



C.M.A.(MD) No.1002 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1002 of 2024

and

C.M.P.(MD) No.10430 of 2024

The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai.

... Appellant

Vs.

- 1.Tamilselvi
W/o.Late.Muthukumar
- 2.Minor.Mohanapriya
D/o.Late.Muthukumar
- 3.Minor.Poovarasam
S/o.Late.Muthukumar
- 4.Minor.Boopathiraja
S/o.Late.Muthukumar
- 5.Shanmugam
W/o.Velusamy
- 6.Velusamy
S/o.Ramaiah

... Respondents

[Minor R2 to R4 are represented through their
mother and natural guardian, R1]



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Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 16.02.2023 passed in M.C.O.P.No.11 of 2016 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Srivilliputtur.

For Appellant : Mr.K.Sudalaiyandi

For Respondents : Mr.A.Sivaji

J U D G M E N T

The instant appeal has been filed by the Tamil Nadu State Transport Corporation challenging the Tribunal's findings on negligence and the quantum of compensation.

2. The respondents had filed a claim petition before the Tribunal, stating that on 18.05.2015, at about 04:45 p.m., while the deceased was trying to board a bus bearing registration No.TN-67-N-0391 belonging to the appellant Corporation, the bus driver negligently started moving the bus, as a result of which the deceased fell off the bus, was run over by it, and sustained fatal injuries.



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3. The appellant Corporation filed a counter, stating that since the deceased had stolen a mobile phone from a nearby hotel, the public chased him, and while attempting to escape, he ran very fast, hit a police barricade, and sustained grievous injuries, and that since the bus was not involved in the accident, the appellant is not liable to pay any compensation.

4. Before the Tribunal, the claimants examined P.W.1 and P.W.2 and marked Exs.P1 to P24, and the appellant Corporation examined R.W. 1, the conductor of the bus, and did not mark any documents.

5. The Tribunal, after taking into consideration the oral and documentary evidence, held that the bus driver was responsible for the accident and directed the appellant Corporation to pay the compensation of Rs.14,34,000/-.

6. The learned counsel for the appellant Corporation submitted that the evidence adduced on the side of the appellant would show that the deceased tried to board the moving bus and, therefore, the bus driver



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cannot be attributed with negligence, and that the compensation, in any case, is excessive and prayed for setting aside the award of the Tribunal.

7. The learned counsel for the respondents/claimants, per contra, submitted that the claimants had established that the deceased had boarded the bus and thereafter slipped and fell down from the bus because the bus moved suddenly, and therefore, the Tribunal was right in holding that the bus driver was responsible for the accident, and prayed for dismissal of this appeal. He further submitted that, though the claimants have not preferred any appeal for enhancement of compensation, the notional income fixed by the Tribunal is meagre, and this Court may enhance the compensation as the Tribunal has not awarded just and reasonable compensation.

8. The points for consideration in the instant appeal are: (a) whether the Tribunal's finding on negligence and liability is justified; and (b) whether the quantum of compensation awarded by the Tribunal is just and reasonable.



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9. As regards the first point, it is seen that though the claimants had not examined any witnesses to prove the manner of the accident, the FIR (Ex.P1) lodged by R.W.1, the conductor of the bus, would show that the deceased was run over by the bus while he was boarding the bus. However, R.W.1, in his deposition, took a contrary stand, stating that the deceased was being chased by the general public as he had stolen a mobile phone from a nearby hotel, had dashed against a police barricade, and sustained injuries, and thereby denying the involvement of the bus in the accident. The evidence of R.W.1, which is contrary to his own complaint registered as FIR (Ex.P1), therefore, cannot be believed. Thus, in the absence of any acceptable evidence produced on the side of the appellant Corporation, the averments in the claim petition and the documents produced on the side of the claimants have been rightly accepted by the Tribunal to hold that the claimants have established the manner of the accident. Thus, the Tribunal's finding that the bus driver was guilty of rash and negligent driving cannot be faulted. The point No.1 is answered accordingly.

10. As regards the second point, this Court is of the view that though the respondents have not preferred any appeal for enhancement of



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compensation, this Court has to award just and reasonable compensation.

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It is seen that the claimants had established by the evidence of P.W.1, the wife of the deceased, that the deceased was working as a painter. The claimants had also examined P.W.2, the Secretary of the Rajapalayam Branch of the Virudhunagar District Construction Workers Association, who deposed that the deceased was working as a painter and was earning a sum of Rs. 600/- per day as wages. However, there is no evidence to prove that the deceased was a member of the said Association, and there is no basis for P.W.2 to certify the income of the deceased. Therefore, this Court is of the view that the evidence of P.W.2, or the documents marked through him, namely Exs.P22 and P23, cannot be relied upon for fixing the income of the deceased.

11. At the same time, this Court is of the view that the notional income of Rs.6,800/- per month fixed by the Tribunal can be enhanced to Rs.8,000/- per month, considering the avocation and the age of the deceased and the year of the accident. Since the deceased was 36 years old at the time of the accident, 40% of the income has to be added towards future prospects, and the multiplier applicable is 15. Since the deceased was survived by his wife, three minor children, and his parents, 1/4th has



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to be deducted towards personal expenses. Hence, the compensation under the head 'loss of dependency' would be Rs.15,12,000/- [Rs.8,000 + 40/100 x 12 x 15 x 3/4].

12. The Tribunal had awarded a sum of Rs.30,000/- towards 'loss of love and affection' to each of the six claimants. However, they are entitled to Rs.40,000/- each, as per the guidelines issued by the Hon'ble Supreme Court. The award under the other heads is just and reasonable and is therefore confirmed. Thus, the total compensation awarded by the Tribunal is modified as follows:

<i>Sl. No</i>	<i>Heads</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 Dependency	Rs.12,24,000/-	Rs.15,12,000/-	Enhanced
2	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
3	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
4	Loss of Love and Affection to the claimants	Rs. 1,80,000/-	Rs. 2,40,000/-	Enhanced
Total		Rs.14,34,000/-	Rs.17,82,000/-	Enhanced by Rs.3,48,000/-

13. The appellant Corporation is directed to deposit the enhanced compensation of Rs.17,82,000/- together with interest at 7.5% per annum



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from the date of the claim petition till the date of realization and costs, after deducting the amount already deposited, if any, within a period of twelve (12) weeks from the date of receipt of a copy of this Judgment.

14. The respondents are entitled to the compensation, as per the apportionment fixed by the Tribunal.

15. The first, fifth, and sixth respondents are permitted to withdraw their shares along with the proportionate interest and costs, less the amount already withdrawn, if any, by filing suitable application before the Tribunal.

16. The second respondent was a minor at the time of filing of the claim petition in 2016. It is noticed that she would have now attained majority. Therefore, the second claimant is permitted to file suitable application before the Tribunal to record her majority and to withdraw her share along with proportionate interest and costs.

17. Since the third and fourth respondents are still minors, their shares are directed to be deposited in an interest-bearing fixed deposit



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[F.D.] in any nationalized bank until they attain majority. The first respondent, who is their natural guardian, is permitted to withdraw the accrued interest once every six months.

18. The respondents are directed to pay the necessary court fee for the enhanced amount of compensation.

19. In the result, this Civil Miscellaneous Appeal filed by the Transport Corporation is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

16.10.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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Copy To:

- 1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Srivilliputtur, Virudhunagar District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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