



C.M.A.Nos.3120 and 3123 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 02.02.2024	Pronounced on 07.02.2024
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CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.As.No.3120 and 3123 of 2021 and
C.M.P.Nos.17631 and 17628 of 2021
and
Cros.Obj.Nos.15 and 24 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Limited,
Salem.

...Appellant in both CMA's/Respondent in both Cross Objections

Vs.

1.Jeganathan
2.Meena
3.Radhakrishnan
4.Senthilkumar

...Respondents in both CMA's/Cross Objectors
in both Cross Objections

Common prayer in C.M.A.Nos.3120 and 3123 of 2021: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 09.02.2021 made in M.C.O.P.Nos.158 of 2020 and 86 of 2020 on the file of the Motor Accident Claims Tribunal [Special District Court,Krishnagiri].



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Common prayer in Cros.Obj.Nos.15 and 24 of 2022:-Cross objection filed under Order 41 Rule 22 of C.P.C, to enhance the compensation amount and fix the entire liability on the respondent/appellant awarded in the Judgment and Decree dated 09.02.2021 made in M.C.O.P.Nos.86 and 158 of 2020 on the file of the Motor Accident Claims Tribunal / Special District Court, Krishnagiri.

For Appellant : Mr.D.Raghu
in both CMA's and for respondent in both Cross
Objections
For Respondents :Mr.S.P.Yuvaraj in both CMA's and for Cross
Objectors in both Cross Objections

COMMON JUDGMENT

Both these appeals arise out of common order passed in M.C.O.P.Nos.86 and 158 of 2020 and hence common argument heard and common judgment is being passed.

2. These appeals have been filed on the point of negligence and quantum in both the cases.

3. The claim petitioners are one and the same. They are legal heirs of the deceased Subathra and Nagichetty who died in the road transport accident



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happened on 18.07.2019 Both Nagichetty (husband of Subathra) and Subathra died and hence the legal heirs have filed the two M.C.O.Ps.

4. The claim petitioners claimed compensation for the death of the parents, both husband and wife who died in the road transport corporation on the ground that the accident has taken place due to the rash and negligence driving of the driver of the transport corporation bus bearing Registration No.TN 29 N 2944.

5. In the counter statement, the transport corporation has raised a plea that the driver of the two wheeler namely Nagichetty was not wearing helmet on his part and therefore he has contributed negligence without noticing the on coming transport corporation bus while he tried to overtake the lorry proceeding in his front of his vehicle and thereby he had contributed to the accident.

6. During the trial, apart from the claim petitioner, one Krishnan -P.W.3 an independent witness was examined on the side of the claim petitioner and driver of the bus namely Perumal was examined as R.W.1. No document was filed on behalf of the respondent.



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7. It is the specific evidence of the independent witness that due to the rash and negligent driving by the driver of the transport corporation bus, the accident has taken place and it is his evidence that on 18.07.2019, while he was proceeding in his TVS 50 after attending a funeral of a relative, in his front, the deceased Nagichetty was riding his two wheeler. While Subathra (wife of Nagichetty) was seated as a pillion rider and the said Nagichetty was overtaking the two wheeler, at that time, without noticing the same the transport corporation bus came in the opposite direction in a rash and negligent manner and dashed against the two wheeler, whereby the pillion rider of the two wheeler namely Subathra died on the spot and Nagichetty, the rider of the two wheeler was taken to hospital who gave a complaint basis on which Ex.P1-F.I.R was registered and subsequently he succumbed to the injuries.

8. It remains to be stated that so is the version as found in complaint given by the deceased Nagichetty while he was taking treatment.

9. The evidence of R.W.1 is that the deceased Nagichetty was not wearing helmet at that time of accident and no statement has been put to P.W.3



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regarding non wearing of helmet assumes significance.

10. Taking into consideration that P.W.3 is an independent witness, the trial Court has rightly come to the conclusion that his evidence of oath with regard to the manner of accident and the version of R.W.1 - driver of the bus, I find that it is a self-saving statement to save his life and thus I find that the contributory negligence of 10% fixed by the trial Court against the deceased Nagichetty, rider of the two wheeler for not wearing the helmet is well considered and well merited and the same is hereby confirmed. In respect of the other person, i.e the deceased Subathra, pillion rider, the respondent/transport corporation is liable to pay the entire compensation.

11. On the point of quantum of compensation, based upon the exhibits and the documentary evidence, the age of the Nagichetty was fixed at 70 years. In the absence of any documentary evidence to prove the income of the deceased, the trial court has rightly fixed the notional income as Rs.7,000/- per month. Since there are four dependants, 1/4th was deducted towards personal expenses of the deceased. Applying multiplier 7, a sum of Rs.4,41,000/- [7000 x 12 x 3/4 x 7] was awarded towards loss of dependency. The compensation



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awarded by the trial court under conventional heads are reasonable and hence the same are confirmed. Hence, I find that the quantum of compensation awarded by the trial Court appears to be just and reasonable and the hence same is hereby confirmed.

12. Accordingly, C.M.A No.3120 of 2021 and the Cross Objection No.15 of 2022 stands dismissed.

13. On the point of quantum of compensation with regard to death of Subathra, I find that the notional income of Rs.4000/- fixed by the trial Court needs to be enhanced. Accordingly, the notional income fixed by the trial court is enhanced to Rs.6000/- per month. In the absence of any documentary evidence to prove the age of the deceased, the trial court has rightly fixed the age of the deceased Subathra as 67 years based on Ex.P15 - post mortem certificate. Applying multiplier 7 and deducting 1/4th towards personal expenses, the compensation towards loss of dependency is enhanced to Rs.3,78,000/- [Rs.6000 x 12 x 3/4 x 7]. The compensation awarded by the trial court under other heads are kept intact. Accordingly, the Cross Objection No.24 of 2022 is partly allowed and C.M.A No.3123 of 2021 filed by the



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transport corporation is dismissed.

14. The break-up details of the compensation is as under :

<i>Sl. No</i>	<i>Heads under which the amount is awarded</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>
1.	Loss of dependency	Rs. 2,52,000/-	Rs.3,78,000/-
2.	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-
3.	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
4.	Loss of Consortium Rs.40,000x4=Rs.1,60,000/-	Rs. 1,60,000/-	Rs.1,60,000/-
5.	Total	Rs. 4,42,000/-	Rs. 5,68,000/-

In total, the claim petitioners are entitled to a sum of Rs.5,68,000/- (Rupees Five Lakhs and Sixty Eight Thousand only) as compensation.

15. In fine,

(i) the Cross Objection No.24 of 2022 is partly allowed, enhancing the award amount from **Rs.4,42,000/- to 5,68,000/-** to the extent indicated above, along with @ 7.5% interest per annum. No costs. Consequently, **C.M.A**



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No.3123 of 2021 filed by the transport corporation is dismissed.

(ii) the Respondent/Transport Corporation is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the Cross Objectors/Claimants are permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, on the basis of apportionment fixed by the Tribunal, by filing necessary application before the Tribunal.

(iv) the Cross Objectors/Claimants are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

(v) **C.M.A No.3120 of 2021** as well as the Cross Objection No.15 of 2022 stands dismissed confirming the compensation awarded by the Tribunal at Rs.9,42,956/- along with interest @ 7.5% per annum.

(vi) the appellant herein/Transport Corporation is directed to deposit the amount awarded by the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.



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(vii) on such deposit being made, the respondents herein/claimants are permitted to withdraw the entire award amount with accrued interest and costs, less the award amount, if any, already withdrawn, on the basis of apportionment fixed by the Tribunal, by filing necessary application before the Tribunal.

(viii) There shall be no order as to costs.

(ix) Consequently, connected C.M.Ps are closed.

.....02.2024

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Index : Yes/No

Internet : Yes/No

Neutral Citation: Yes/No

Speaking Order: Yes/no

To

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



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RMT.TEEKAA RAMAN.J,

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Judgment made in
C.M.As.No.3120 and 3123 of 2021 and
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Dated:07.02.2024