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CMA.Nos.1652 and 949 of 2023
and C.M.P.No216313 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CMA.Nos.1652 and 949 of 2023

and

C.M.P.No216313 of 2023

C.M.A. No.1652 of 2023

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region, Periya milaguparai,
Trichy - 1.

... Appellant

VS.

1.Rajavel
2.Rosapathi
3.Ajith Kumar
4.Ananth Raj

... Respondents

C.M.A.No.949 of 2023

1.Rajavel
2.Rosapathi
3.Ajith Kumar
4.Ananth Raj

... Appellants

Vs.



CMA.Nos.1652 and 949 of 2023
and C.M.P.No216313 of 2023

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region, Periya milaguparai,
Trichy - 1.

...Respondent

PRAYER in C.M.A. No.1652 of 2023: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 14.11.2022 in M.C.O.P.No.55 of 2020 on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Jayamkondam.

PRAYER in C.M.A.No.949 of 2023 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 14.11.2022 in M.C.O.P.No.55 of 2020 on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Jayamkondam.

Appearance in C.M.A. No.1652 of 2023 :

For Appellant : Mr.M.Murali Vinodh

For Respondents : Ms.Sithi Fathima. SAMT
for Mr.C.Vidhusan

Appearance in C.M.A. No.949 of 2023 :

For Appellant : Ms.Sithi Fathima. SAMT
for Mr.C.Vidhusan

For Respondents : Mr.M.Murali Vinodh



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CMA.Nos.1652 and 949 of 2023
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COMMON JUDGMENT

The appellants in C.M.A. 949 of 2023 are the claimants in MCOP No.55 of 2020 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Jayankondam. They filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.30,00,000/- for the death of one Ashok Raj (son of the claimants 1 and 2 and the brother of the claimants 3 and 4) in a road accident that took place on 31.12.2019.

2. The appeal in C.M.A.1652 of 2023 has been filed by the Managing Director, Tamil Nadu State Transport Corporation (Kumbakonam) Limited, Trichy Region, who is the respondent in M.C.O.P.No.55 of 2020. Both the appeals are filed questioning the quantum of compensation awarded by the Tribunal.

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



CMA.Nos.1652 and 949 of 2023
and C.M.P.No216313 of 2023

WEB COPY

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

4.1. On 31.12.2019, at about 10 p.m, Ashok Raj (deceased) was riding his two wheeler Yamaha Sz bearing Registration No.TN-38-CT-5686 on Perambalur - Aattur Road. When he was nearing Veeraganur Raghavendra School, a speeding bus bearing Registration No.TN-45-N-3781, belonging to the Tamil Nadu State Transport Corporation Limited hit his two wheeler, as a result of which, Ashok Raj fell down and died on the spot.

4.2. According to the claimants the rash and negligent driving of the driver of the bus bearing Registration No.TN-45-N-3781, belonging to the Tamil Nadu State Transport Corporation Limited was the cause of the accident and therefore, they are liable to pay compensation to them.

5. The Tribunal after analysing the evidence on record, fixed 50% negligence on the part of the deceased, as he equally contributed to the accident, and awarded compensation of Rs.15,10,008/- to the claimants together with interest at the rate of 6% per annum from the date



CMA.Nos.1652 and 949 of 2023
and C.M.P.No216313 of 2023

WEB COPY

of claim petition till the date of deposit.

6. Ms.Sithi Fathima, learned counsel appearing for the claimants contended that though the accident was due to the negligence on the part of the driver of the bus belonging to the Tamil Nadu State Transport Corporation Limited, the Tribunal had committed an error in fixing 50% contributory negligence on the part of the deceased. It is also her contention that the Tribunal has not awarded just compensation to the claimants.

7. *Per contra* Mr.M.Murali Vinodh, learned counsel appearing for the Tamil Nadu State Transport Corporation (Kumbakonam) Limited, Trichy Region, contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage. According to him, fastening 50% contributory negligence on the part of the deceased by the Tribunal is based on facts and therefore, it does not warrant any interference by this Court.



CMA.Nos.1652 and 949 of 2023
and C.M.P.No216313 of 2023

WEB COPY

8. The Tribunal fixed 50% negligence on the part of the deceased based on the rough sketch (Ex.R1) and observation mahazar (Ex.R2) filed by the police. A perusal of the rough sketch shows that the victim was travelling on the left hand side of the road. The accident took place in a curved road at about 10.00 p.m. The road actually turns on the right hand side. Though it is contended that the driver gave proper signal, the accident spot suggests that the driver of the Tamil Nadu State Transport Corporation was the wrong doer.

9. Mr.Murali Vinod, learned counsel for the Tamil Nadu State Transport Corporation drew the attention of this court to the final report (Ex.R3) filed by the police wherein it is contended that the rider of the two wheeler was the wrong doer.

10. Based on the final report (Ex.R3) this Court cannot come to a conclusion that the entire negligence is on the part of the deceased. Even the Tribunal had fixed only 50% contributory negligence on the deceased. However as already observed, the accident spot as per the observation mahazar (Ex.R2) and the rough sketch (Ex.R1), clearly shows that the



CMA.Nos.1652 and 949 of 2023
and C.M.P.No216313 of 2023

driver of the bus was rash and negligent in driving the bus as he was not on the left side of the road. However, we cannot simply brush aside the eyewitness account who has deposed that the deceased was also rash in driving his vehicle. The bus is a heavy vehicle compared to the two wheeler and the driver of the bus ought to have been more cautious in driving his vehicle. Hence, the contributory negligence on the part of the deceased is reduced to 20%. The negligence on the driver of the bus is 80%.

11. In the claim petition, it is contended that the deceased was a Fitter earning a sum of Rs.20,000/- per month. In the absence of income proof, the Tribunal fixed the monthly income of the deceased as Rs.6,500/-. It is pertinent to point out that the accident took place in the year 2019 and in the facts and circumstances, this Court is of the opinion that fixing the notional monthly income of the deceased at 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



CMA.Nos.1652 and 949 of 2023
and C.M.P.No216313 of 2023

towards his personal expenses. The deceased was aged 21 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.6,000/-

Total = Rs.15,000/- + Rs.6,000/- = Rs.21,000/-

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

Loss of dependency :

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

= Rs.22,68,000/-

In addition to that the claimants are entitled to Rs.1,60,000/- (40,000 x 4), 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.24,58,000/- (22,68,000 + 1,60,000 + 15,000 + 15,000= 24,58,000) as shown in the following tabular column.



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CMA.Nos.1652 and 949 of 2023
and C.M.P.No216313 of 2023

<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	1,60,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
Total		24,58,000/-

Since the deceased had contributed to the accident, 20% is deducted from the total award amount and hence, the claimants are entitled to a sum of Rs.19,66,400/- ($24,58,000 - 4,91,600 = 19,66,400$). This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. In the result,

CMA.No. 949 of 2023

- The appeal in C.M.A. 949 of 2023 is partly allowed. No costs.
- The compensation awarded by the tribunal is enhanced to Rs.19,66,400/- from Rs.7,55,004/-.
- The Tamil Nadu State Transport Corporation is directed to deposit



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CMA.Nos.1652 and 949 of 2023
and C.M.P.No216313 of 2023

the enhanced compensation of Rs.19,66,400/- along with interest at the rate of 7.5% per annum, less the amount already deposited by them, within a period of four weeks from the date of receipt of a copy of this order.

- iv. On such deposit being made, the claimants are entitled to withdraw the same, as per the apportionment made by the tribunal, after following due process of law.

C.M.A No.1652 of 2023

- i. The appeal in C.M.A. 1652 of 2023 is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.
- ii. Contributory negligence on the part of the driver of the bus is fixed as 80% and the driver of the two wheeler (deceased) as 20%.

13.08.2024

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



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CMA.Nos.1652 and 949 of 2023
and C.M.P.No216313 of 2023

To

1.The Motor Accident Claims Tribunal,
(Subordinate Court), Jayamkondam.

2. The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region, Periya milaguparai,
Trichy - 1.

3. The Section Officer, V.R. Section, Madras High Court, Chennai.



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CMA.Nos.1652 and 949 of 2023
and C.M.P.No216313 of 2023

R.HEMALATHA, J.

mtl

CMA.Nos.1652 and 949 of 2023
and C.M.P.No216313 of 2023

13.08.2024