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C.M.A.No.2041 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2041 of 2021

1. S.Munusamy
2. Shanmugathai

... Appellants

vs.

Tamil Nadu State Transport Corporation
(VPM DIV III) Limited,
Kancheepuram.

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 05.12.2017 in M.C.O.P. 396 of 2012 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondent : Mr.S.Santhosha Kumar

JUDGMENT

The appellants are the claimants in M.C.O.P. 396 of 2012 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai.



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They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.8,15,000/- for the death of their minor son Murugan, in a road accident that took place on 24.08.2010.

2. The brief case of the appellants / claimants is as follows :

On 24.08.2010, Murugan (since deceased) was attempting to board the bus bearing Registration Number TN-21-N-0675 on Nagari - Podatturpet Road. The driver of the bus suddenly moved the bus unmindful of the passenger boarding the bus, as a result of which, the deceased hit a wall and sustained injuries. He was immediately rushed to the Government Hospital, Vellore. However, he succumbed to injuries the same day.

3. According to the claimants the rash and negligent driving of the driver of the bus belonging to the respondent, the Tamil Nadu State Transport Corporation Limited was the cause of accident and therefore, they are liable to pay compensation to them.



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4. The respondent, the Tamil Nadu State Transport Corporation Limited, Kancheepuram, contested the claim petition

5. The Tribunal while awarding compensation of Rs.1,80,000/- together with interest at the rate of 7.5% per annum also concluded that the deceased had contributed to the accident to the extent of 50% as he travelled on the footboard of the bus.

6. Aggrieved over the quantum of compensation and challenging the contributory negligence fastened on the part of the deceased to the extent of 50% by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr.K.Varadha Kamaraj, learned counsel appearing for the appellants and Mr.S.Santhosha Kumar, learned counsel appearing for the respondent.



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8. Mr.K.Varadha Kamaraj, learned counsel for the appellants contended that the deceased was attempting to board the bus and the driver of the bus did not notice the same and moved his bus, as a result of which, Murugan hit a wall and sustained injuries and subsequently, died in the hospital. However, the Tribunal had fixed 50% contributory negligence on the part of the deceased which according to him, is erroneous. He also prayed for enhancement of compensation.

9. Per contra Mr.S.Santhosha Kumar, learned counsel appearing for the respondent would contend that even as per FIR (Ex.P1) the deceased was travelling on the footboard of the bus and therefore, he equally contributed to the accident. In the circumstances, the Tribunal was right in fixing contributory negligence to the extent of 50%.

10. **Negligence :**

It is disheartening to see most of the youth prefer to put their lives at risk by hanging on to the railings of the footboard, clutching their lives in their hand. However, the drivers / conductors must give warning



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to these footboard travellers and if the passengers do not pay heed to their warning they should immediately stop the vehicle. In the instant case, the young man was boarding the bus and the driver of the bus without noticing this had moved the bus resulting in his instantaneous death. In the circumstances, the Tribunal was wrong in fastening contributory negligence on the part of the deceased and that too to the extent of 50%. Therefore, the same is liable to be set aside.

11. Quantum :

In *Kishan Gopal and another vs. Lala and others* reported in **2013 (2) TN MAC 358**, the Hon'ble Supreme Court fixed the notional income of a minor child as Rs.30,000/- per annum and granted a sum of Rs.50,000/- under the other conventional heads. The accident in *Kishan Gopal and another vs. Lala and others* (cited supra) happened in the year 1992. In the present case, considering the passage of time and the age of the victim child, fixing Rs.5,000/- per month as notional income of the deceased would meet the ends of justice. The proper multiplier to be adopted in the instant case is 18, as per the decision in *Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009)*



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6 SCC 121. Calculation for loss of dependency is worked out here under.

Calculation :

Notional Income = Rs.5,000/- x 12 = Rs.60,000/-

Loss of dependency :

= Rs.60,000/- x 18

= Rs.10,80,000/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000 x 2), Rs.15,000/- and Rs.15,000/- towards 'loss of consortium', 'loss of estate' and 'funeral expenses' respectively as per the decision in *National Insurance Company Limited Vs. Pranay Sethi and others* (cited supra).

Thus, the claimants are entitled to a total compensation of Rs.11,90,000/- (10,80,000 + 80,000 +15,000 +15,000 = 11,90,000) as shown in the following tabular column.

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	10,80,000/-
2.	Loss of consortium	80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
Total		11,90,000/-



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12. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,80,000/- to Rs.11,90,000/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

- i. The Civil Miscellaneous Appeal is allowed. No costs.
- ii. The orders passed by Tribunal fixing contributory negligence on the part of the deceased is set aside.
- iii. The compensation awarded by the Tribunal is enhanced from Rs.1,80,000/- to Rs.11,90,000/-.
- iv. The appellants / claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.
- v. The respondent is directed to deposit the compensation amount i.e.,



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Rs.11,90,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order to the credit of M.C.O.P. 396 of 2012 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

vi. On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact. The appellants/claimants are not entitled to claim any interest for the period of delay of 661 days in filing this appeal.

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Index : Yes/No

Speaking/Non-speaking order
mtl



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To

1. The Motor Accident Claims Tribunal,
Chief Judge, Small Causes Court, Chennai.
2. Tamil Nadu State Transport Corporation
(VPM DIV III) Limited, Kancheepuram.
3. The Section Officer, V.R. Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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