



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 12.04.2024**

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**CORAM**

**THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**

**CMA No.909 of 2024**  
**and CMP No.8387 of 2024**

The Managing Director  
Tamil Nadu State Transport Corporation Ltd.,  
Kumbakonam

..Appellant

.vs.

1.Santhinin  
2.R.Vignesh  
3.R.Kowsalya

..Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree made in MCOP No.168 of 2021 on the file of Motor Accident Claims Tribunal, The Chief Judicial Magistrate, Nagapattinam, dated 09.03.2023.

For Appellant : Ms.M.Rohini

For Respondents : Mr.K.C.Karl Marx for R1to R3

**JUDGMENT**

The Transport Corporation aggrieved by the Award passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Nagapattinam in MCOP No.168

of 2021, dated 09.03.2023, has filed the appeal before this Court questioning the



quantum of compensation fixed by the Tribunal.

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2.The deceased Ravi was riding his two wheeler on 06.01.2019 and when the two wheeler was approaching near Vattakudi Manmadhan Koil Street at about 11 a.m., the bus belonging to the respondent Corporation was driven in a rash and negligent manner and it dashed on the deceased. As a result of which, the head of the deceased Ravi was crushed, the entire left leg below the knee was crushed and there was also a fracture on the right knee and apart from that they were injuries all over the body. As a result, the deceased died on the spot. It is under these circumstances, the claimants who are the wife and children of the deceased filed the claim petition 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 categoric conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the respondent Corporation. The Tribunal having rendered such a finding, attributed 10% towards contributory negligence on the part of the deceased on the ground that the deceased was not wearing a helmet.



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4.The Tribunal thereafter proceeded to fix the compensation and the total compensation was fixed at Rs.17,01,000/- payable with interest at the rate of 7.5% per annum in the following manner:

| <b>Compensation awarded under the head</b> | <b>Amount (in Rs.)</b> |
|--------------------------------------------|------------------------|
| Loss of Income                             | 15,56,000              |
| Loss of Love and Affection<br>(40,000 x 3) | 1,20,000               |
| Funeral Expenses                           | 15,000                 |
| Transport Charges                          | 10,000                 |
| <b>Total Compensation</b>                  | <b>17,01,000</b>       |

5.The Transport Corporation aggrieved by the above Award has filed the present appeal.

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

7.The main ground that was urged by the learned counsel for the appellant was that the Tribunal ought to have deducted 10% contributory negligence from the total compensation and whereas, it was deducted from the head of 'Loss of Income'. The other ground that was urged was that 40% future prospects was not properly



calculated and instead of arriving at a total amount at Rs.8,400/-, the Tribunal had wrongly calculated as Rs.9,600/- per month.

8. In the considered view of this Court, the contributory negligence that was attributed against the deceased is liable to be interfered by this Court. This is in view of the fact that the Tribunal rendered a categorical finding that the accident had taken place only due to the rash and negligent driving of the bus which resulted in the head of the deceased being crushed, and also his left leg below knee being crushed and the right leg getting fractured. It is multiple injuries that has led to the demise of the deceased which is evident from the post-mortem report marked as Ex.P2. Hence, if the entire negligence is on the bus driver, there is no question of attributing 10% contributory negligence on the deceased just because he was not wearing the helmet. If contributory negligence is attributed against the deceased, it must be shown that the non-wearing of the helmet also contributed to the accident. That is not the case here and even if the deceased had worn the helmet, his head would have crushed, since it came under the wheel of the bus, apart from serious injuries the entire body. Considering the evidence available on record, the deceased cannot be attributed with any contributory negligence. This Court exercises its jurisdiction Order XVI Rule 33 of CPC and sets aside the 10% contributory negligence that was attributed against the deceased.

9. Insofar as the monthly income is concerned, the Tribunal had fixed the



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notional income at Rs.9000/- The future prospects was fixed at 40%, since the deceased was aged about 40 years at the time of the accident. If the future prospects is added to the total notional monthly income, it works out to Rs.8400/- (Rs.9000 + 3600 (40%) = 12,600 –  $\frac{1}{3}$  = Rs.8400/-). The Tribunal has calculated the income at Rs.9,600/- which is erroneous. Therefore, it is seen that the compensation to be awarded towards loss of income is Rs.8400/- x 12 x 15 = Rs.15,12,000/-

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

| <b>Compensation awarded under the head</b> | <b>Amount (in Rs.)</b> |
|--------------------------------------------|------------------------|
| Loss of Income                             | 15,12,000              |
| Loss of Love and Affection (40,000 x 3)    | 1,20,000               |
| Funeral Expenses                           | 15,000                 |
| Transport Charges                          | 10,000                 |
| <b>Total Compensation</b>                  | <b>16,57,000</b>       |

11. The compensation awarded by the Tribunal at Rs.17,01,000/- is reduced to Rs.16,57,000/-. The appellant Transport Corporation is directed to deposit the reduced compensation, less the amount already deposited, together with interest at



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7.5% 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 judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

**12.04.2024**

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

To

The Chief Judicial Magistrate  
Motor Accident Claims Tribunal, Nagapattinam.

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