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CMA.Nos.2861 of 2024 and 2293 of 2023
and C.M.P. No.23489 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CMA.Nos.2861 of 2024 and 2293 of 2023

and

C.M.P. No.23489 of 2024

C.M.A. No.2861 of 2024

The Managing Director,
Tamil nadu State Transport Corporation Limited,
No.37, Metupalayam Road,
Coimbatore - 641 043.

... Appellant

VS.

1. S.Dhanalakshmi

2. S.Gowsalya

... Respondents

C.M.A. No.2293 of 2023

1. S.Dhanalakshmi

2. S.Gowsalya

... Appellants

VS.

The Managing Director,
Tamil nadu State Transport Corporation Limited,
No.37, Metupalayam Road,
Coimbatore - 641 043.

... Respondents



CMA.Nos.2861 of 2024 and 2293 of 2023
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COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 31.01.2023 in M.C.O.P.3465/2018 on the file of the Motor Accident Claims Tribunal, I Additional District & Sessions Court, Cuddalore.

Appearance in C.M.A. No.2861 of 2024

For Appellant : Mr.M.Murali Vinodh
For Respondents : Mrs.Ramya V.Rao

Appearance in C.M.A. No.2293 of 2023

For Appellants : Mrs.Ramya V.Rao
For Respondent : Mr.M.Murali Vinodh

COMMON JUDGMENT

The appellant, the Tamilnadu State Transport Corporation Limited in C.M.A.No.2861/2024 is the respondent in M.C.O.P.3465/2018 on the file of the Motor Accident Claims Tribunal, Cuddalore and the appellants in C.M.A.No.2293/2023 are the claimants in the said petition.



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2. The claimants filed the petition under Section 166(1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.25,00,000/- for the death of their brother S.Santhoshkumar in a road accident that occurred on 24.09.2018.

3. The brief case of the claimants is as follows :

On 24.09.2018, S.Santhoshkumar (deceased) was riding a two wheeler bearing Registration Number TN-36-Q-4892 on Palladam - Tiruppur road and at about 6.15 p.m., when he was nearing Kunnaangalpalayam cross road, a speeding bus bearing Registration number TN-38-N-2921 belonging to the respondent Transport Corporation, hit the two wheeler driven by S.Santhoshkumar (deceased) resulting in his instantaneous death.

4. According to the claimants, the rash and negligent driving of the driver of the bus belonging to the Tamilnadu State Transport Corporation Limited was the cause of accident and therefore the Transport Corporation is liable to pay compensation to them.



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5. The respondent, the Tamilnadu State Transport Corporation Limited, contested the claim petition by filing its counter.

6. The Tribunal after analysing the evidence on record, fastened negligence on the part of the driver of the bus and the rider of the two wheeler (deceased) in the ratio 90:10 as the deceased did not wear helmet at the time of accident and awarded compensation of Rs.13,99,500/- (90% of total compensation of Rs.15,55,000/-) together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

7. Aggrieved over the quantum of compensation awarded by the Tribunal, the Tamilnadu State Transport Corporation has filed C.M.A.No.2861 of 2024 and challenging 10% of contributory negligence fastened on the part of the deceased, the claimants have filed C.M.A. No.2293 of 2023.

8. Heard Mr.M.Murali Vinodh, learned counsel for the Tamilnadu State Transport Corporation and Mrs.Ramya V.Rao, learned counsel appearing for the claimants.



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9. Negligence:

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It is seen from the records that the driver of the bus bearing Registration number TN-38-N-2921 was rash and negligent in driving the bus and FIR (Ex.P1) was also registered against him. The evidence of one Purushothaman (P.W.2) who is the eyewitness to the occurrence, is clear as to the rash and negligent driving of the driver of the bus. The manner of the accident also confirms the same. However, the Tribunal had fixed 10% of contributory negligence on the part of the rider of the two wheeler (deceased) as he was not wearing helmet at the time of accident. There is nothing on record to show that the rider of the two wheeler also contributed to the accident. In the circumstances, fastening 10% of contributory negligence on the part of the claimant by the Tribunal is erroneous and the same is hereby set aside.

10. Quantum:

In the claim petition, it is contended that S.Santhoshkumar (deceased) aged 20 years was working as a helper in a private concern, earning a sum of Rs.10,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the



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deceased as Rs.10,000/-. It is pertinent to point out that the accident took place in the year 2018. Considering the year of accident and the age of the deceased, this Court feels that the Tribunal has rightly fixed the monthly notional income of the deceased as Rs.10,000/-. The Tribunal has also followed the dictum laid down by the Hon'ble Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121*** and ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601*** while awarding compensation to the claimants. Therefore, I do not find any reason to interfere with the same.

11. In the result,

(i) The appeal in C.M.A. No.2861 of 2024 filed by the Tamilnadu State Transport Corporation is dismissed and C.M.A.No.2293 of 2023 filed by the claimants is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(ii) the quantum of compensation awarded by the Tribunal is upheld.



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(iii) 10% of contributory negligence fastened on the part of the deceased is hereby set aside.

(iv) The Tamilnadu State Transport Corporation is directed to deposit the entire compensation amount, i.e., Rs.15,55,000/- (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.3465/2018 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Cuddalore within a period of four weeks from the date of receipt of a copy of this order / uploading of this order.

(v) On such deposit being made, the claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

24.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
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R.HEMALATHA, J.

vum

To

1.The Motor Accident Claims Tribunal,
I Additional District and Sessions Court,
Cuddalore.

2.The Section Officer,
VR Section, Madras High Court, Chennai.

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