



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.3105 of 2023
and CMP No.29368 of 2023

The Managing Director
KSRTC, Chikmagalur Division,
Karnataka State

... Appellant

.vs.

1.Mrs.Devi

2.Mr.Rudresh

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 01.11.2022 passed in MCOP No.715 of 2020 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem.

For Appellant : Mr.T.Thiyagarajan

For Respondents : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneetharan for R1

JUDGMENT

The Transport Corporation has filed the present appeal against the award passed by the Tribunal in MCOP No.715 of 2020, dated 01.11.2022.

2.The claimant is the unmarried sister of the deceased Tamilselvan. The



deceased was walking on the left hand side of the National Highway near APMC Beerur Town on 17.05.2018 and at about 8.25 p.m., the bus belonging to the Karnataka Transport Corporation was driven in a rash and negligent manner by the 2nd respondent and hit the deceased. As a result of which, the deceased sustained fatal injuries and he died on 03.06.2018. An FIR came to be registered against the driver of the offending vehicle in Crime No.68 of 2018. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the 2nd respondent driver. Having come to such a conclusion, the Tribunal fixed the total compensation payable at Rs.10,05,000/- under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income [(10,000 x 12 x 16=) 19,20,000 – 1/3 = 9,60,000]	9,60,000
2.	Loss of Love and Affection	20,000
3.	Funeral Expenses	25,000
	Total	10,05,000



4.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5.The Transport Corporation has filed the present appeal questioning their liability on the ground that the accident had taken place only due to the negligence of the deceased.

6.Heard Mr.T.Thiyagarajan, learned counsel appearing on behalf of the appellant and Mr.R.S.Arthanareeswaran, learned counsel appearing on behalf of the 1st respondent.

7.This Court has carefully considered the submissions made on either side and also the materials available on record.

8.The main ground that was raised by the learned counsel for the appellant Corporation is that the claimant in this case was not an eye witness to the accident and she could not have spoken about the manner in which the accident had taken place in this case. It was further contended that Transport Corporation had examined RW1 who was the conductor of the bus who had categorically stated that the deceased suddenly crossed the road and therefore, the bus hit the deceased and that the entire negligence was on the part of the

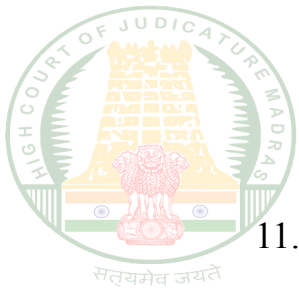


deceased. It was further contended that the Tribunal failed to take note of this

clinging evidence and went wrong in fixing the entire liability on the Transport Corporation.

9.To appreciate the above argument made by the learned counsel for the appellant, it is necessary to take note of the evidence of RW1 and also the FIR and final report marked as Exs.P1 and P9 respectively.

10.It is true that PW1 is not the eye witness in this case. Therefore, she could not have spoken about the manner in which the accident had taken place. What was available before the Court was the FIR that was registered against the driver of the offending vehicle and the final report that was submitted before the Court after the completion of the investigation and which was marked as Ex.P9. On going through the final report, it is seen that the Investigation Officer has examined two witnesses who are the eye witnesses in this case and has recorded their statements. Based on the same, the negligence has been fixed on the driver of the offending vehicle. As a result, the final report has been filed for offence under Sections 279 and 304A of IPC against the driver of the vehicle who is shown as the accused in this case.

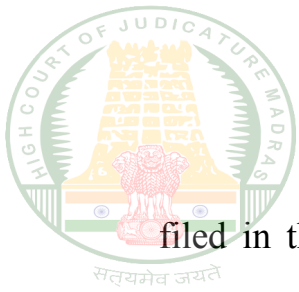


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11. The Transport Corporation has examined the Conductor of the vehicle as RW1. This Court carefully went through the evidence of RW1. It is quite surprising that the best evidence that could have been let in in this case is the evidence of the driver of the vehicle. The work of the Conductor is more confined inside the bus by issuing tickets and controlling the passengers inside the bus. The Conductor does not always sit in the front side of the bus next to the Driver. However, RW1 claims that he was sitting in the front of the bus and he saw the deceased crossing the road when he was hit by the offending vehicle.

12. The Tribunal has come to a conclusion that since the driver of the offending vehicle was not examined in this case, adverse interference must be drawn against the Transport Corporation. This finding rendered by the Tribunal is perfectly justifiable. The law of evidence always expects the best evidence to be tendered before the Court. That is the scope of Section 60 of the Indian Evidence Act. The best evidence in this case can be tendered only by the Driver of the offending vehicle. He will be the best person to talk about what happened in front of the bus at the time of the accident. There is no valid reason for the Transport Corporation not to have examined the Driver of the offending vehicle.

13. The Tribunal took into consideration the FIR as well as the final report



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filed in the criminal case against the Driver. The final report talks about two witnesses from whom statements were recorded under Section 161(3) of Cr.P.C., and these are the eye witnesses to the incident. The criminal case is also pending as against the driver of the offending vehicle. The cumulative reading of the evidence available and after applying the test of preponderance of probabilities, it can be safely concluded the appellant Corporation failed to let in the best evidence and before the Tribunal, the final report was available which revealed the statements recorded from two eye witnesses to the incident and therefore, the finding of the Tribunal to the effect that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle, does not suffer from any illegality or perversity. In view of the same, the finding of the Tribunal fixing the negligence on the driver of the offending vehicle is hereby sustained.

14. Insofar as the fixation of compensation is concerned, the Tribunal has granted only a sum of Rs.20,000/- under the head of loss of love and affection. The same can be enhanced to Rs.40,000/-. The Tribunal has granted a sum of Rs.25,000/- under the head of funeral expenses and the same can be fixed at Rs.15,000/-. This Court is inclined to fix a sum of Rs.15,000/- under the head of loss of estate. The compensation fixed under the head of loss of income is



reasonable and it does not require the interference of this Court.

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15. In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income $[(10,000 \times 12 \times 16 =) 19,20,000 - 1/3 = 9,60,000]$	9,60,000
2.	Loss of Love and Affection	40,000
3.	Funeral Expenses	15,000
4.	Loss of Estate	15,000
	Total	10,30,000

16. The compensation awarded by the tribunal at Rs.10,05,000/- is enhanced to Rs.10,30,000/-. The appellant is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5%



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N. ANAND VENKATESH., J

ssr

p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgement. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

17.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accidents Claims Tribunal (Special District Judge) at Salem.

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