



WEB COPY



Civil Miscellaneous Appeal No.724 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 05.07.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**Civil Miscellaneous Appeal No.724 of 2024**

R.Jayalakshmi [Died]

1. S.Senthamarai

[Amended as per order in I.A.No.459 /2018

dated 30.07.2018] residing at

Meenavar Street, Semmankuppam,

Cuddalore – 607 005

... Appellants

Vs.

The Managing Director,

State Express Transport Corporation Limited,

Thiruvallur House, Pallavan Salai,

Chennai 600 002

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree in M.C.O.P.No.2880 of 2017 dated 22.07.2022 on the file of Motor Accident Claims Tribunal /(I Additional District and Sessions Judge (FAC) – Cuddalore).

For Appellant : Mrs.Ramya V Rao

For Respondents : Mr.K.Raghuraman

\*\*\*\*\*



WEB COPY



Civil Miscellaneous Appeal No.724 of 2024

## **JUDGMENT**

The present appeal has been filed by the claimants not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal /(I Additional District and Sessions Judge (FAC) – Cuddalore) in M.C.O.P.No.2880 of 2017 dated 22.07.2022.

2. The claimants were the mother and the sister of the deceased. The case of the claimants is that the deceased was riding a two wheeler along with the pillion rider on 07.05.2017 at Cuddalore - Chidambaram main road and at about 15.00 hours, at Sangolikuppam Main Road, the bus belonging to the Transport Corporation was driven in a rash and negligent manner and it hit the two wheeler ridden by the deceased and as a result, the deceased fell down and he sustained fatal injuries and he died on the same day. It is under these circumstances, the claim petition came to be filed seeking for payment of compensation.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to



WEB COPY

a conclusion that the accident had taken place solely because of the rash and negligent driving on the part of the driver of the bus belonging to the respondent Corporation. Having rendered such a finding, the Tribunal attributed 10% contributory negligence on the deceased on the ground that he was not wearing an helmet.

4. The Tribunal thereafter proceeded to fix the total compensation at Rs.29,90,000/- under various heads as follows :-

| <i><b>Sl.No.</b></i> | <i><b>Compensation awarded under the head</b></i>                                                          | <i><b>Amount (in Rs.)</b></i>                                 |
|----------------------|------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| 1.                   | Loss of Income is<br>(Rs.1,92,895/- x 17<br>Multiplier ) =<br>Rs.32,79,215/-                               | Rs.32,79,215.00/-                                             |
| 2.                   | Towards Funeral expenses                                                                                   | Rs.16,500/-                                                   |
| 3.                   | Loss of estate                                                                                             | Rs.16,500/-                                                   |
| 4.                   | Transportation charges                                                                                     | Rs.10,000/-                                                   |
|                      | <b>Total</b>                                                                                               | <b>Rs.33,22,215/-</b>                                         |
|                      | After Deducting 10% of award amount towards contributory negligence for non wearing helmt is Rs.3,33,221/- | Rs.29,89,993.50<br>(Rounded off to<br><b>Rs.29,90,000/-</b> ) |



WEB COPY

The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5. The claimants not being satisfied with the quantum of compensation fixed by the Tribunal and also attributing 10% contributory negligence on the deceased, have filed the present appeal before this Court.

6. Heard Mrs.Ramya V Rao, learned counsel for appellants /claimants and Mr.K.Raghuraman, learned counsel for Transport Corporation.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. This Court also carefully went through the award passed by the Tribunal.



WEB COPY

9. Insofar as the quantum of compensation fixed by the Tribunal under various heads, this Court finds that the same is reasonable and it does not require the interference of this Court.

10. The only other issue that is left is with regard to the 10% contributory negligence attributed against the deceased on the ground that he did not wear an helmet at the time of the accident. The Tribunal on considering the evidence of PW2 and RW1 came to a categorical conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the bus belonging to the Transport Corporation. Having rendered such a finding, the Tribunal cannot attribute contributory negligence against the deceased on the ground that he was not wearing an helmet. While attributing contributory negligence, there must be material to show that the deceased had also contributed to the negligence resulting in the accident. The same is completely absent in this case and therefore, the contributory negligence cannot be attributed merely on the ground of non-wearing of the helmet.



Civil Miscellaneous Appeal No.724 of 2024

WEB COPY

11. In view of the above, the finding of the Tribunal attributing 10% contributory negligence against the deceased is hereby set-aside.

12. In the light of the above discussion, there shall be a direction to the respondent Corporation to pay the entire compensation amount of Rs.33,22,215/- with interest 7.5% per annum. The compensation amount shall be deposited, less amount has already been deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this judgement. On such deposit, it is left open to the sole appellant to withdraw the same. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants.

13. In the result, this Civil Miscellaneous appeal is partly allowed in the above terms. No costs.

**05.07.2024**

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

rka



WEB COPY



Civil Miscellaneous Appeal No.724 of 2024

**N.ANAND VENKATESH.,J**  
rka

To,

Motor Accident Claims Tribunal, II Court of small causes, Chennai.

**Civil Miscellaneous Appeal No.724 of 2024**



WEB COPY



Civil Miscellaneous Appeal No.724 of 2024

**05.07.2024**