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CMA.No.277 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.277 of 2024

P. Samatha

.... Appellant

VS.

The Managing Director,
Tamil Nadu State Transport Corporation
(Salem Division.I) Limited,
12, Ramakrishna Road, Salem 7.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 31.10.2023 in M.A.C.T.O.P.No.3749/2018 on the file of the Motor Accident Claims Tribunal, Special District Court No.II, Cuddalore.

For Appellant : Mrs.A.Subadra

For Respondent : Mr.D. Nitin



JUDGMENT

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The appellant is the claimant in M.A.C.T.O.P.No.3749/2018 on the file of the Motor Accident Claims Tribunal, Special District Court No.II, Cuddalore. She filed the claim petition under Section 166(1) of the Motor Vehicles Act, seeking compensation of Rs.25,00,000/- for the death of her son in a road accident that occurred on 24.05.2018.

2. The brief case of the appellant / claimant is as follows :

2.1. On 24.05.2018 Manikandan (since deceased) was riding his two wheeler on Panruti-Cuddalore main road and at about 2.30 p.m. a speeding bus bearing Registration Number TN-30-N-1147 belonging to the respondent Tamil Nadu State Transport Corporation hit the two wheeler as a result of which Manikandan fell down and died on the spot.

3. According to the claimant, the rash and negligent driving of the driver of the bus bearing Registration Number TN-30-N-1147 was the cause of the accident and therefore the Transport Corporation is liable to pay compensation to her.



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4. The respondent Tamil Nadu State Transport Corporation

Limited resisted the claim petition by filing its counter.

5. The Tribunal after analysing the evidence on record fastened negligence on the part of the driver of the bus bearing Registration Number TN-30-N-1147 and the deceased in the ratio 90:10 and directed the respondent Tamil Nadu State Transport Corporation Limited to pay compensation of Rs.8,94,800/- (90% on the total compensation of Rs.9,94,200/-) to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

6. Aggrieved over the quantum of compensation awarded by the Tribunal and also challenging the contributory negligence fastened on the part of the deceased, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mrs.A. Subadra, learned counsel appearing for the appellant and Mr. D. Nitin, learned counsel appearing for the respondent Tamil Nadu State Transport Corporation.



8. Mrs.A. Subadra, learned counsel appearing for the appellant contended that though the FIR and the final report are against the driver of the bus, the Tribunal was wrong in fastening contributory negligence on the part of the rider of the two wheeler on the ground that he was not wearing a helmet at the time of accident. She also contended that the Tribunal had not awarded just compensation to the claimant.

9. Per contra, Mr. D. Nitin, learned counsel appearing for the respondent/Tamil Nadu State Transport Corporation Limited contended that the Tribunal, after analysing the evidence on record, had concluded that the deceased also contributed to the accident and awarded just compensation and therefore the same need not be disturbed in the present appeal.

Negligence

10. FIR (Ex.P1) was registered against the driver of the bus bearing Registration Number TN-30-N-1147 belonging to the Tamil Nadu State Transport Corporation Limited. Jagadish (P.W.2), who is the eye witness to the occurrence had clearly deposed that the driver of the bus was rash and negligent in driving the vehicle. The manner of accident



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also shows that the driver of the bus was rash and negligent in driving his vehicle. Moreover, there is nothing on record to show that the deceased also contributed to the accident. Infact the Tribunal had come to the conclusion that the accident happened only due to the negligence on the part of the driver of the bus. However, the Tribunal fastened contributory negligence on the part of the deceased only because he was not wearing a helmet at the time of accident. This observation of the Tribunal cannot be sustained because, as already observed, there is nothing on record to show that the deceased contributed to the accident and hence the same is set aside.

Quantum

10.1. According to the claimant, Manikandan (deceased) was aged 24 years on the date of accident and was working as a commission agent earning a sum of Rs.20,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.6,000/-. Considering the year of accident and the age of the deceased, this Court fixes the notional monthly income of the deceased as Rs.16,000/-. As per the decision of the Supreme Court of



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India in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**, 40% is added towards future prospects of the deceased. Since the deceased died as a bachelor, 1/2 is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 18 as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **(2009) 6 SCC 121**.

Calculation

Notional Income = Rs.16,000/-

40% Future Prospects = Rs.22,400/-

After 1/2 deduction = Rs.11,200/-

Loss of dependency

= Rs.11,200/- x 12 x 18

= Rs.24,19,200/-

In addition to that the claimant is entitle to get Rs.40,000/-, Rs.15,000/- and Rs.15,000/- for 'loss of Consortium', 'loss of Estate' and 'Funeral Expenses' respectively as per the decision in *National Insurance Co. vs Pranay sethi and others* (cited supra).

10.2. The enhanced amount under the different heads are



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detailed hereunder:

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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	24,19,200/-
2.	Loss of consortium	40,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	24,89,200/-

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The 10% contributory negligence fastened on the deceased by the Tribunal is set aside.
- iii. The compensation awarded by the Tribunal is enhanced to Rs.24,89,200/-.
- iv. The appellant / claimant is 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



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draft the decree only after receipt of the Court fee.

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v. The respondent, the Tamil Nadu State Transport Corporation Limited, Salem, is directed to deposit the enhanced compensation amount of Rs. 24,89,200/- (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 to the credit of M.A.C.T.O.P.No.3749/2018 on the file of the Motor Accident Claims Tribunal, Special District Court No.II, Cuddalore, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.

vi. On such deposit being made, the claimant is at liberty to withdraw the same after filing proper petition for withdrawal.

29.10.2024

Index : Yes/No
Speaking/Non-speaking order
bga



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To

1. Motor Accident Claims Tribunal,
Special District Court No.II, Cuddalore.
2. The Managing Director,
Tamil Nadu State Transport Corporation
(Salem Division.I) Limited,
12, Ramakrishna Road, Salem 7.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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