



Civil Miscellaneous Appeal No.2370 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.2370 of 2022

and

C.M.P.No.18469 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Limited,
Salem – 7

... Appellant

Vs.

1. Indirani

2. Vasanthakumari

3. Raj Kumar

4. Premalatha

... Respondents 1 to 4/Petitioners

5. New India Assurance Company limited,
Branch Office,
Represented by its Manager,
Opp. New Bus Stand,
Perambalur – 621 212

..5th respondent / 2nd respondent



Civil Miscellaneous Appeal No.2370 of 2022

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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgement and decree dated 23.11.2021 passed in M.C.O.P.No.61 of 2018 on the file of the Motor Accident Claims Tribunal (Sessions Judge), Perambalur.

For Appellant : Mr.K.Sudalaiyandi

For Respondents : Mr.T.Gopinath
learned counsel for R1 to R4
Mr.S.P.Chockalingam for R5

JUDGMENT

The Transport corporation aggrieved by the award passed in M.O.P.No.61 of 2018 on the file of the Motor Accident Claims Tribunal (Sessions Judge), Perambalur, dated 23.11.2021, have filed the present appeal before this Court.

2. The claimants are the wife, daughters and son of the deceased Thangaraj alias Thangarajan. The deceased is the owner and the driver of the Auto Rickshaw. He was riding the vehicle on 15.09.2017 and at about 7.00 p.m., when the vehicle came near Madhu hospital, the



driver belonging to the appellant corporation drove the bus in a rash and negligent manner and as a result, while over taking the auto that was driven by the deceased, the bus hit the auto and the auto capsized and the deceased along with the other passengers in the auto sustained grievous injuries. The deceased unfortunately succumbed to the injuries on the same day. An FIR came to be registered in Crime No.1094 of 2017 by the Perambalur police station. It is under these circumstances, the claimants have filed the claim petition before the Tribunal seeking for payment of compensation against the transport 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 bus driven by the Driver belonging to the transport corporation was driven in a rash and negligent manner which resulted in the accident. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.4,52,500/- in the following manner :-



Civil Miscellaneous Appeal No.2370 of 2022

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Dependency [(8000 *12*5 = 4,80,000 (-) 1,20,000 (1/4)]	Rs.3,60,000/-
2.	Loss of Estate	Rs. 15,000/-
3.	Funeral Expenses	Rs.15,000/-
4.	Loss of Consortium	Rs.40,000/-
5.	Medical bills	Rs.22,500/-
	Total	Rs.4,52,500/-

The Tribunal directed the above compensation to be paid along with interest at 7.5% p.a.

4. The Transport Corporation aggrieved by the award passed by the Motor Accident Claims Tribunal (Sessions Judge), Perambalur, dated 23.11.2021 in M.C.O.P.No.61 of 2018, has filed the present appeal.

5. Heard Mr.K.Sudalaiyandi, learned counsel for appellant Transport Corporation and Mr.T.Gopinath, learned counsel for Respondents 1 to 4 and Mr.S.P.Chockalingam, learned counsel for 5th respondent.



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

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

8. The learned counsel for the appellant submitted that the Tribunal has fixed the negligence on the Driver of the bus by relying upon the FIR that was registered and marked as Ex.P1. The learned counsel submitted that the Auto that was driven by the deceased was driven in the middle of the Road and the deceased had also contributed to the negligence and therefore, the Tribunal ought to have fixed 50% contributory negligence against the deceased.

9. The learned counsel further submitted that the Tribunal has fixed the notional income at Rs.8,000/-, which is on the higher side and it was submitted that the same also requires the interference of this Court. The compensation that was fixed under the other heads was also questioned and it was contended that they are also on the higher side.



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10. Per contra, the learned counsel for respondents 1 to 4 claimants submitted that the tribunal apart from considering the evidence of Ex.P1 and Ex.P2, also considered the evidence of PW2, who was the eye witness and has rightly come to the conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver belonging to the transport corporation. The learned counsel further submitted that the Tribunal has properly appreciated the materials available on record and the evidence and has fixed the compensation, which is just and proper and the same does not require the interference of this Court. Therefore, the learned counsel sought for the dismissal of this appeal.

11. Insofar as the issue of negligence is concerned, the Tribunal has taken into consideration Ex.P1, which is the FIR registered in Crime No.1094 of 2017 and Ex.P2, which is the final report filed by the Investigation officer by fixing the negligence on the part of the bus driver. Apart from that, the Tribunal also took into consideration the eye witness account of PW2 who speaks about the accident. The Tribunal on



a cumulative assessment of the evidence came to the conclusion that the negligence is attributable wholly on the driver of the bus. Considering the fact that the standard of proof required in a motor accident case is that of preponderance of probabilities, the finding rendered by the Tribunal cannot be faulted and it does not require the interference of this Court. Therefore, this Court upholds the findings of the Tribunal insofar as the aspect of negligence is concerned.

12. Insofar as the issue of compensation, the main ground of attack seems to be the monthly notional income that was fixed by the Tribunal. The Tribunal had fixed the notional income of the deceased, who was aged about 71 years as Rs.8,000/- per month. It is seen that the claimants in this case are his wife, aged about 63 years and two daughters who are married and living in the matrimonial home and one son, who was aged about 40 years. Strictly speaking, the claimants 2 to 4 may not be considered to be dependents of the deceased except the 1st claimant, who is the wife. Considering these factors, this Court is inclined to fix the notional monthly income at Rs.7,000/- per month. Insofar as the compensation that has been fixed under the other heads is



concerned, the same looks reasonable and it does not require the interference of this Court.

13. If the notional monthly income is taken to be Rs.7,000/-, the total loss of dependency will work out to $\text{Rs.7,000} \times 12 \times 5 \times \frac{1}{4} = 3,15,000/-$. In the light of the above discussion, 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 [(7000 *12*5 = 4,20,000 (-) 1,05,000 (1/4)]	Rs.3,15,000/-
2.	Loss of Estate	Rs. 15,000/-
3.	Funeral Expenses	Rs.15,000/-
4.	Loss of Consortium	Rs.40,000/-
5.	Medical bills	Rs.22,500/-
	Total	Rs. 4,07,500/-

14. The compensation awarded by the Tribunal at Rs.4,52,500/- is reduced to Rs.4,07,500/-. The appellant is directed to deposit the reduced compensation, less the amount already deposited, together with



Civil Miscellaneous Appeal No.2370 of 2022

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interest at 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.

15. This Civil Miscellaneous petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

16.04.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To

Motor Accident Claims Tribunal (Sessions Judge), Perambalur.



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Civil Miscellaneous Appeal No.2370 of 2022

N.ANAND VENKATESH.,J
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Civil Miscellaneous Appeal No.2370 of 2022



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Civil Miscellaneous Appeal No.2370 of 2022

16.04.2024