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C.M.A.No.472 of 2024



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

DATED: 26.03.2024

CORAM:

**THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY**

C.M.A.No.472 of 2024

1. Rajathi

2. Minor Jaganathan

3. Minor Deepika

Minors represented by their next  
friend/guardian Mother Rajathi

4. Pathmini

.. Appellants

**Vs.**

The Managing Director,

M/s.Tamil Nadu State Transport Corporation Limited,

Head Office at No.12, Ramakrishna Road,

Salem.

.. Respondent

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.12.2021 made in M.C.O.P.No.1474 of 2017 by the learned Motor Accident Claims Tribunal (Special District Judge, Salem).

For Appellants : Mr.R.Navaneetha Krishnan

For Respondent : Mr.D.Nitin

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## **J U D G M E N T**

Challenging the fixation of 15% contributory negligence against the deceased as well as the quantum of compensation awarded by Motor Accident Claims Tribunal, Special District Judge, Salem vide award dated 01.12.2021 made in M.C.O.P.No.1474 of 2017, the present Civil Miscellaneous Appeal has been filed by the Appellants/Claimants.

2. The Appellants are the Claimants in M.C.O.P.No.1474 of 2017 on the file of *Motor Accidents Claims Tribunal, Special Distict Judge, Salem*. They filed the above said claim petition, claiming a sum of **Rs.49,00,000/-** as compensation for the death of one Baskaran, who died in the accident that took place on 25.04.2017.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Respondent- Corporation bus bearing Registration No.TN30-N-0199, and directed the Respondent to pay a sum of **Rs.13,69,000/-** as compensation to the Appellants.



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4. Not being satisfied with the amount awarded by the Tribunal and being aggrieved with the fixation of contributory negligence of 15% on the deceased, the Appellants have come out with the present appeal seeking enhancement of compensation and to set aside the contributory negligence fixed against the deceased.

5. The learned counsel for the Appellants submitted that the Tribunal while determining the compensation towards Loss of Income has fixed 15% contributory negligence on the deceased, who is the rider of the two wheeler bearing Registration No. TN 30-BW-9297 on the ground that the deceased had not worn the helmet while driving the two wheeler. He further submitted that non wearing of helmet by the deceased does not imply that the deceased had also contributed for the accident. He further submitted that at the time of accident, the deceased was 39 years old and was working as a driver in Bullet Logistics India Private Limited and earning a sum of Rs.25,000/- per month, but the Tribunal without considering the same, has fixed the monthly income of the deceased at Rs.12,000/- which is very low and that apart no compensation was awarded towards Loss of Estate. He



further submitted that the overall compensation awarded by the Tribunal is very low and therefore, seeks for enhancement.

6.Per contra, the learned counsel appearing for the Respondent-Transport Corporation contended that at the time of accident, the deceased had not worn the helmet and he died due to head injuries. He further submitted that if the deceased had worn the helmet, he would have escaped from unnatural death and hence the Tribunal on considering the said aspect, has rightly fixed 15% contributory negligence on the deceased. He further submitted that since the Appellants have not filed any documentary evidence to prove the income of the deceased, the Tribunal has fixed the notional monthly income of the deceased at Rs.12,000/- and the same is reasonable. He further submitted that the total compensation awarded by the Tribunal under various heads, is not meager and the appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the Appellants as well as the learned counsel appearing for the Respondent-Transport Corporation



and perused the entire materials on record.

8. A perusal of the Award passed by the Tribunal would go to show that though the Tribunal by considering the evidence of P.W.2- Angappan who is an eye witness to the accident, has come to the conclusion that the accident had occurred due to rash and negligent driving by the driver of the bus belonging to the Respondent Corporation and while determining the compensation towards Loss of Income has fixed 15% contributory negligence on the part of the deceased on the ground that the deceased had not worn the helmet at the time of accident, which in the opinion of this Court, is not correct. It is no doubt true that non wearing of helmet at the time of riding two wheeler, is in violation of Motor Vehicles Act, 1988, for which penalty can be imposed, but not wearing of helmet cannot be construed to be negligence, which has contributed to the accident. Hence, this Court is inclined to set aside 15% of the contributory negligence fixed against the deceased and accordingly set aside the same.

9. As far as the quantum of compensation awarded by the Tribunal is concerned, since no documents were produced by the Appellants to prove the monthly income of the deceased, the Tribunal, fixed the monthly



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income of the deceased at Rs.12,000/-, per month, which in the opinion of this Court, is very low. In the case on hand, the accident occurred in the year 2017. The cost of living has been increased enormously and salary of even unskilled workers being increased substantially and therefore this Court is of the view that a sum of Rs.15,000/- can be fixed as monthly income of the deceased and accordingly a sum of Rs.15,000/- is fixed as monthly income of the deceased and by adding 40% towards future prospects, a sum of Rs.21,000/-(15000+6000) is arrived and by deducting 1/3th towards personal expenses and adopting multiplier '15' as per Judgment of the Hon'ble Supreme Court in the case of **SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER** reported in **(2009) 4 MLJ 997**, a sum of Rs.28,35,000/-  $(21000 \times 15 \times 12 \times 3/4)$  is awarded towards **Loss of Income** and hence the compensation towards Loss of Income is enhanced from Rs.12,24,000/- to Rs.28,35,000/-. Since no compensation was awarded towards **Loss of Estate**, a sum of Rs.15,000/- is awarded under the said head. The Tribunal awarded compensation towards Loss and Affection @ Rs.20,000/- for each of the Claimants. Since Loss of Consortium was fixed at Rs.40,000/- to the 1st Appellant, this Court is inclined to fix a sum of Rs.40,000/- each to the



Appellants 2 to 4 under the head '*Loss of love and affection*'. Accordingly, a sum of Rs.20,000/- each is awarded to the Appellants 2 to 4 under the head Loss of Love and Affection. Since, the compensation awarded towards Funeral Expenses is on the higher side, the same stands decreased to Rs.15,000/-. Thus, the compensation awarded by the Tribunal is re-determined as follows:

| S. No | Description                | Amount awarded by Tribunal (Rs)              | Amount awarded by this Court (Rs)            | Award confirmed or enhanced or granted |
|-------|----------------------------|----------------------------------------------|----------------------------------------------|----------------------------------------|
| 1.    | Loss of Income             | 12,24,000/-                                  | 28,35,000/-                                  | Enhanced                               |
| 2.    | Loss of Consortium         | 40,000/-                                     | 40,000/-                                     | Confirmed                              |
| 3.    | Loss of Love and Affection | 80,000/-                                     | 1,20,000/-                                   | Enhanced                               |
| 4.    | Funeral Expenses           | 25,000/-                                     | 15,000/-                                     | Reduced                                |
| 5.    | Loss of Estate             | NIL                                          | 15,000/-                                     | Granted                                |
|       | <b>Total</b>               | <b>Rs.13,69,000/-</b><br><b>Rs.13,69,000</b> | <b>Rs.30,25,000/-</b><br><b>Rs.30,25,000</b> | <b>Enhanced by Rs.16,56,000 /-</b>     |

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,69,000/- is hereby



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enhanced to Rs.30,25,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Out of the said compensation, the 1st Appellant is entitled for a sum of Rs.15,25,000/- and the Appellants 2 to 4 are entitled to a sum of Rs.5,00,000/- each. The Respondent-Transport Corporation is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment to the credit of **M.C.O.P.No.1474 of 2017** on the file of the Motor Accidents Claims Tribunal (Special District Judge, Salem). On such deposit being made, the Tribunal is directed to transfer the award amount of the Appellants 1 and 4, directly to their Bank accounts through RTGS, within a period of **three weeks**. The shares of the minor claimants /Respondents 2 and 3 are directed to be deposited in any of the nationalized banks in a cumulative interest bearing fixed deposit, till they attain majority and after attaining the majority the claimants 2 and 3 shall withdraw the same, in accordance with law. The Appellants/Claimants shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest



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for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest. No costs.

**26.03.2024**

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Index : Yes / No

Internet : Yes / No

To

1.The Managing Director,  
M/s.Tamil Nadu State Transport Corporation Limited,  
Head Office at No.12, Ramakrishna Road,  
Salem.

2. The Motor Accident Claims Tribunal,  
Special District Judge, Salem.

3.The Section Officer,  
VR Section,  
High Court,  
Madras.



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**KRISHNAN RAMASAMY, J.**

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