



WEB COPY

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 12.12.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**Civil Miscellaneous Appeal No.3241 of 2024**

1. B.Chitra

2. C.Baskaran

... Appellants

Vs.

The Managing Director,  
Metropolitan Transport Corporation Ltd.,  
Pallavan House, Chennai-2.

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against judgment and decree dated 25.04.2024 in MCOP. No.2298 of 2019 passed by the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr. R.Nalliyappan

For Respondents : Mr.M.Murali vinod

**JUDGMENT**

The first appellant is the wife and the second appellant is the father of the deceased Kabilan. The claimants not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal.



WEB COPY

2. The case of the claimants is that on 30.11.2018, at about 17.00 hours, while the deceased Kabilan was travelling on the bus bearing registration No.TN 01 N 4291 in Thiruvottiyur High Road from south to north direction, at that time, the same was driven by its driver in a rash and negligent manner, due to which, the said Kabilan was thrown out from the bus, and back wheel of the bus ran over the deceased head and died on the spot. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation for a sum of Rs.27,00,000/- for the death of the deceased Kabilan.

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 only due to the rash and negligent driving on the part of the driver of the bus and after deducting 40% contributory negligence on the part of the deceased, awarded Rs.7,31,300/- towards compensation for the death of the deceased Kabilan under various heads.



WEB COPY

4. The claimants not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation as well as questioning the negligence.

5. The learned counsel for the appellants submitted that the Tribunal has erred in fixing 40% contributory negligence on the deceased who alleged to have travelled in the bus on the foot board without having any evidence is not sustainable. The Tribunal has failed to appreciate that as per the evidence of RW1 who is the driver of the bus in his cross examination admits that it is on the fault to proceed with the overloaded bus and by allowing the passengers to stand on the foot board on the day of occurrence. The compensation awarded by the Tribunal is very low. Therefore, this Court may interfere with the impugned award and modify the same.

6. Per contra, the learned counsel appearing for the second respondent-Transport Corporation contended that admittedly the deceased was a school student aged about 16 years. The deceased was



WEB COPY

travelling the bus in the foot board in a hanging manner carrying a school bag on his shoulder by holding a window bar between the front and rear foot board, lost grip and fell on the road. The rear wheel ran over the boy and sustained fatal injuries. The accident had occurred on the negligence of the deceased boy. Therefore, 40% negligence fixed on the deceased by the Tribunal is perfectly in order, which needs no interference. Hence, this Court may dismiss the petition.

7. Heard the learned counsel for appellant/claimant and the learned counsel for the respondent. This Court has carefully considered the submissions made on either side and the materials available on record. This Court also carefully went through the award passed by the Tribunal.

10. The fact in the present case is not in dispute and the manner of the accident is also not in dispute. Questioning the negligence and enhancement of compensation, the present appeal has been filed by the dependents of the deceased.



WEB COPY

11. In the instant case, the deceased was aged about 16 years at the time of the accident and he was a school student. The deceased was travelling in a bus in the foot board. Due to rash and negligent driving of the driver of the bus, the deceased was thrown away and died on the spot.

12. If a passengers is on the foot board and there is no space at all for him to sit or stand inside the bus, the Conductor must be asked to get down and the bus can be set in motion only after he alights. This corresponds with the driver's duty to ensure that bus is moved only after ensuring safe several travel conditions. If the bus with no vacant seats and no standing space is started when a passenger is on the foot board and he is not asked to alight from the bus or not cautioned against travel on foot board and accident takes place and the foot board passenger sustained injury, wholly or partly on account of his position in the foot board, he cannot be held to be guilty of contributory negligence.

13. In the present case, the deceased was a student. In recent days, the students have travelled only in the foot board without hearing the advice/warnings of the conductors. It is seen from the RW1, the



WEB COPY

conductor was cautioned the deceased to come inside the bus. Due to overcrowded, the deceased has travelled in a foot board and lost grip and fell down from the bus. Therefore, the Tribunal has fastened 40% negligence as against the deceased, which is highly exorbitant. However, this Court is inclined to reduce the same from 40% to 10%. If so, the loss of dependency would be Rs. 67,200/- X 18 multiplier = 12,09,600/-. After deducting 10% contributory negligence on the part of the deceased, the total loss of dependency will arrive Rs.10,88,640/-. In respect of other heads awarded by the Tribunal is just and reasonable, which cannot be interfered with.

14. In the light of the above discussion, this Court modifies the compensation in the following manner:-

| <i><b>Heads</b></i> | <i><b>Amount awarded<br/>by the Tribunal<br/>(Rs.)</b></i> | <i><b>Modified Award<br/>Amount<br/>(Rs.)</b></i> |
|---------------------|------------------------------------------------------------|---------------------------------------------------|
| Loss of dependency  | 6,04,800                                                   | <b>10,88,640</b>                                  |
| Loss of Consortium  | 88,000                                                     | <b>88,000</b>                                     |
| Loss of estate      | 16,500                                                     | <b>16,500</b>                                     |
| Funeral Expenses    | 16,500                                                     | <b>16,500</b>                                     |
| Transportation      | 5,500                                                      | <b>5,500</b>                                      |



WEB COPY

| <i><b>Heads</b></i> | <i><b>Amount awarded<br/>by the Tribunal<br/>(Rs.)</b></i> | <i><b>Modified Award<br/>Amount<br/>(Rs.)</b></i> |
|---------------------|------------------------------------------------------------|---------------------------------------------------|
| Total               | 7,31,300                                                   | 12,15,140/-                                       |

15. The compensation awarded by the Tribunal at Rs. 7,31,300/- is enhanced to Rs. 12,15,140/-. The liability fixed by the Tribunal is confirmed. The respondent is directed to deposit the entire award amount as ordered by this Court, less the amount, if any, already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants. The appellants are entitled to get the award amount equally with proportionate interest and costs.

16. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

12.12.2024

rli



WEB COPY



**M.DHANDAPANI.,J**

**rli**

To,  
The Judge,  
Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

**Civil Miscellaneous Appeal No.3241 of 2024**

**12.12.2024**