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CMA.No.1773 of 2023 and Cross Obj. No.53 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1773 of 2023 & C.M.P. No.17388 of 2023

&

Cros. Obj. No.53 of 2023

C.M.A. No.1773 of 2023

Managing Director
Tamilnadu State Transport Corporation Limited
(Salem Division)
Salem Main Road
Bharathipuram Post, Dharmapuri District.

... Appellant

VS.

1. Madhu
2. Madhaiyan

...Respondents

CROS. OBJ. NO.53 of 2023

1. Madhu
2. Madhaiyan

...Cross Objectors

Vs.

Managing Director,
Tamilnadu State Transport Corporation Limited,
(Salem Division)



CMA.No.1773 of 2023 and Cross Obj. No.53 of 2023

Salem Main Road,
Bharathipuram Post, Dharmapuri District.

...Respondent

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PRAYER in C.M.A. No.1582 of 2023: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 16.08.2002 passed in M.C.O.P.No.105 of 2020 on the file of the Motor Accident Claims Tribunal, Special Court , Dharmapuri.

PRAYER in CROS.OBJ. No.92 of 2023

Cross objection filed under Order XL1 Rule 22 of the Code of Civil Procedure against the against the Award dated 16.08.2002 passed in M.C.O.P.No.105 of 2020 on the file of the Motor Accident Claims Tribunal, Special Court , Dharmapuri.

Appearance In C.M.A. No.1773 of 2023

For Appellant : Mr. D. Nitin
For Respondents : Mr.D. Rameshkumar

Appearance in Cros. Obj. No. 53 of 2023

For Cross Objectors : Mr.D. Rameshkumar
For Respondent : Mr. D. Nitin

COMMON JUDGMENT

The appellant in CMA No.1773 of 2023 is the Managing
Director, Tamilnadu State Transport Corporation Limited, Dharmapuri,



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while the Cross Objectors in Cros. Obj. No. 53 of 2023 are the claimants in MCOP No.105 of 2020 on the file of the Motor Accident Claims Tribunal, Special Court, Dharmapuri.

2. The Cross Objectors / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.60,00,000/- for the death of their son Sarath in a road accident that took place on 17.01.2020.

3. For the sake of convenience the parties are referred to as per their ranking in the Tribunal.

4. The case of the claimants in a nutshell is as follows:

4.1. On 17.01.2020, at about 3.30 p.m, Sarath (deceased) was riding his two wheeler bearing Registration No.KA 53 EG 5326 with one Senthil as a pillion rider on Kadathur-Dharmapuri Main Road. When he was nearing Maniyambadi Mariamman Nagar, a bus belonging to the Tamilnadu State Transport Corporation, bearing Registration Number TN 29 N 2482 came in the opposite direction and hit the two wheeler



resulting in the instantaneous death of Sarath.

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4.2. According to the claimants the rash and negligent driving of the driver of the Tamilnadu State Transport Corporation bus bearing Registration Number TN 29 N 2482, was the cause of the accident and therefore, they are liable to pay compensation to them.

5. The respondent Transport Corporation resisted the claim petition by way of filing a counter.

6. The Tribunal after analysing the evidence on record, fixed negligence on the part of the driver of the bus bearing Registration Number TN 29 N 2482 belonging to the Tamilnadu State Transport Corporation Limited and awarded a compensation of Rs.14,81,800/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 16.08.2022.



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7. Aggrieved over fastening of negligence on the part of the driver of the bus and the quantum of compensation awarded by the Tribunal, Tamilnadu State Transport Corporation, Dharmapuri, has filed CMA No.1773 of 2023, while the claimants filed Cross Objection 53 of 2023 seeking enhancement of compensation.

8. Heard Mr. D. Nitin, learned counsel for the appellant Tamilnadu State Transport Corporation in C.M.A. No.1773 of 2023 and Mr.D. Rameshkumar, learned counsel for the respondents/claimants.

9. Mr. D. Nitin learned counsel appearing for the appellant, Tamilnadu State Transport Corporation Limited, contended that the rider of the two wheeler was actually driving his vehicle in a rash and negligent manner. His intention was to avoid the traffic police who were checking vehicles and in the process collided with the bus. He therefore, contended that the Tamilnadu State Transport Corporation cannot be made liable to pay compensation to the claimant. He also contended that the Tribunal had awarded an exorbitant amount of Rs.14,81,800/- towards compensation and the same has to be scaled down.



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10. Per contra, Mr. D. Ramesh Kumar, learned counsel for the cross objectors/claimants contended that the deceased was aged 25 years on the date of accident and he was a bore well operator and Manager in a private concern. Apart from that he was also doing business earning a sum of Rs.45,000/- per month. However, the Tribunal fixed his notional monthly income only as Rs.9,000/-. He therefore, prayed for enhancement of notional monthly income of the deceased.

11. The deposition of the driver of the bus is that the deceased, on seeing the traffic police checking vehicles, drove his two wheeler rashly and negligently, came in the opposite direction and hit his bus. Except the *ipsi dixit* of the driver of the bus, nothing on record to show that the rider of the two wheeler was rash and negligent in riding his vehicle. Moreover, the eye witness account is clear with regard to the negligence on the part of the driver of the bus. Therefore, I do not see any reason to interfere with the orders passed by the Tribunal fastening negligence on the part of the driver of the bus.



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11.1. The accident took place in the year 2020 and according to the claimants their son Sarath was aged 25 years and was a borewell operator and Manager in Sree Murugan borewell. They also contended that he was doing business earning a sum of Rs.40,000/- per month. In the absence of income proof, the Tribunal had fixed the notional monthly income of the deceased as Rs.9,000/-. This seems to be on the lower side. In the circumstances, this Courts feels that fixing the notional monthly income of the deceased as Rs.15,000/- would meet the ends of justice. As per the decision of the Supreme Court of 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. The deceased died as a bachelor and hence, 50% is deducted towards his personal expenses. The deceased was aged 25 years on the date of the accident and 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.15,000/-

40% Future Prospects = Rs.21,000/-



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After 1/2 deduction = Rs.10,500/-

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= Rs.10,500/- x 12 x 18

= Rs.22,68,000/-

In addition to that the claimants are entitled to Rs.80,000/- (40,000 x 2), 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). Thus, the claimants are entitled to a total compensation of Rs.23,89,000/- (22,68,000 + 88,000 + 16,500 + 16,500= 23,89,000) 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	22,68,000/-
2.	Loss of consortium (Rs.40,000/- x 2)	80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
Total		Rs.23,78,000/-

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



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12. Thus, the compensation awarded by the Tribunal is enhanced from Rs.14,81,800/- to Rs.23,78,000/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

- i. C.M.A No.1773 of 2023 stands dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The Cross Objection No.53 of 2023 is partly allowed. No costs.
- iii. The compensation awarded by the Tribunal is enhanced from Rs.14,81,800/- to Rs.23,78,000/-.
- iv. The appellant, the Tamilnadu State Transport Corporation Limited, in C.M.A. No. 1773 of 2023 is directed to deposit the compensation amount i.e., Rs.23,78,000/- (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.No.105 of 2020 on the file of the Motor Accident Claims Tribunal, Special Court , Dharmapuri.



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v. The ratio of apportionment made by the Tribunal shall be kept intact. The Cross Objectors/claimants are at liberty to withdraw the compensation amount as per the directions given by the Tribunal after following due process of law.

22.08.2024

Index : Yes/No

Speaking/Non-speaking order
bga

To

1. Motor Accident Claims Tribunal, Special Court , Dharmapuri
2. The Section Officer, V.R. Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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