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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)Nos.14 and 180 of 2023

and

C.M.P(MD)No.68 of 2023

C.M.A(MD)No.14 of 2023

The Managing Director,
The State Express Transport Corporation Limited,
No.2,Pallavan Salai,
Thiruvalluvar House,
Chennai – 600 002. :Appellant/Appellant

.vs.

1.Palaniyayee
2.Pappathi :Respondents/Respondents

C.M.A(MD)No.180 of 2023

1.Palaniyayee
2.Pappathi :Appellants/Petitioners

/vs/

The Managing Director,
The State Express Transport Corporation Limited,
No.2, Pallavan Salai,
Thiruvalluvar House,
Chennai-600 002. :Respondent/Respondent



COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act against the award and decree made in M.C.O.P.No.1713 of 2018, dated 13.7.2022, on the file of the Motor Accidents Claims Tribunal/Special District Court(MACT), Madurai.

C.M.A(MD)NO.14 of 2023

For Appellant :Mr.P.Prabhakaran

For Respondents :Mr.V.Sakthivel
1 and 2

C.M.A(MD)NO.180 of 2023

For Appellants :Mr.V.Sakthivel

For Respondent :Mr.P.Prabhakaran

COMMONJUDGMENT

C.M.A(MD)No.14 of 2023 is filed by the appellant-Transport Corporation challenging the award of the Tribunal, whereas, C.M.A(MD)No.180 of 2023 is filed by the claimants seeking enhancement of compensation.

2.The facts leading to the filing of these appeals are as follows:

The claimants are the sisters of the deceased, who was



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unmarried, aged about 55 years at the time of accident and he was working as a Cook in one Senthil Mess and earning a sum of Rs. 15,000/- as monthly salary. While he was crossing on the left side of the road in south to north direction near Othakadai, the transport Corporation bus, coming in the same direction bearing Registration NO. TN 01 AN 1109, in a rash and negligent manner and also in a high speed, hit against the deceased and the deceased died.

3.It is the contention of the Corporation that the bus was proceeding from Madurai to Melur main Road in a cautious manner. The deceased who is in a drunken mood, suddenly crossed the road and as a result the accident took place and disputed the liability.

4.On the side of the Petitioners, P.W.1 to P.W.3 were marked and Ex.P1 to Ex.P10 were marked. On the side of the respondents, one Veerapandi was examined as R.W.1 and no document was marked.

5.The Tribunal considering the evidence of P.W.1 to P.W.3 hold that the driver of the transport Corporation bus is negligent in



driving the bus and the awarded the compensation as follows:

1.For loss of income	- Rs.5,08,200/-
2.For funeral expenses	- Rs.15,000/=
3.For loss of estate	-Rs.15,000/-
4.For transport expenses	- Rs.5000/-

total	-Rs.5,43,200/-

6.The main submission of the learned counsel for the Corporation was that the deceased suddenly crossed the road which resulted in the accident. Further the claimants are the married sisters of the deceased. Therefore, they are not dependants and whereas the learned counsel for the respondent/appellant in the other appeal submitted that the Tribunal has taken the notional income only at Rs.7000/-p.m., and according to him, the deceased was the chief Cook in a Sathya Mess which was proved by the evidence of P.W.3.The Tribunal ought to have fixed the notional income at a higher level.

7.Now the point that arose for consideration in these appeals are as follows:

2.Whether the quantum arrived at by the Tribunal is just and reasonable?

8.With regard to the submissions of the learned counsel for



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the transport Corporation that the deceased had suddenly crossed the road and therefore, the accident had occurred, except the interested testimony of R.W.1, no other witness was examined. Further it is to be noted that even assuming that the pedestrian suddenly crossed the road, the same cannot be a ground to attribute negligence on his part. Admittedly, in this case, the accident took place near Othakkadai bus stop and the driver of the heavy vehicle/bus particularly buses are expected to slow down the bus near bus stand. Even if the pedestrians move on the road, care should have been taken by the drivers of the heavy vehicle like bus. Therefore the defense taken by the Corporation that the deceased died only on suddenly crossing the road cannot be countenanced. Considering the place where the accident took place, this Court is of the view that the finding of the Tribunal fixing the negligence on the part of the driver of the transport Corporation bus cannot be found fault with.

9.As far as the married sisters are not dependants, it is relevant to note that the legal representatives are entitled to make claim application as per Section 166 of the Motor Vehicles Act.

10.Regarding the fact, the pedestrian crossing the road, the



learned counsel relied on the judgment reported in **2004(2) TN MAC 00 (DB) in the case of Pallavan Transport Corporation Limited, represented by Managing Director, Pallavan Salai, Madras - 600 002**, wherein, it has been held as follows:

Pedestrian/victim crossing road at a place other than pedestrian crossing – cannot be taken as victim contributing to accident – It cannot be said that whenever a person crosses road at a place other than pedestrian crossing, he is guilty of contributory negligence – Tribunal rightly came to conclusion that accident occurred only due to rash and negligent driving of driver of bus ."

11. The learned counsel has also relied on the judgement of this Court in C.M.A(MD)No.140 of 2016, dated 4.3.2016, wherein, this Court has held as follows:

"13. The quantum of compensation or loss of contribution is not determined on the basis of monetary loss alone. It is also determined on the basis of invaluable and gratuitous services rendered



by the mother or the wife, as the case may be. The legal representative, particularly, a married daughter, may not be totally dependent on the income of the deceased mother for her survival or living, but still, there can be a monetary assistance, during the lifetime of the deceased.

14. Even in the case of married daughters, a father or mother or brother, can still monetarily help a married daughter, depending upon the need or out of love and affection. A mother can continuously render her valuable service to her daughter, even if the daughter is married. Similarly, a married daughter would still continue to assist her mother, or father, in the case of need. Contribution by means of service or income, both can be taken into account to determine the quantum of compensation. A married daughter is a legal representative, as per law of succession and that she is entitled to make a claim and it is for the Claims Tribunal or Court, to apportion the amount between the claimants, depending upon the loss of contribution suffered by the married daughter.

15. Exclusion of a married daughter/ sister/brother from the claim petition, altogether would be opposed to the object of the Act and it would be amounting to adding words to the legislation, which the Court is not supposed to do. As held by the Apex Court, even if there is casus omissus, it is not for the Court to add words to the



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legislation. The construction or interpretation of the words, "legal representatives" in Section 166 of the Motor Vehicles Act, in the context and nature of legislation, being beneficial should be interpreted in such a way not to take away their rights. Merely because a married daughter/sister is living with her husband, in a separate house, that by itself would not disentitle her from claiming compensation, as a legal representative, to represent, the estate of the deceased."

Considering the above decision, the contention of learned counsel for the transport Corporation has no legs to stand.

12. As far as the quantum of compensation is concerned, the Tribunal has fixed the notional income of the deceased at Rs. 7,000/-p.m..The deceased was a Chief Cook in the Mess at Madurai and Madurai is well known for hotel industry and mess are very famous and even applying the Minimum Wages Act, the deceased would have earned Rs.9,000/-p.m.. In such view of the matter, this Court fixed the notional income of the deceased at Rs. 9000/- p.m, to meet the ends of justice and if 10% is added towards future prospects, the income will come to Rs.9900/- and if 50% is deduced towards the personal income of the deceased, the monthly income comes to Rs.4950/- and the loss of dependency comes to Rs.



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4950 x 12 x 11 = Rs.6,53,400/-.The other conventional heads of funeral expenses at Rs.15,000/-, loss of estate at Rs.15,000/-and transport expenses at Rs.5000/- stands confirmed. Thus the total compensation is arrived at Rs.6,88,400/-, which is tabulated as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of inome	Rs.5,08,200	Rs6,53,400/-	enhanced
2	For funeral expenses	Rs.15,000/-	Rs.15,000/-	same
3	For loss of estate	Rs.15,000/-	Rs.15,000/-	same
4.	For transport expenses	Rs.5,000/-	Rs.5,000/-	same
9	Total	Rs. 5,43,200/-	Rs. 6,88,400/- (rounded off to Rs. 6,90,000/-	enhanced

with interest at the rate of 7.5%p.a., from the date of claim petition till the date of realization.

13.In the result, C.M.A(MD)No.14 of 2023 filed by the Transport Corporation stands dismissed,whereas, C.M.A(MD)No. 180 of 2023 filed by claimants stand allowed enhancing the compensation from Rs.5,43,200/- to Rs.6,88,400/- with interest at the rate of 7.5%pa., from the date of claim petition till the date of



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realization. The respondent/Transport Corporation is directed to deposit the enhanced award amount with accrued interest and costs to the credit of claim petition, less the award amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants each are equally entitled to Rs.3,44,200/- with proportionate accrued interest and costs, less the award amount if any already withdrawn, by filing necessary application before the Tribunal. The claimants are directed to pay the excess court fee towards the enhanced award amount to the credit of the Registry. Only on such court fee being paid, Registry is directed to draft the decrees in these appeals. No costs. Consequently, connected Miscellaneous Petition is closed.

24.04.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

1.The Motor Accidents Claims Tribunal,
(Special District Judge),
Madurai.

2.The Record Keeper,
Vernacular Section,

10/12



Madurai Bench of Madras High Court,
Madurai.

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N.SATHISH KUMAR.,J.



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vsn

JUDGMENT MADE IN
C.M.A(MD)Nos.14 and 180 of 2023
and
C.M.P(MD)No.68 of 2023

24.04.2023