



C.M.A.(MD).No.202 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.202 of 2023

and

C.M.P.(MD).No.2229 of 2023

The General Manager,
Tamil Nadu State Transport Corporation Limited,
Tiruppur (As per amended in I.A.No.729 of 2019
dated 30.10.2019) (Coimbatore Limited).

... Appellant

-Vs-

- 1.Banumathi
- 2.Minor Kirsheeka
(2nd minor respondent's mother and
guardian represented by the first respondent)
- 3.Gobi
- 4.Valarmathi

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No.105 of 2018, dated 08.07.2022 on the file of the Motor Accident Claims Tribunal, Additional District Court, Pudukottai.



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For Appellant : Mr.P.Prabhakaran

For Respondents : M/s.A.Banumathi

J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal, Additional District Court, Pudukottai in M.C.O.P.No.105 of 2018, dated 08.07.2022, the Corporation has filed the present appeal.

2. The Tribunal has passed the following award:

S. No	Description	Amount awarded by the Tribunal
1.	Loss of income of loss of dependency	Rs.29,38,400/-
2.	Loss of Estate	Rs.15,000/-
3.	Loss of Consortium	Rs.40,000/-
4.	Funeral and Transportation Expenses	Rs.15,000/-
	Total	Rs.30,18,400/-

3. The first petitioner is the wife of the deceased, the second petitioner is the minor son of the deceased and the petitioners 3 and 4 are the parents. The



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deceased was the driver by profession. On 14.07.2017, while the deceased Sathishkumar was driving a TATA ACE vehicle bearing Registration No.TN 48 F 9482, carrying iron rods towards Thanjavur, the Government bus came in a rash and negligent manner and dashed against the TATA ACE vehicle from the behind. As a result, the passengers travelling in the bus also sustained grievous injuries. The driver of the TATA ACE vehicle also succumbed to injuries. Thereafter, a case in Crime No.221 of 2017 also registered against the driver of the offending vehicle. At the time of accident, the deceased was aged about 26 years and he was earning a sum of Rs.21,000/-. The respondent/Transport Corporation has disputed the manner of accident. It is also their contention that the accident was occurred only due to the rash and negligent driving of the deceased and the said TATA ACE vehicle also carrying iron rods and they were placed out of the body of the vehicle and the vehicle has been suddenly stopped without any signal. As a result, the iron rods went inside the bus, thereby the passengers travelling in the bus sustained injuries and the driver of the bus also died in the accident.

4. Before the Tribunal, on the side of the petitioners, P.Ws.1 2 were examined and Exs.P1 to P5 were marked and no evidence on the side of the



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5. The Tribunal, after considering the evidence of P.Ws.1 and 2, fixed the negligence on the part of the driver of the bus, who is also succumbed to injuries in the accident and took the notional income of the deceased as Rs.13,000/- and added 40% towards future prospects and deducted 1/4th of the amount towards personal expenses and by adopting multiplier '18' awarded a sum of Rs. 30,18,400/- as compensation. Challenging the same, the present appeal has been filed by the Transport Corporation.

6. The main contention of the learned counsel appearing for the appellant/Transport Corporation is that the accident was occurred only due to the negligence on the part of the deceased and some other injured has filed a claim petition. Against the award passed by the Tribunal, the Transport Corporation has filed an appeal before this Court and this Court, by judgment dated 21.11.2019 in C.M.A.(MD).Nos.581 and 582 of 2019, has clearly held that the driver of the TATA ACE is also negligent and there was a violation in carrying the goods and the driver of the TATA ACE vehicle carried iron rods violating the Rule and kept



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the iron rod 10 feet away from the body of the vehicle. On the basis of the evidence of the eyewitnesses, this Court has fixed 50% of the contributory negligence on the part of the driver of the TATA ACE vehicle. Hence, according to him, the same judgment already reached finality. Therefore, fixing the entire negligence on the part of the driver of the offending bus is not correct. Further, the Tribunal has applied multiplier '18' instead of '17' and the same also to be reduced.

7. The learned counsel appearing for the respondents has not disputed the judgment of this Court arising out of the same accident in C.M.A.(MD).Nos.581 and 582 of 2019.

8. In the light of the above submissions, now the point for consideration in this appeal is whether the Tribunal is right in fixing the entire liability on the part of the driver of the offending vehicle? As rightly pointed out by the learned counsel appearing for the appellant that the other matters arising out of the same accident, the appeals have been filed before this Court. This Court, in a judgment dated 21.11.2019 in C.M.A.(MD).Nos.581 and 582 of 2019, held as follows:



“8. On the other hand, in the present case R.W.1 clearly deposed that without indication, due to sudden application of the brake by the driver of the offending vehicle only, the accident had occurred. Further, due to extend of iron rods in the TATA Ace lorry, beyond the body about 10 feet was the main cause for the accident. However, these aspect was not considered by the Tribunal. The Tribunal has considered the only aspect that due to lack of maintain a distance of 30 feet by the driver of the bus, the accident had occurred. However, in the present case, there is a clear violation in carrying goods on the part of the driver of TATA Ace vehicle, who carry the iron rods, by violating the rules and keeping the iron rod 10 feet away from the body of the vehicle. Further, the eyewitness is clear that without any indication, sudden application of brake, is the cause for the accident and this Court is of the view that if the goods vehicle carrying the iron rods within the body, the lives of the people in the bus could have been saved.

9. In fact, this Court is of the view that because keeping the iron rods outside the surface of body, about 10 feet, is the main cause for the accident. It is clearly violation of the rules and regulations, while carrying the goods and in fact, the Tribunal should have fixed 100 % liabilities against the owner of the TATA Ace, because this accident had occurred purely on the negligence of the driver of the TATA Ace, while carrying the goods. Therefore, this Court is of the view it would



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9. As the issue has already been decided by this Court, in respect of the same accident, this Court has to follow the same judgment, which has already reached the finality. Therefore, this Court held that the negligence also on the part of the driver of the TATA ACE vehicle, who was driving the vehicle and the present claimants are the legal heirs of the said driver.

10. In such a view of the matter, 50% of the contributory negligence as held by this Court is fixed on the deceased. The Tribunal has adopted the notional income of Rs.13,000/- and added 40% towards future prospects and applied multiplier '18' instead of '17', as per the dictum laid down by the Hon'ble Apex Court in the case of *Sarala Varma*. In such a view of the matter, if the proper multiplier '17' is applied, the total loss of dependency would come around Rs. 27,84,600/- (Rs.13,650/- x 12 x 17 = Rs.27,84,600/-) and the amount awarded under the other heads is confirmed. Thus, the total award amount comes to Rs. 28,54,600/-. The claimants are entitled to 50% (Rs.14,27,300/-) of the award



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amount from the appellant Corporation. The appellant Corporation shall pay 50% of the award amount with interest at the rate of 7.5% and the same shall be deposited within a period of one month from the date of receipt of a copy of this order. On such deposit, the first respondent is entitled to Rs.6,00,000/- with interest and the second respondent is entitled Rs.4,00,000/- with interest and the respondents 3 and 4 are entitled to the remaining amount equally. In respect of the minor claimant, the award amount shall be deposited in a Nationalised Bank till she attains majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months.

11. In the result, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

20.04.2023

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To

The Motor Accident Claims Tribunal,
Additional District Court,
Pudukottai.

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N.SATHISH KUMAR, J.

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