



CMA.No.2709 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2709 of 2024

- 1.Chinnaponnu
2. Govindharaji
3. Sangeetha
4. Srinivasan
5. Nagaraji

.... Appellants

vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Arcot, Vellore District.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 26.04.2019 in M.C.O.P.17/2017 on the file of the Motor Accident Claims Tribunal, II Additional District Court (FAC), Ranipet, Vellore District.

For Appellants : Mr. M. Vinoth
for M/s. C. Prabakaran

For Respondent : Mr.C.R. Sureshkumar



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JUDGMENT

The appellants are the claimants in M.C.O.P.17/2017 on the file of the Motor Accident Claims Tribunal, II Additional District Court (FAC), Ranipet, Vellore District. They filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.30,00,000/- for the death of one Thangaraj (son of claimants 1 and 2 and brother of claimants 3 to 5) in a road accident that occurred on 15.08.2016.

2. The brief case of the appellants / claimants is as follows :

2.1. On 15.08.2016 Thangaraj (since deceased) was travelling in his Hero Honda Splendor Motorcycle bearing Registration number TN 23 AK 8682 on Katpadi-Vallimalai Road. When he was nearing Kandipedu bus stop, a speeding bus bearing Registration Number TN 23 N 1685, belonging to the respondent, came in the opposite direction and hit his two wheeler as a result of which he fell down and sustained injuries all over his body. He was immediately rushed to C.M.C. Hospital, Vellore.



However, he succumbed to injuries on 25.08.2016.

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3. According to the claimants, the rash and negligent driving of the driver of the bus bearing Registration Number TN 23 N 1685 belonging to the Tamil Nadu State Transport Corporation Limited was the cause of the accident and therefore they are liable to pay compensation to them.

4. The respondent Tamil Nadu State Transport Corporation Limited resisted the claim petition by filing its counter.

5. The Tribunal after analysing the evidence on record fastened negligence on the part of the driver of the bus bearing Registration Number TN 23 N 1685 and the deceased in the ratio 75:25 and directed the respondent Tamil Nadu State Transport Corporation Limited to pay compensation of Rs.12,00,700/- (75% on the total compensation of Rs.13,15,200 + Rs.2,14,271 towards medical expenses) to the claimants 1 and 2 together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.



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6. Aggrieved over the quantum of compensation awarded by the Tribunal and also challenging the contributory negligence fastened on the part of the deceased, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr. M. Vinoth, learned counsel appearing for the appellants and Mr. C.R. Sureshkumar, learned counsel appearing for the respondent Tamil Nadu State Transport Corporation.

8. Mr. M. Vinoth, learned counsel appearing for the appellants contended that when the FIR and the final report are against the driver of the bus belonging to the respondent, the Tribunal was wrong in fastening contributory negligence to the extent of 25% on the part of the rider of the two wheeler (deceased) on the ground that (a) there were two pillion riders; (b) the rider was not wearing a helmet; (c) the driver did not have a valid driving licence. He also contended that the Tribunal has not awarded just compensation to the claimants. He therefore prayed for enhancement of compensation and also to set aside the contributory negligence of 25% fastened on the part of the deceased.



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9. Per contra, Mr. C.R. Sureshkumar, learned counsel appearing for the respondent/Tamil Nadu State Transport Corporation Limited contended that the Tribunal, after analysing the evidence on record had concluded that the deceased also contributed to the accident and therefore the same need not be disturbed in the present appeal.

Negligence

10. A copy of the FIR (Ex.P1) shows that the driver of the Tamil Nadu State Transport Corporation Limited was the wrong doer. However, the Tribunal fixed 25% contributory negligence on the part of the deceased merely because he was not in possession of a valid driving licence and was not also wearing a helmet at the time of accident. The contention of the learned counsel for the respondent is that two persons were travelling in the motorcycle as pillion riders, which is beyond the seating capacity. The evidence on record shows that one of the pillion riders is a child aged below five years. In any event, when there is nothing on record to show that the rider of the two wheeler also contributed to the accident, the Tribunal was wrong in fastening 25% of contributory



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negligence on the part of the deceased and the same is hereby set aside.

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Quantum

10.1. According to the claimants, Thangaraj (deceased) was working as an electrician earning a sum of Rs.15,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.9,000/-. Considering the year of accident and the age of the deceased, this Court fixes the notional monthly income of the deceased as Rs.12,000/-. As per the decision of the Supreme Court of India in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**, 40% is added towards future prospects of the deceased. Since the deceased died as a bachelor, 1/2 is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 17 as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **(2009) 6 SCC 121**.

Calculation



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Notional Income = Rs.12,000/-

40% Future Prospects = Rs.16,800/-

After 1/2 deduction = Rs.8,400/-

Loss of dependency

= Rs.8,400/- x 12 x 17

= Rs.17,13,600/-

In addition to that the claimants 1 and 2 are entitled to get Rs.2,14,271/- towards medical expenses and Rs.2,00,000/- (40,000/- x 5 claimants), Rs.15,000/- and Rs.15,000/- for 'loss of Consortium', 'loss of Estate' and 'Funeral Expenses' respectively as per the decision in *National Insurance Co. vs Pranay sethi and others* (cited supra).

10.2. The enhanced amount under the different heads are detailed hereunder:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	17,13,600/-
2.	Loss of consortium (Rs.40,000/- x 5)	2,00,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-



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<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
5.	Medical Expenses	2,14,271/-
	Total	21,57,871/-

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The 25% contributory negligence fastened on the deceased by the Tribunal is set aside.
- iii. The compensation awarded by the Tribunal is enhanced to Rs.21,57,871/-.
- iv. The appellants / claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to



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draft the decree only after receipt of the Court fee.

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v. The respondent, the Tamil Nadu State Transport Corporation Limited, Arcot, is directed to deposit the enhanced compensation amount of Rs. 21,57,871/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.17/2017 on the file of the Motor Accident Claims Tribunal, II Additional District Court (FAC), Ranipet, Vellore District, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.

vi. The enhanced compensation amount of Rs.21,57,871/- is apportioned to the claimants as follows:

Chinnaponnu (first claimant)	Rs.10,18,936/-
Govindaraji (second claimant)	Rs.10,18,935/-
Sangeetha (third claimant)	Rs.40,000/-
Srinivasan (fourth claimant)	Rs.40,000/-
Nagaraji (fifth claimant)	Rs.40,000/-

vii. On such deposit being made, the claimants are at liberty to



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withdraw the same as per the apportionment made by this Court
after filing proper petition for withdrawal.

viii. The claimants are not entitled to claim interest for the period of
delay of 1427 days in filing this appeal as per the orders of this
Court dated 22.12.2023 in C.M.P. No.17265 of 2023.

17.10.2024

Index : Yes/No
Speaking/Non-speaking order
bga

To

1. Motor Accident Claims Tribunal,
II Additional District Court (FAC), Ranipet, Vellore District.
2. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Arcot, Vellore District.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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