



CMA.No.1312 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.1312 of 2021

and

CMP.No.6665 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
37, Mettupalayam Road, Coimbatore – 43.

...Appellant

Vs.

1. D.Thirumalmohan
2. Vaneeswari
3. Palanisamy
4. Minor J.Manjuladevi
Rep. by Natural Guardian V.Jagannathan
5. R.Boopathy
6. M/s.IFFCO Tokya General Insurance Co. Ltd.,
Venkatramana Round Road,
Mahalingapuram, Pollachi – 641 002.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 03.04.2019 made in MCOP.No.325 of 2016 on the file of the Motor Accident Claims Tribunal, the II Additional District Judge, Tiruppur.



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For Appellant : Mr.Murali Vinoth

For Respondents : M/s.Preethika
for Mr.D.R.Arun Kumar, for R1 & R2
: Mr.S.Sivakolappan, for R6
: No Appearance, for R3 & R4
: Notice dispensed with, for R5

JUDGMENT

Challenging the judgment and decree dated 03.04.2019 made in MCOP.No.325 of 2016 on the file of the Motor Accident Claims Tribunal, the II Additional District Judge, Tiruppur, the appellant has come up with this appeal.

2. It is the case of the claimants that, on 25.05.2015 at about 19.45 hours, when the deceased Ranjitha was travelling as a pillion rider in the two wheeler bearing Regn.No.TN-41-AK-7227 owned by the 5th respondent insured with the 6th respondent driven by the 4th respondent along with another pillion rider in Coimbatore-Pollachi Main Road, near Mahalingapuram Arch, at that time, the appellant transport corporation bus bearing Regn.No.TN-38-N-1362 driver by its driver came in a rash



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and negligent manner and dashed against the above said two wheeler, due to which the victim sustained grievous injuries and succumbed to the same. Thereby, the 1st and 2nd respondents/claimants, who are the parent of the deceased Ranjitha filed a claim petition claiming a sum of Rs.25,00,000/- towards compensation. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked exhibits P.1 to P.16 and on the side of appellant-transport corporation as well as the respondents therein, two witnesses viz. R.W.1 and R.W.2 were examined and exhibits R1 to R4 were marked. After trial, the Tribunal, on appreciation of oral and documentary evidence came to the conclusion that the above accident took place solely due to the rash and negligent driving on the part of the driver of the appellant-transport corporation and awarded a sum of Rs.16,50,000/- towards compensation for the death of the deceased Ranjitha, payable by the appellant corporation in favour the 1st and 2nd respondents/claimants. Aggrieved by the same, the appellant-transport corporation has come up with this appeal.

3. Learned counsel for the appellant-transport corporation submitted that the above said accident happened solely due to the rash



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and negligent driving on the part of the the 4th respondent/the driver of the two wheeler in which the deceased had travelled as pillion driver at the time of accident. Moreso, it is not in dispute that, at the time of accident, three persons have travelled in the two wheeler, in which, the deceased had travelled as one of the pillion rider, which is a major violation of Motor Vehicles Rules. In addition to that, the 4th respondent who drove the two wheeler in which the deceased had travelled at the time of accident was a minor and she was not in possession of a valid driving license. When the rider of the two wheeler has violated the Motor Vehicles Rules, the Tribunal ought to have fixed the entire negligence on the part of the driver of the two wheeler and must have fastened the entire liability as against the owner of the two wheeler/the 5th respondent and ought to have exonerated the appellant-transport corporation. However, without doing so, the tribunal had mechanically fixed the entire negligence on the part of the driver of the appellant transport corporation bus and fastened the entire liability as against the appellant, solely on the ground that the FIR came to be registered as against the driver of the appellant-transport corporation, which is wholly unsustainable. Further, the compensation awarded by the tribunal under

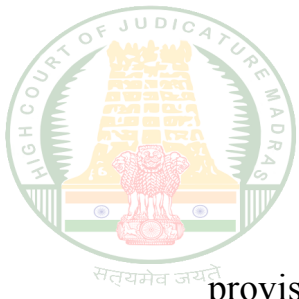


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various heads are also on the higher side which has to necessarily be interfered with. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing on behalf of the 1st and 2nd respondents/claimants submitted that, the above said accident happened solely due to the rash and negligent driving on the part of the driver of the appellant transport corporation. Further, though three persons have travelled at the time of accident and the 4th respondent /driver of the two wheeler in which the deceased had travelled at the time of accident did not possess valid driving license and the same would amount to violation of the Motor Vehicle Rules as alleged by the learned counsel for the appellant, however, it has to be decided only by the competent Court as to whether the offender shall be punished under the Motor Vehicles Act and Rules or not? In support of her contention, the learned counsel relied upon the decision of by this Court in the case of *Naveen and ors. Vs. Sampath and ors* reported in **2024 (2) TN MAC 76**, wherein it was held that riding a two wheeler without a license or carrying more persons as pillion rider in a motorcycle though is not permitted in law, it will only tantamount to violation of relevant



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provisions of the Motor Vehicles Act, which results in imposition of punishment/penalty. Further, it was also held that unless it is established that the very act of riding without a license or carrying more than one person as a pillion rider had contributed either to the accident or to the impact of the accident upon the victim, the said violation, by itself, cannot lead to giving a finding on contributory negligence. In view of the above decision rendered by this Court, the grounds canvassed by the learned counsel for the appellant for fixation of contributory negligence on the aspect of Triple driving and non possession of driving license is wholly unsustainable. Thereby, the tribunal, by considering all the relevant documents, passed the present impugned award, which cannot be said to be erroneous and the quantum of compensation awarded by the tribunal is already on the lower side and the same does not require further reduction. Accordingly, she prayed for dismissal of the appeal.

5. On the above said contentions, heard learned counsel for the 6th respondent and perused the material documents placed on record.



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6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The main contention of the learned counsel for the appellant relates to the fact that the 4th respondent/driver of the two wheeler in which the deceased had travelled at the time of accident did not possess valid Driving license and three persons have travelled in the said two wheeler and the entire accident had taken place solely due to the negligence on the part of the 4th respondent, however, the tribunal had fixed the entire negligence on the part of the driver of the appellant transport corporation bus, which is not sustainable.

7. Though such a stand is taken by the learned counsel for the appellant-transport corporation, however, the learned counsel for the claimants by placing reliance on the decision rendered by this Court in the case of *Naveen and ors. Vs. Sampath and ors* reported in **2024 (2) TN MAC 76** has rightly submitted that, unless it is proved that the said violation of riding without a driving license or carrying more than one person as pillion rider has contributed to the accident, the same cannot be a basis to fixation of contributory negligence.



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8. Further, based on the oral testimony of P.W.2 eye witnesses, coupled with the FIR filed against the driver of the appellant-transport corporation bus and other connected exhibits marked on the side of the claimants, the tribunal had concluded that the accident occurred solely due to the rash and negligent driving of the driver of the appellant corporation bus, which, in the opinion of this Court, is based on sound reasoning and hence, does not warrant interference.

9. Insofar as the quantum of compensation fixed by the tribunal is concerned, applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459** and also considering the age of the deceased as also the claimants, though the Tribunal has rightly fixed a sum of Rs.10,000/- as nominal income, however, added future prospectus at 25%, which is contrary to the decision of the constitutional Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**. Hence, this Court modifies the awards passed by the Tribunal by adding a component of 40% for future prospectus and therefore the income of the deceased



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per month is quantified at Rs.14,000/-. Since the deceased was a minor

aged about 14 years, 50% has to be deducted towards personal expenses.

After deducting 50% towards personal expenses, the monthly income of

the deceased would be Rs.7,000/-. Further, since the deceased was a

minor aged about 14 years, as per the decision of the Apex Court in the

case of ***Kishan Gopal & Ors. Vs. Lala & Ors.*** reported in

MANU/SC/0864/2013, the right multiplier to be adopted is '15'. Hence,

the loss of income to the family of the deceased is arrived at

Rs.12,60,000/- (Rs.7,000/- x 12 x 15).

9. Insofar as the compensation awarded under the other heads are concerned, no compensation has been awarded under the head Loss of estate and thereby, this Court awards a sum of Rs.15,000/- under the said head. Further, the tribunal had awarded only a sum of Rs.50,000/- under the head Loss of love and affection, which is on the lower side and accordingly, this Court is inclined to enhance the same to Rs.80,000/-. At the same time, the tribunal had awarded a compensation of Rs.80,000/- under the head loss of love and care, which is not sustainable and accordingly, the same is set aside.



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10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of income	13,50,000/-	12,60,000/-
Loss of love and affection	50,000/-	80,000/-
Loss of care	80,000/-	-
Funeral Expenses	15,000/-	15,000/-
Loss of estate	-	15,000/-
Transport to hospital	10,000/-	10,000/-
Medical Bills	1,57,586/-	1,57,586/-
Total	16,62,586/-	15,37,586/-
Rounded off to	16,50,000/-	15,38,000/-

11. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal is modified by reducing the compensation amount from Rs.16,50,000/- to **Rs.15,38,000/-** and the Appellant-transport corporation is directed to deposit the said compensation amount arrived by this Court to the credit of MCOP.No.325 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as



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awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On the above said compensation, the 1st and 2nd respondents/claimants are entitled to a sum of Rs.7,69,000/- each along with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the compensation amount directly to the bank accounts of the 1st and 2nd respondents/claimants through RTGS within a period of two (2) weeks thereafter. If any excess amount is deposited by the appellant/transport corporation, it is at liberty to withdraw the same by way of filing necessary application. No costs. Consequently, the connected Miscellaneous petition is closed.

12.12.2024

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NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No



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M.DHANDAPANI, J.

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To:

1. The II Additional District Judge,
Motor Accident Claims Tribunal, Tiruppur.
2. The Section Officer,
VR Section, High Court of Madras.

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and
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