



C.M.A.(MD) No.858 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 30.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.858 of 2012

and

M.P.(MD)No.3 of 2012

Tamil Nadu State Transport Corporation Limited,
Through its Managing Director,
Pudukottai.

... Appellant/1st respondent

Vs.

1.Santhi,
2.Nivethidha,
3.Shymala (minor),
4.Sindhuja (minor),
(Respondents 3 and 4 are represented by its mother/1st respondent)
Gnanasundaram (died) ... Respondents/Petitioners

5.Saraswathi,
6.Omprakash,
7.M/s.The Oriental Insurance Company Ltd.,
No.33, Bhupal Complex,
Park Road,
Kurnool,
Andhra Pradesh – 518 001. ... Respondents/2nd and 3rd
respondents

[6th respondent remained *ex parte* before the
Tribunal]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor



C.M.A.(MD) No.858 of 2012

Vehicle Act, 1988, to set aside judgment and decree dated 16.06.2011 passed in M.C.O.P.No.754 of 2007 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Trichy.

For Appellant	: Mr.S.C.Herold Singh
For Respondents	
for R1 to R5	: Mr.P.Ganapathi Subramanian
for R6	: Dispensed with
for R7	: No appearance

J U D G M E N T

The instant appeal has been filed challenging the finding on negligence and the quantum of compensation awarded by the Tribunal.

2. The respondents 1 to 5/claimants filed a claim petition stating that the deceased was working as a Conductor in the appellant/Transport Corporation; and that during the course of employment, the driver of the bus, in which, he was traveling, drove the bus in a rash and negligent manner and caused a collision with a stationery lorry, as a result of which, he sustained fatal injuries.

3. The appellant/Transport Corporation filed a counter denying the averments in the claim petition and stating that the accident did not take



C.M.A.(MD) No.858 of 2012

place due to the negligence of the bus driver.

WEB COPY

4. The respondents 1 to 5/claimants examined three witnesses and marked Exs.P1 to P6 from their side. The appellant/Transport Corporation examined R.W.1 on their side and no documents were marked. The Salary Certificate of the deceased was marked as a Court Document as Ex.X1.

5. The Tribunal has held that the accident took place due to the negligence of the bus driver and awarded the compensation of Rs.11,03,900/- payable by the appellant/Transport Corporation.

6. The learned counsel for the appellant/Transport Corporation submitted that the finding on negligence is erroneous, inasmuch as though the lorry was parked without any indicator, the Tribunal had not attributed the contributory negligence to the lorry driver; and that the compensation awarded by the Tribunal is excessive.

7. The learned counsel for the respondents 1 to 5/claimants, per contra, submitted that the compensation awarded by the Tribunal is meagre and that the Tribunal had not considered the future prospects



C.M.A.(MD) No.858 of 2012

while computing the loss of income.

WEB COPY

8. Since the sixth respondent remained *ex parte* before the Tribunal, notice to the sixth respondent is dispensed with. Though notice to the seventh respondent has been served and the name has also been printed in the cause list, none has entered appearance.

9. The points for consideration are as follows:

'a. Whether the finding on negligence by the Tribunal is justified?

b. Whether the compensation awarded by the Tribunal is just and reasonable?'

10. As regards the first question, it is seen that the claimant had examined the eye witness-P.W.3 and marked Ex.P1-FIR to corroborate his version of P.W.3. That apart, the Police had filed Ex.P6-Final Report holding that the bus driver was guilty of rash and negligent driving. In the light of the other evidence on record, R.W.1's evidence does not inspire confidence. Therefore, the finding on negligence by the Tribunal is justified in accordance with law. The point No.1 is answered accordingly.



C.M.A.(MD) No.858 of 2012

11. As regards the quantum of compensation, admittedly, the deceased was earning a sum Rs.8,410/- at the time of his death and the Tribunal had adopted the said income. However, the Tribunal had not taken into consideration the addition towards future prospects, as per the judgment of the Hon'ble Supreme Court in ***National Insurance Company Ltd vs. Pranay Sethi reported in 2017 (16) SCC 680***. Since the deceased had a permanent job, 30% has to be added towards future prospects. In view of the number of dependents, $\frac{1}{4}$ has to be deducted towards the personal expenses. The multiplier applicable is '15'. Therefore, the compensation under the head 'loss of income' has to be Rs.8,410/- + Rs.2523/- (30%) x 12 x 15 x $\frac{3}{4}$ = Rs.14,75,955/-. The compensation awarded under other heads are confirmed. Though there is no appeal filed by the claimants seeking enhancement, this Court is of the view that in order to award just and reasonable compensation, the compensation can be enhanced. Thus, the compensation payable by the appellant is enhanced to Rs.15,75,955/- in the following manner:

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of Income	Rs.10,03,900/-	Rs.14,75,955/-	Enhanced
2	Loss of Consortium	Rs. 15,000/-	Rs. 15,000/-	Confirmed



C.M.A.(MD) No.858 of 2012

3	Loss of Love and affection (Rs.15,000/- x 5)	Rs. 75,000/-	Rs. 75,000/-	Confirmed
4	Transport Expenses	Rs. 5,000/-	Rs. 5,000/-	Confirmed
5	Funeral Expenses	Rs. 5,000/-	Rs. 5,000/-	Confirmed
Total		Rs.11,03,900/-	Rs.15,75,955/-	Enhanced by Rs.4,72,055/-

12. The appellant/Transport Corporation is directed to deposit enhanced compensation of Rs.15,75,955/- (Rupees Fifteen Lakhs Seventy Five Thousand Nine Hundred and Fifty Five only) together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs, less the amount already deposited, if any, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

13. On such deposit, the respondents 1, 2 and 5/claimants are entitled to withdraw their share amount together with proportionate interest and costs, as per the apportionment fixed by the Tribunal, less the amount already withdrawn, if any, by filing appropriate applications before the Tribunal.

14. The respondents 3 and 4/claimants were minors when the claim



C.M.A.(MD) No.858 of 2012

petition was filed in the year 2007. They would have attained the age of majority now. Hence, they are permitted to file appropriate application for recording their majority and to withdraw their share. The respondents 1 to 5/claimants are directed to pay the necessary Court Fee, if any, on the enhanced amount.

15. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

30.08.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:
1. Motor Accidents Claims Tribunal
II Additional Sub Judge,
Trichy.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD) No.858 of 2012

SUNDER MOHAN, J.

apd

C.M.A.(MD) No.858 of 2012

30.08.2024