



C.M.A.(MD).No.1086 of 2007 and Cros.Obj(MD).No.51 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.02.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.(MD).No.1086 of 2007 and Cros.Obj(MD).No.51 of 2007

C.M.A.(MD).No.1086 of 2007

The Managing Director,
Tamilnadu State Transport Corporation,
Bye-Pass Road,
Madurai Division – I,
Madurai.

.. Appellant/1st Respondent

Vs.

1.M.Rani

2.M.Manikandan

3.Chinnaian

(Minors R-2 & R-3 are declared as major and the guardianship of their mother/R-1 is discharged vide Court order dated 21.01.2009 in M.P.(MD).Nos.1 to 4 of 2009 in C.M.A.(MD).No.1086 of 2007)

4.Minor Malarmanan

5.Minor M.Karthikeyan



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6.Minor M.Sakthivel

.. Respondents 1 to 6/Petitioners

7.P.Sasikumar

.. 7th Respondent/2nd Respondent

8.The Divisional Manager,
National Insurance Company Limited,
3, North Veli Street,
Madurai – 1.

..8th Respondent/3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the decree and judgment of the Motor Accident Claims Tribunal (I Additional Subordinate Judge) Madurai made in M.C.O.P.No.1400 of 2004 dated 04.04.2006.

For Appellant : Mr.R.Janakiramulu

For R-2 & R-3 : Mr.G.Mohan Kumar

For R-1, R-4 to R-8: No appearance

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1.M.Rani

2.M.Manikandan

3.Chinnaian

(Minors Cross Objectors 2 & 3 are declared as major and the guardianship of their mother/1st Cross Objector is discharged vide



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*Court order dated 16.09.2022 in M.P.
(MD).Nos.1 to 4 of 2009 in
Cros.Obj(MD).No.51 of 2007)*

4.Minor Malarmanan

5.Minor M.Karthikeyan

6.Minor M.Sakthivel

.. Cross Objectors

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai Division – 1,
Bye Pass Road,
Madurai.

2.P.Sasikumar

3.The Divisional Manager,
National Insurance Company Limited,
3, North Veli Street,
Madurai – 1.

..Respondents/Respondents

PRAYER: Cross Objection filed under Order XLI Rule 22 of Civil Procedure Code, praying to set aside the fair order and decretal order in M.C.O.P.No.1400 of 2004 on the file of Motor Accident Claims Tribunal (I Additional Sub Judge), Madurai dated 04.04.2006 insofar as they are against the cross objectors are concerned and allow this Cross Objection.



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For Cross Objectors : Mr.G.Mohan Kumar
2 & 3

For Cross Objectors : No appearance
1, 4 to 6

For Respondents : Mr.R.Janakiramulu for R-1
No appearance for R-2

COMMON JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the judgment and decree of the Motor Accident Claims Tribunal (I Additional Subordinate Judge), Madurai passed in M.C.O.P.No.1400 of 2004 dated 04.04.2006.

2. On 11.10.2003 at about 4.00 PM, one Jeyamani @ Karuppanan was riding his TVS Suzuki motor cycle bearing Registration No.TN 59 S 0295 from Madurai town to Othakkadaai along with one T.Madhavan on the pillion and they met with an accident near H.A.S. Petrol Bunk, when the passenger bus of the Tamil Nadu State Transport Corporation bearing Registration No.TN 58 N 0102 hit the two wheeler. The pillion rider Madhavan sustained severe injuries and was taken to the hospital, but he died on 18.10.2003.



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3. The wife and five children of the deceased made a claim against the Transport Corporation, the Insurance Company and the owner of the two wheeler, seeking compensation of Rs.7,00,000/- on the ground that the deceased Madhavan was an M.A. graduate taking tuition in the name of Madhavan Tuition Centre and earning more than Rs.5000/-. Therefore, the Insurance Company of the two wheeler, in which the deceased was a pillion rider and the Transport Corporation is liable to pay the compensation jointly and severally.

4. The claim petition was strongly opposed by the Insurance Company as well as the Transport Corporation on the ground that the accident occurred only due to the negligence of the two wheeler rider and the bus driver of the Transport Corporation was diligent in driving his vehicle. Further, there is discrepancy in the description of the registration number of the two wheeler, which is alleged to have involved in the accident. It is also contended that the complaint was given after seven days of the incident, which causes doubt about the manner in which the accident took place and the person negligent for the accident.



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5. The Trial Court, after considering the ocular evidence of P.W.1 Rani, the wife of the deceased and P.W.2, one Barathan as well as the evidence of D.W.1, Rajiam and D.W.2, Jeyamani, the rider of the two wheeler as witnesses for respondents and the exhibits, namely, the FIR, the postmortem report and legal heirs certificate, arrived at a conclusion that the claimants have not proved the income of the deceased and therefore, fixed a sum of Rs.15,000/- as annual income. Applied multiplier '16' and awarded a sum of Rs.2,40,000/- for the loss of income, Rs.10,000/- for the pain and suffering, Rs.2500/- for nourishment, Rs.10,000/- for the loss of love and affection and Rs.20,000/- for the loss of consortium.

6. The Transport Corporation has preferred the appeal in C.M.A. (MD).No.1086 of 2007, challenging the award as excessive and improper, since the negligence was only on the part of the two wheeler rider and not on the part of the driver of the Transport Corporation. It is further contended that the ocular evidence of R.W.2, the rider of the two wheeler, ought to have been rejected as a self-serving testimony. But the Trial Court had heavily relied upon the evidence of R.W.2 without taking note of the



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fact that the accident occurred due to his negligence and that his testimony is a self-serving statement to put the blame on the bus driver to get himself exonerated from the liability.

7. Per contra, the learned counsel appearing for the claimants, who have preferred Cross Objection Petition, submitted that the Tribunal has failed to take note of the fact that at the time of accident, the deceased was 40 years old with an M.A. Degree and was earning a sum of Rs.5000/- per month taking tuition as well as from his agricultural activities. Though no documentary evidence is filed by the claimants, the evidence of P.W.1 regarding the income of the deceased ought to have been taken note of by the Tribunal, but erroneously, the Tribunal had fixed only Rs.1250/- per month as notional income of the deceased.

8. This Court, on considering the material evidence and the submissions made by the learned counsels, finds that the accident has occurred when the two wheeler driven by R.W.2 Jeyamani colluded with a bus owned by the appellant/Transport Corporation. The injuries sustained



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by Madhavan, the pillion rider not denied and his subsequent death due to the injuries is also not in dispute. Though there is no proof for age, the postmortem certificate and the ocular evidence of the witnesses have been taken into consideration to fix the age of the claimant as 40 years and the Tribunal has applied the multiplier '16'.

9. The only point in dispute is whether the accident was caused due to the negligence of the two wheeler rider or the driver of the bus. The evidence probalises that the accident took place due to the negligence of the bus driver and there is no contra evidence to disprove the preponderance of probability. Therefore, the Tribunal has held that the Transport Corporation is responsible and liable to pay the compensation and exonerated the Insurance Company, which has insured the two wheeler. In any event, the fact remains that the claimants are the dependants of the deceased Madhavan, who was the pillion rider and therefore, the liability to pay compensation for his death, after holding that the accident was caused due to the negligence of the bus driver, is with the Transport Corporation and there cannot be any reason to exonerate the Transport Corporation.



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Hence, the appeal preferred by the Transport Corporation is liable to be dismissed. Accordingly, C.M.A.(MD).No.1086 of 2007 is dismissed.

10. Regarding the Cross Objection, the learned counsel for the claimants, who have preferred the Cross Objection, submitted that the fixation of Rs.1250/- per month for an M.A. Graduate is very meagre and unreasonable and in view of the judgment of the Hon'ble Supreme Court in ***New India Assurance Company Limited Vs. Smt.Kalpana and others in Civil Appeal No.255 of 2007 dated 17.01.2007***, at least a sum of Rs.4500/- per month ought to have been fixed.

11. This proposition of law canvassed by the learned counsel for the cross objectors, was vehemently opposed by the learned counsel appearing for the Transport Corporation on the ground that there is not even an iota of evidence to show that the deceased had any income worth mentioning. Though tall claim has been made by the claimants that the deceased had income from his agricultural activities and from taking tuition, no proof filed for the income. He further submitted that the claimants stated that he



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was an M.A. Graduate and running a tuition centre, but no evidence was placed before the Tribunal to prove his income through tuition or the alleged educational qualification. In such facts and circumstances, the Tribunal has rightly fixed Rs.15,000/- as annual income.

12. These rival submissions on appreciation in the light of the catena of pronouncements by the Courts, leads to an irresistible conclusion that the Tribunal is not fair in fixing Rs.1250/- per month as notional income for a man, who died at the age of 40. By any stretch of imagination, he would have earned a sum of Rs.3000/-, i.e., at least Rs.100/- per day. Hence, a notional income of Rs.3000/- is fixed as monthly income. After deducting 1/3 for his personal expenses, the loss of income is arrived at as follows:

$$2000 \times 16 \times 12 = \text{Rs.}3,84,000/-$$

13. Regarding the compensation awarded on the other heads like loss of love and affection, consortium, pain and suffering, this Court is not inclined to interfere with the amount fixed by the Tribunal. Accordingly, the Cross Objection is partly allowed by modifying the award as stated above.



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14. In view of the above, the appellant/Transport Corporation is liable to pay a sum of Rs.1,44,000/- with 7.5% interest per annum in addition to the amount awarded by the Tribunal. The excess amount shall be apportioned by the claimants in the same proportion fixed by the Tribunal.

15. In the result, the Civil Miscellaneous Appeal is dismissed and the Cross Objection is partly allowed. There shall be no order as to costs.

16.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

1.The Motor Accident Claims Tribunal,
I Additional Sub Court,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN,J.

Lm

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