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CMA.No.2474 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2474 of 2024 and
C.M.P.No.19654 of 2024

The Managing Director,
Tamilnadu State Transport Corporation Limited,
Salem.

... Appellant

vs.

1. Thenmozhi
2. Jayanthi
3. Jayasri
4. Nithyadevi
5. Dhivya

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award, dated 15.03.2023 in M.C.O.P.242/2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Villupuram.

For Appellant : Mr.D.Nitin

For Respondents : Mr.C.Munusamy

J U D G M E N T



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Questioning the quantum of compensation awarded by the Motor Accident Claims Tribunal, Villupuram in M.C.O.P.242/2018, the present appeal is filed by the appellant, the Managing Director, Tamilnadu State Transport Corporation, Salem.

2. The claimants filed a claim petition under Section 166 of Motor Vehicles Act, in M.C.O.P.242/2018 before the Motor Accident Claims Tribunal, Villupuram, seeking compensation of Rs.20,00,000/- for the death of one Kaliyamoorthy ((husband of the 1st claimant and father of the claimants 2 to 5) in a road accident which happened on 22.01.2017.

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

On 22.01.2017, Kaliyamoorthy (deceased) was travelling as a pillion rider in a two wheeler bearing Registration number TN 32 H 4402 on Chennai-Trichy National highways. When they were nearing Villupuram, a bus bearing Registration number TN 30 N 1209 belonging to the appellant, the Tamilnadu State Transport Corporation, hit the two wheeler, as a result of which, Kaliyamoorthy (deceased) sustained injuries all over his body. He was immediately rushed to Government hospital,



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Vilupuram from where he was referred to JIPMER hospital, Pondicherry.

However, Kaliyamoorthy succumbed to injuries on 04.05.2017.

4. According to the claimants, the rash and negligent driving of the driver of the bus bearing Registration Number TN 30 N 1209 belonging to the appellant was the cause of the accident and therefore, the appellant is liable to pay compensation to him.

5. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the MTC bus bearing Registration number TN 30 N 1209 and the rider of the two wheeler in the ratio 70:30 and awarded total compensation of Rs.18,52,747/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation vide, its orders dated 15.03.2023.

6. Aggrieved over the quantum of compensation awarded by the Tribunal and challenging 70% of contributory negligence fastened on the part of the driver of the MTC bus, the appellant, Tamilnadu State Transport Corporation Limited has filed the present appeal under Section



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173 of the Motor Vehicles Act.

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7. Heard Mr.D.Nitin, learned counsel for the appellant, Tamilnadu State Transport Corporation and Mr.C.Munusamy, learned counsel appearing for the claimants / respondents.

8. Mr.D.Nitin, learned counsel for the appellant contended that the Tribunal had wrongly fastened negligence on the part of the driver of the Tamilnadu State Transport Corporation bus bearing Registration number TN 30 N 1209 and the same has to be set aside. He also contended that the Award passed by the Tribunal is on the higher side and prayed for scaling down the same.

9. The deceased in the instant case was a pillion rider and there is nothing to show on record that he had contributed to the accident. Therefore, the Tribunal was wrong in fastening contributory negligence on his part. The accident took place near Ponnusamy hotel, near Chennai-Trichy National highways.

10. Ravichandran (R.W.1), the driver of the bus was examined



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on the side of the appellant Tamilnadu State Transport Corporation. His evidence was that the two wheeler suddenly crossed the road unmindful of vehicular traffic. However, the deceased in the instant case, was a pillion rider. It is settled law that if two tort-feasors are involved in an accident, the claimants can proceed against any one of the tort-feasors and all the tort feasors need not be shown as respondents. In the instant case, the claimants had chosen to proceed against the Tamilnadu State Transport Corporation. Moreover, the FIR (Ex.P1) was registered against the driver of the Tamilnadu State Transport Corporation and in the circumstances, fastening 30% of contributory negligence on the part of the pillion rider is totally erroneous. Therefore, the same is liable to be set aside.

11. According to the claimants, the deceased Kaliyamoorthi (deceased) was an agriculturist, earning a sum of Rs.20,000/-p.m. However, no income proof was adduced by them. Therefore, the Tribunal fixed the notional monthly income of the deceased as Rs.10,000/-. A perusal of the records shows that there are five dependents and the age of the deceased was 45 years on the date of accident. The accident took place in the year 2017 and in the circumstances, the notional monthly income



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fixed by the Tribunal is perfectly in order. The Tribunal had deducted 1/3rd

towards his personal expenses and applied proper multiplier following the

dictum laid down by the Hon'ble Supreme Court in

(i) *Sarla Verma and others vs. Delhi Transport Corporation and another*

reported in *(2009) 6 SCC 121*

(ii) *National Insurance Co. vs Pranay sethi and others* reported in *2017*

(2) TNMAC 601.

Thus, the quantum of compensation of Rs.18,52,747/- awarded by the Tribunal is just and reasonable.

12. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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

(iii) 30% of the contributory negligence fastened on the part of the deceased Kaliyamoorthy is set aside.

(iv) the appellant, the Tamilnadu State Transport Corporation is directed to deposit the entire compensation amount i.e., Rs.18,52,747/-



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(less the amount already deposited) together with interest @ 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order/uploading of the order to the credit of M.C.O.P.242/2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Villupuram.

(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.

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Index : Yes/No
Speaking/Non-speaking order
Neutral citation : Yes / No
vum

To

- 1.The Motor Accident Claims Tribunal,
Special District Court, Villupuram.
2. The Section Officer, VR Section,
Madras High Court, Chennai.

R.HEMALATHA, J.

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