



CMA.No.2989 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

C.M.A.No.2989 of 2021 &
CMP.No.17025 of 2021

The VC and MD APSRTC Hyderabad,
Bus Bhavan, Mushirabad, Medchal,
Hyderabad, AP

.. Appellant

/vs/

Mangal (died)

1. Sathiya
2. Latha
3. Nandhini
4. Anitha
5. Anjali
6. Tirupathi
7. minor Thirumoorthy
(R7 represented through his
natural guardian and mother/
1st respondent)

[R1 to R7-legal heirs of 1st respondent
already on record, memo filed)

8. B. Venkatesan Naik

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 16.03.2020 passed by the Subordinate Judge, Vaniyambadi in MCOP.No.219 of 2015.

For Appellant

... Mrs. G.V.Shoba



WEB COPY

CMA.No.2989 of 2020



For Respondents

.... R1 – died

R2 to R7-no appearance

R8-notice dispensed with

JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree made in M.C.O.P.No.219 of 2015 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Vaniyambadi, dated 16.03.2020.

2. The facts leading to filing of this Civil Miscellaneous Appeal is as follows:-

(i) On 28.04.2013 at 8.30 p.m., one Venkatesan was travelling as a pillion rider in a Hero Honda Two Wheeler bearing Regn. No.TN 02 AR 2130 from Chennai to Bangalore National Highway. Whiles, near Kaveripakkam Bus stand check post, in order to avoid head-on collision, an unidentified vehicle suddenly applied brake, due to which, the rider of the Hero Honda vehicle also applied sudden brake. On account of sudden impact, the deceased and the rider of the vehicle fell down on the road, at that time, the appellant bus which was proceeding from Chennai to Vellore bearing Regn. No.AP 29 Z 1864, which was driven by its driver in a rash and negligent manner ran over the said Venkatesan. Due to which, Venkatesan



sustained grievous injuries on his right and left leg thigh and other parts.

Immediately he was taken to G.H. Vellore for treatment, where, he succumbed to injuries on 29.04.20213.

(ii) At the time of accident, the deceased was aged 49 years and he was a mason by avocation. He earned not less than Rs.15,000/- per month. At the time of accident, he was hale and healthy. The respondents 1 to 8 are the legal heirs of the deceased claimant. The respondent No.8 is the driver of the Transport Corporation, Andhra Pradesh.

(iii) Claiming compensation for the death of the deceased Venkatesan, the claimants have filed a claim petition in MCOP.No.219 of 2015 before the Subordinate Judge, Vaniyambadi, seeking compensation of Rs.20 lakhs. According to the claimants, since the accident had occurred due to the rash and negligent driving of the driver of the Transport Corporation Bus, the appellant and the 8th respondent who are respectively the owner and driver of the Transport Corporation are jointly and severally liable to pay the compensation to the claimants.

3. Before the claims tribunal, on the side of the claimants, witnesses PW1 and PW2 were examined and exhibits Ex.P.1 to Ex.P.19 were marked. On the side of the respondents, RW1 was examined and no exhibits were



marked. The tribunal, on appreciation of material and documentary evidence, came to a conclusion that the accident was occurred only due to the rash and negligent driving of the driver of APSRTC. It directed the appellant/APSRTC and the 8th respondent/driver of the bus to pay the compensation of Rs.16,73,000/- along with interest at the rate of 6% per annum from the date of petition till the date of realisation. The claimants 2 to 8 are awarded compensation of Rs.2,39,000/- each and the share of the minor/8th petitioner shall be deposited in nationalised bank till he attains majority. The compensation awarded by the tribunal under various conventional heads are as follows:

<i>S.NO.</i>	<i>Conventional Heads</i>	<i>Amount</i>
1.	Loss of Dependency	Rs.16,08,828.00
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of Love and affection to the petitioners	Rs. 50,000/-
	Total	Rs. 16,73,828.00

4. Aggrieved against the quantum of compensation fixed by the tribunal on the higher side, the Appellant Transport Corporation has filed the present Civil Miscellaneous Appeal.

5. The learned counsel for the appellant submitted that the tribunal without considering the evidence of RW1/driver of the bus has erroneously



WEB COPY

came to the conclusion that the driver of the Transport Corporation Bus was solely responsible for the accident and erred in apportioning the negligence against driver of Transport Corporation. Infact, the driver of the two wheeler, in which the deceased travelled as a pillion rider, only invited the accident by applying brake to avoid collusion with an unidentified vehicle. Hence the driver of the two wheeler alone is responsible for the accident. Further, the rider of the two wheeler did not possess any valid driving licence. Since the accident had happened due to the negligence and carelessness of the driver of the two wheeler, the insurer of the two wheeler alone is liable to pay compensation, but the insurer of the two wheeler, owner and driver of the two wheeler were not made as necessary parties to the proceedings.

6. He further submitted that in the absence of age proof and income proof of the deceased, the tribunal has wrongly determined the notional income of the deceased at Rs.11,000/- per month which is on the higher side. It also awarded Rs.50,000/- towards loss of love and affection which is also on the higher side. Therefore he prayed for reducing the award amount by allowing the appeal.

7. Today when the matter is called, there is no representation for the



respondents/claimants, though the names of the respondents 2 to 7/claimants were printed in the cause list. Hence, this court is disposing of the appeal with the available records.

8. Admittedly, the deceased travelled as a pillion rider in the two wheeler driven by its driver and it is an undisputed fact the rider of the two wheeler applied sudden brake in order to avoid head on collision, thereby, the pillion rider lost his balance and fell down on the left side of the road. The transport corporation driver he has to see what comes in front of him while driving the bus, but without noticing the same, the driver of the bus driven the vehicle in a rash and negligent manner, due to which, the bus ran over the deceased. Hence FIR was registered against the appellant which was proved by examining the evidence of PW2 by the respondents/claimant. Further in order to disprove the evidence of PW2 and Exp.1-FIR, no independent witnesses were examined. Except the driver of the transport corporation, no other independent witnesses were examined on the side of the Transport Corporation. The driver of the Transport Corporation who was examined as sRW1 is an interested witness, hence, his evidence is not acceptable. It is the duty cast upon the appellant to examine independent witness to prove their defence. Hence, in the absence of examining any



WEB COPY

CMA.No.2989 of 2019



independent witnesses on the side of the appellant, the trial court has rightly fixed the liability against the appellant transport Corporation, which need not be interfered with.

9. In respect of quantum of compensation awarded, it is seen that the accident took place in the year 2013. In the absence of income proof, the tribunal has rightly fixed the notional income of the deceased at Rs.11,000/- per month and after adding future prospectus, it adopted correct multiplier of 13 as per the decision of the Apex Court rendered in *Sarla Verma's case* reported in **(2009) 6SCC 121**, which, in the considered opinion of this court, need not be interfered with. The tribunal has awarded Rs.15,000/- towards funeral expenses and Rs.50,000/- towards loss of love and affection, which seems to be just and reasonable. Hence the compensation awarded under such heads also requires no interference.

M. DHANDAPANI, J.

mst

10. In view of the foregoing discussions, this Civil Miscellaneous



CMA.No.2989 of 2021

Appeal deserves to be dismissed, hence the same is dismissed. No costs.

Consequently, the connected miscellaneous petition is closed.

WEB COPY

09.12.2024

msr

Index : yes/no

Internet: yes/no

To

The Subordinate Judge, Vaniyambadi

C.M.A.No.2989 of 2021 &
CMP.No.17025 of 2021