.

2. To prove the negligence on the part of the driver of the transport corporation, the claimants have examined the occurrence witness as P.W.2 and marked Ex.P1 to Ex.P14 and Ex.X1 to Ex.X8 documents were marked on the side of the witness. Based upon the oral and documentary evidence, the tribunal has come to the conclusion that the accident had occurred due to the rash and negligent driving by driver of the appellant



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transport corporation and also ascertained the documents filed that at the time of accident, the deceased was employed as a Manager in the Idhayam Oil Company and also relied upon Ex.X7 and Ex.X8 and granted 30% future prospects and computed the compensation. Aggrieved against the said compensation, the Transport Corporation has filed the present appeal.

3.The learned counsel appearing for the appellant / transport Corporation would contend that the deceased had invited the accident by standing in the footboard of the bus, therefore, the deceased is responsible for the accident and also stated that the deceased was aged about 47 years at the time of accident and hence, only 25% has to be granted for future prospects as per **2017(2) TNMAC 609 (SC)** **[National Insurance Co. Ltd., v. Pranay Sethi]**, but the Tribunal has awarded 30% as future prospects..

4. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.



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5. On perusal of Ex.P1-FIR and the evidence of occurrence witness P.W.2 coupled with Ex.P3 rough sketch, this Court finds that the deceased was standing on the upper footboard and about to take money for purchasing the ticket, at the time, the bus while passing the speed breaker, the driver applied the brake, due to the sudden brake, he lost his balance and fell down. We find that due to rash and negligent driving by the driver of the vehicle, the accident had occurred and hence, the finding arrived at by the tribunal for different reasoning as stated supra is hereby confirmed.

6. The yet another issue is that on behalf of the transport corporation, neither the driver nor the conductor were examined.

7. On the point of quantum of compensation, we find that as per the documentary evidence filed before the tribunal as Ex.P9 he was employed as Manager in the Idhayam oil Mill and he is earning around Rs.19,320/- and he was aged about 47 years at the time of accident, and hence, the correct multiplier is '13' as per **2009(2) TN MAC 1 (SC) (Smt. Sarla Verma and Others Vs. Delhi Transport corporation and another)**, and 25% (Rs.4,830) of future prospects has to be taken and hence, the compensation is hereby reassessed.



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8.Rs.19,320/- as monthly salary + Rs.4,830/- (25% future prospects) = 24,150/-. Rs.24,150 x 12 x 13 x 1/4= 28,25,472/-.

Therefore, the loss of income would be Rs.28,25,472/-. The tribunal has not awarded any amount for loss of estate. Therefore, this Court is inclined to grant a sum of Rs.15,000/- for loss of estate. The compensation awarded in all other heads are just and reasonable and the same were confirmed. Accordingly, the Civil Miscellaneous Appeal is partly allowed.

9.The award of the Tribunal is modified as follows:

S. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or modified or enhanced or granted
1.	Loss of income	Rs.29,38,572	Rs. 28,25,472	reduced
2.	Loss of consortium	Rs.1,60,000	Rs.1,60,000	confirmed
3.	For funeral expenses	Rs.15,000	Rs.15,000	confirmed
4.	For Transport expenses	Rs.5,000	Rs.5,000	confirmed
5.	For loss of estate		Rs.15,000	awarded
	Total	Rs.31,18,572	Rs.30,20,472	reduced by Rs. 98,100



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10.The Civil Miscellaneous Appeal is partly allowed reducing the compensation from Rs.31,18,572/-to Rs.30,20,472/- with interest at the rate of 7.5% p.a.from the date of claim petition till the date of realization. The appellant / Transport Corporation is directed to deposit modified award amount within a period of eight (8) weeks from the date of receipt of a copy of this order. The claimants are entitled to withdraw the reduced award amount along with proportionate accrued interest and cost, less the amount already withdrawn, if any, by filing necessary application before the tribunal as per the ratio of apportionment made by the Tribunal. The Tribunal is directed to refund the excess amount, if any, to the appellant / Transport Corporation along with proportionate interest. No costs. Consequently, connected miscellaneous petitions are closed.

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

[T.K.R.,J.] [P.B.B.,J.]
01.12.2023



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To
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The Motor Accident Claims Tribunal
(I Additional District Court)
Tirunelveli.



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

am

JUDGMENT MADE IN
C.M.A(MD)No.43 of 2022

01.12.2023