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Civil Miscellaneous Appeal No.2705 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.2705 of 2022

The Managing Director,
Tamil Nadu State Express Transport Corporation Limited,
No.2, Pallavan Salai,
Chennai

... Appellant

Vs.

1.A.Gurusamy
2. G.Pooppandiyammal
3. Sunatha (Minor)
4. P.Pichaimuthu

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgement and decree dated 05.03.2021 made in M.C.O.P.No.446 of 2010 on the file of IV Additional District and Session Judge, Bhavani -Motor Accident Claim Tribunal, Bhavani.

For Appellant : Ms.S.Preetha

For Mr.K.Kathiresan

For Respondents : Mr.N.S.Balaji for R1 to R3



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JUDGMENT

The Transport Corporation has filed the present appeal aggrieved by the award passed by IV Additional District and Session Judge, Bhavani -Motor Accident Claim Tribunal, Bhavani in M.C.O.P.No.446 of 2010 dated 05.03.2021, questioning the percentage of contributory negligence as against the deceased and also the quantum of compensation that was fixed by the Tribunal.

2. The claimants, who are the father, wife and minor daughters of the deceased Sudharsanan, filed a claim petition before the Tribunal on the ground that the deceased Sudharsanan, on 22.06.2009, was riding the two wheeler, with a pillion rider at Pollachi road and at about 11.15 p.m. when the vehicle was moving near Kurichikulam, the bus belonging to the respondent corporation was driven in a rash and negligent manner and it dashed on the two wheeler and as a result, the deceased was thrown out of the two wheeler and he died on the spot. It is under these circumstances, the claimants sought for payment of compensation from the respondent corporation.

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 due to the rash and negligent driving on the part of the driver of the respondent corporation. However, the Tribunal also found that the deceased was only having a learners license and the pillion rider, who was traveling along with the deceased, did not have a driving license, which is mandatory under Rule 3 of the Motor Vehicle Rules, 1989 and that apart, the deceased was also not wearing a Helmet at the time of the accident. In view of the same, the Tribunal proceeded to fix contributory negligence at 35% on the deceased. The balance 65% negligence was put against the transport corporation.

4. The Tribunal had proceeded to fix the total compensation of Rs.16,41,000/- in the following manner :-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of dependency	12,96,000/-
2.	Loss of love and affection	2,25,000/-
3.	Towards filial consortium to 1 st and 2 nd petitioner	80,000/-
4.	Loss of estate	15,000/-
5.	Transportation	15,000/-
6.	Damage to clothes	10,000/-
	Total	16,41,000/-



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Out of the above compensation, 65% negligence which was attributed against the respondent corporation was fixed at 10,66,650/- and this amount was directed to be paid with 7.5% per annum. Aggrieved by the same, the transport corporation has filed the present appeal before this Court.

6. Heard Ms.Preetha, learned counsel for appellant and Mr.N.S.Balaji, learned counsel for respondents 1 to 3.

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

8. This Court has also carefully went through the award passed by the Tribunal.

9. The first issue that requires consideration of this Court is with regard to the contributory negligence that was attributed against the deceased by the Tribunal. The Tribunal on considering the evidence of PW2 and on appreciation of Ex.P1 (FIR), Ex.X7 (Final report), Ex.X3 (Rough Sketch) and also the evidence of R1, came to a categoric



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conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver belonging to the respondent corporation. After having rendered a finding to that effect, there is no question of attributing contributory negligence against the deceased on the ground that he only possessed a learners license and the pillion rider did not possess a valid driving license. Even assuming that the deceased did not possess any license in this case, that by itself is not a ground to attribute contributory negligence against the deceased. Useful reference can be made to the judgement of this Court in ***[Dinesh Kumar J Vs. National Insurance Company Limited and others]*** reported in ***2018 1 SCC 750***.

10. The next issue is with regard to the contributory negligence that was attributed against the deceased on the ground that he was not wearing a helmet. For this purpose, it will be useful to refer to the postmortem certificate, which was marked as Ex.X6. The following antemortem injuries were noted in the postmortem report and the same is extracted hereunder :-



Abrations noted over the following regions :-

2 x 1 cm over left frontal region, 6 x 4 over left cheek, 4 x 3 cm over top of left shoulder, 6 x 4 cm over left fore arm

Graze abrasion 32 x 10 – 4 cm noted over front of both side chest and 20 xxx 10 cm noted over right upper thigh.

Crush lacerated injury 45 x 23 cm x pelvic cavity deep seen involving perineal region and left thigh with exposing fractured left pelvic bone and left femur

Crush lacerated injury 12 x 7 cm x bone deep noted over dorsum of left hand and fingers with exposing fractured metacarpal bones with deformity, on dissection fracture and dislocation of left wrist joint noted with surrounding contusion.

Crush lacerated injury 40 x 12 cm bone deep seen involving right fore arm and wrist, hand in its dorsal aspect with exposing fracture both bone of left fore arm and wrist noted.

11. The final opinion that was rendered is that the deceased would appear to have died of multiple injury and its complications. It is therefore quite evident from the postmortem certificate as well as the final opinion that the head injury was not the sole cause for the demise. When that is the case, the non wearing of the helmet cannot be put



against the deceased and the contributory negligence cannot be attributed against the deceased. In view of the same, this Court exercising its power and jurisdiction under Order XXXI Rule 33 of CPC is inclined to fix the entire negligence on the driver of the bus and attributing contributory negligence on the deceased is hereby set-aside.

12. The next issue pertains to the quantum of compensation that was fixed by the Tribunal. In the instant case, the deceased was studying in the 3rd year Engineering Course. The Tribunal had fixed the notional income of the deceased at Rs.12,000/- per month. The said notional income sounds reasonable and it does not require any interference of this Court. However, the Tribunal failed to add future prospects to the notional income. The deceased was aged about 21 years at the time of accident and therefore, 40% future prospects must be added to the notional income. If it is added, it comes to Rs.16,800/- (12000 + 4800). If this income is taken into account and the loss of dependency is calculated, it comes to $\text{Rs.}16,800 \times 12 \times 18\frac{1}{2} = 18,14,400/-$.

13. The compensation fixed under the head of loss of love and



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affection is on the higher side and apart from granting compensation under this head, the 2nd claimant has been granted compensation even under the head of loss of consortium. Hence, the 2nd and 3rd head under which compensation has been granted is consolidated and the compensation is fixed under a single head loss of love and affection at Rs.1,20,000/- [Rs.40,000 x 3]. The compensation under the other heads are reasonable, which does not require the interference of this Court.

14. In view of the above, the compensation fixed by the Tribunal is modified as follows :-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of dependency	18,14,400/-
2.	Loss of love and affection	1,20,000/-
3.	Loss of estate	15,000/-
4.	Transportation	15,000/-
5.	Damage to clothes	10,000/-
	Total	19,74,400/-

15. The compensation awarded by the Tribunal at Rs.10,66,650/- is enhanced to Rs.19,74,400/-. The appellant Transport corporation is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim



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petition till the date of realization, within a period of four weeks from the date of receipt of this judgment. The Court fee payable towards the enhanced compensation amount shall be paid by the claimants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

16. This Civil Miscellaneous Appeal is disposed of in the above terms. No costs.

22.04.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To

IV Additional District and Session Judge, Bhavani -Motor Accident
Claim Tribunal, Bhavani.

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