



CMA.No.1763 of 2022 and Cross Objection No.5 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.1763 of 2022 and  
Cross Objection No.5 of 2024  
CMP.No.12784 of 2022

Tamil Nadu State Transport Corporation  
(Villupuram) Limited , by its Managing Director  
Villupuram District

Appellant-CMA  
Respondent-Cross Objection.

Vs

1. Ambika  
2. Rayar  
3. Arulkumar  
4. Krishnaveni

Respondents-CMA  
Appellants-Cross Objection

Prayer:- These Civil Miscellaneous Appeal and Cross Objection have been filed, against the judgement and decree, dated, 25.10.2019, made in MCOP.No.224 of 2018, by the Special District Judge (MACT) Villupuram.

For Appellant : Mr.K.J.Sivakumar, Standing Counsel

For Respondents : Mr.Ma.P.Thangavel

JUDGEMENT

1. These Civil Miscellaneous Appeal and Cross Objection have been filed, against the judgement and decree, dated, 25.10.2019, made in MCOP.No.224 of 2018, by the Special District Judge (MACT) Villupuram.



2. For the sake of convenience, the parties herein after referred to as they were arrayed in the claim petition.

3. The claimants, who are the mother, father, brother and grand mother of the deceased Vignesh, have filed the claim petition before the Tribunal, seeking a compensation of Rs.25,00,000/-, on various heads, for the death of the deceased, who died in a motor road accident, which had happened on 13.06.2018. The claim petition was resisted by the Transport Corporation, by filing a counter. On the side of the claimants, PW.1 and PW.2 were examined and Ex.P1 to Ex.P7 were marked. On the side of the Transport Corporation, RW.1 was examined.

4. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending bus belonged to the Transport Corporation, the Tribunal has awarded a total compensation of Rs.10,17,200/-, on various heads, with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be payable by the Transport Corporation, as detailed below:-

| S.No               | Category                                                           | Award Amount (Rs.) |
|--------------------|--------------------------------------------------------------------|--------------------|
| 1                  | Loss of Dependency $(6000+40\%) \times 50/100 \times 18 \times 12$ | 907200             |
| 2                  | Loss of Consortium                                                 | 80000              |
| 3                  | Funeral Expenses                                                   | 15000              |
| 4                  | Loss of Estate                                                     | 15000              |
| Total Compensation |                                                                    | 1017200            |

Aggrieved by the quantum of compensation as well as the negligence and liability aspects, the Transport Corporation has filed the above appeal. The above cross objection has been filed by the claimants, challenging the



quantum of compensation.

5. This Court heard the learned counsel for the Transport Corporation and the claimants, considered their submissions and also perused the entire materials placed on record.
6. On considering the submissions of the learned counsel on either side, this Court finds that the Transport Corporation had disputed the entire impugned judgement and decree in all respects, namely, quantum of compensation and negligence and liability aspects and that the claimants have disputed the entire quantum of compensation.
7. The learned counsel for the Transport Corporation has also raised an issue, which was not raised by the Tribunal, but for the first time before this Court, suspecting the legal heirship of the claimants and submitted that non production of legal heirship certificate by the claimants raises a suspicion over their legal heirship. With regard to such a suspicious aspect, this Court finds that the Transport Corporation did not let in any valid evidence, both oral and documentary evidence, to show that the claimants are not the legal heirs of the deceased rider. On the other hand, on the side of the claimants, the transfer certificate of the deceased was produced and marked as Ex.P7 to show that the 2<sup>nd</sup> claimant is his father. Hence, this Court is unable to accept the said contention of the learned counsel for the Transport Corporation on the said issue of suspicion over the heirship of the claimants and accordingly, it is rejected.
8. Now, coming to the question of negligence and liability aspects, according to



the claimants, on 13.06.2018 at about 10.45 p.m. when the deceased along with his friend, was riding the Motor Cycle, bearing Reg.No.PY-01-CCF-6285, on the left side of the road from Gingee to Melmalaiyanur, near Vivekananda College, Lakshmipuram, the bus, bearing Reg.No.TN 21 N 1307 belonged to the Transport Corporation coming from Gingee to Villupuram direction, driven by its driver in a rash and manner, dashed against the said two wheeler. Due to the accident, both of them died.

9. In so far as the negligence aspect is concerned, the learned counsel for the Transport Corporation would submit that at the time of the accident, the deceased rider did not wear helmet and hence, the rider of the two wheeler had also contributed to the accident by virtue of not wearing helmet and that therefore, the Tribunal ought to have fastened some percentage of contributory negligence on the part of the deceased rider of the two wheeler, but, it failed to do so and hence, the Transport Corporation is not liable to pay the entire compensation.

10. On the other hand, the learned counsel for the claimants would submit that based on evidence, the Tribunal has categorically come to the conclusion that only due to the rash and negligent driving of the driver of the bus belonged to the Transport Corporation, the accident had happened and hence, the question of fastening negligence on the part of the rider of the two wheeler does not arise, since not wearing the helmet is only a statutory violation, for which, the Statutory Authority has to impose fine only and as such, negligence cannot be fastened against the deceased rider and hence,



the findings of the Tribunal with regard to negligence aspect is sustainable.

11.On a perusal of the entire evidence, both oral and documentary evidence, including the impugned judgement and decree, more particularly, the oral evidence of PW.1, PW.2 and RW.1 and Ex.P1 to Ex.P7, it appears that the Tribunal has rightly come to the conclusion that the accident had happened only due to the rash and negligence driving of the driver of the bus and accordingly, fastened liability on the part of the Transport Corporation. This Court finds no merits in the contentions of the learned counsel for the Transport Corporation on the negligence and liability aspects. Hence, the findings with regard to negligence and liability aspects are sustainable and accordingly, they are confirmed.

12.In so far as the quantum of compensation is concerned, according to the claimants, at the time of the accident, the deceased rider was aged about 20 years old and he was a bachelor and he passed Wireman Grade in ITI and he was earning a sum of Rs.15,000/- p.m. as an Electrician. He was the sole bread winner of the family.

13.In the absence of evidence to prove the monthly income of the deceased and his employment, the Tribunal fixed the notional monthly income at Rs.6,500/-, which in the opinion of this Court, appears to be on the lower side and hence, it is to be redetermined and enhanced, since in a decision of the Division Bench of this Court reported in **2019 (1) TNMAC 54 (DB) ( Andai Vs. Avinav Kannan)**, a sum of Rs.13,750/- was arrived at as the notional monthly income of a Meat Chopper, considering the cost of inflation index



issued by the Central Board of Direct Tax.

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14.Considering the submissions of the learned counsel on either side and the materials available on record and the facts and circumstances of the case and considering the age of the deceased at the time of the accident, i.e. 20 years, the cost of living due to inflation rate at the relevant point of time and in the light of catena of decisions of the Honourable Supreme Court, in the present case, it would be just and appropriate to fix the monthly notional income of the deceased at Rs.12,000/-. After adding 40% future prospects and deducting 50% towards personal expenses, as the deceased was a bachelor, the loss of monthly dependency would come to Rs.8,400/-. Since the deceased was aged 20 years old at the time of the accident, the multiplier of 18, as rightly adopted by the Tribunal, would be proper. Thus, the total compensation under the head of loss of dependency is redetermined at Rs.18,14,400/-(12000+4800)x (1/2x12x18).

15.For the claimants 3 and 4, who are the brother and grand mother of the deceased, the Tribunal ought to have awarded compensation towards loss of love and affection to them, but it failed to do so. Hence, since the claimants 3 and 4 being the brother and grand mother of the deceased, a further sum of Rs.20,000/- each (totally Rs.80,000/-) is hereby awarded towards loss of love and affection to them.

16.The compensation amounts awarded under the other heads of loss of consortium, funeral expenses and loss of estate are reasonable and hence, they are confirmed. In addition to the above, a further sum of Rs.10,000/- is



hereby awarded towards transportation expenses. In all, the total compensation is redetermined at Rs.19,74,400/-, which shall carry interest 7.5% p.a. from the date of the claim petition till the date of realisation.

17. In fine, the Civil Miscellaneous Appeal filed by the Transport Corporation is dismissed and the cross objection filed by the claimants is partly allowed. In all, the claimants are entitled to a total compensation of Rs.19,74,400/-, (Rupees nineteen lakhs seventy four thousand four hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as redetermined below:-

| S.No                      | Category                                                            | Award Amount (Rs.) |
|---------------------------|---------------------------------------------------------------------|--------------------|
| 1                         | Loss of Dependency $(12000+40\%) \times 50/100 \times 18 \times 12$ | 1814400            |
| 2                         | Loss of Consortium (Claimants 1 and 2)                              | 80000              |
| 3                         | Funeral Expenses                                                    | 15000              |
| 4                         | Loss of Estate                                                      | 15000              |
| 5                         | Loss of Love and Affection (4 <sup>th</sup> claimant)               | 20000              |
| 6                         | Loss of Love and Affection (3 <sup>rd</sup> Claimant)               | 20000              |
| 7                         | Transportation Expenses                                             | 10000              |
| <b>Total Compensation</b> |                                                                     | <b>1974400</b>     |

Out of the total compensation, the claimants 1 to 4, being the mother, father, brother and grandmother of the deceased respectively, are entitled to a sum of Rs.10,00,000/-, Rs.8,00,000/-, Rs.50,000/- and Rs.1,24,400/- respectively, with proportionate interest. The claimants shall pay proper court fee for the enhanced compensation amount. The Transport Corporation is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to



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KRISHNAN RAMASAMY, J.

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transfer, by way of RTGS, the respective compensation amounts as apportioned above, with proportionate interest directly to the respective bank accounts of the claimants, within a period of three weeks thereafter. No costs.

27.02.2024

Index:Yes/No  
Web:Yes/No  
Speaking/Non Speaking  
Neutral Citation  
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To

1. The Special District Judge (MACT) Villupuram.
2. The Record Keeper, VR Section, High Court, Madras

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