



C.M.A.(MD) No.564 of 2024 &
Cros.Obj.(MD) No.38 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.564 of 2024
and **C.M.P.(MD) No.7242 of 2024**
and
Cros.Obj.(MD) No.38 of 2024

C.M.A.(MD) No.564 of 2024

Tamil Nadu State Transport Corporation Ltd.,
Through its Managing Director,
Having office at Tirunelveli.

... Appellant

Vs.

1.T.Madhavi
W/o.Late. Thangavel

2.Bharathivel (Minor)
S/o.Late. Thangavel

3.Sakthivel (Minor)
S/o.Late. Thangavel

[Minor R2 and R3 are represented through
their mother and natural guardian, R1]

4.Chinnaponnu
W/o.Late. Paraman

... Respondents



C.M.A.(MD) No.564 of 2024 &
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Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order made in M.C.O.P.No.1153 of 2021 dated 12.08.2022 on the file of the Motor Accident Claims Tribunal cum Special District Court, Madurai.

For Appellant : Mr.S.Micheal Heldon Kumar

For Respondents : Mr.A.Vadivel

Cros.Obj.(MD) No.38 of 2024

1.T.Madhavi
W/o.Late. Thangavel

2.Bharathivel (Minor)
S/o.Late. Thangavel

3.Sakthivel (Minor)
S/o.Late. Thangavel

[Minor Cross-objectors 2 and 3 are represented through their mother and natural guardian, Cross-objector 1]

... Cross-Objectors

Vs.

1.Tamil Nadu State Transport Corporation Ltd.,
Through its Managing Director,
Having office at Tirunelveli.

2.Chinnaponnu
W/o.Late. Paraman

... Respondents



C.M.A.(MD) No.564 of 2024 &
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Prayer:- Cross-Objection filed under Order XLI Rule 22(1) of Civil Procedure Code to award an enhanced compensation of Rs.5,00,000/- over and above Rs.16,94,400/- awarded by the lower court in M.C.O.P.No.1153 of 2021 dated 12.08.2022 on the file of the Motor Accident Claims Tribunal cum Special District Court, Madurai.

For Cross-Objectors : Mr.A.Vadivel

For R1 : Mr.S.Micheal Heldon Kumar

COMMON JUDGMENT

The Tamil Nadu State Transport Corporation has preferred the instant appeal challenging the finding of negligence and also the quantum of compensation awarded by the Motor Accident Claims Tribunal (Special District Court), Madurai, in M.C.O.P.No.1153 of 2021, *vide* its judgment and decree dated 12.08.2022.

2. The claimants have filed the instant cross-objection, seeking enhancement of compensation.

3. For the sake of convenience and brevity, the parties herein are referred to as 'State Transport Corporation' and 'claimants', respectively.



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4. The claimants filed a claim petition in M.C.O.P.No.1153 of 2021 before the Tribunal, stating that on 14.01.2020, at 09.45 p.m., while the deceased was riding his two-wheeler bearing Registration No.TN-AP-0349, the driver of the bus belonging to the State Transport Corporation came from behind in a rash and negligent manner and dashed against the two-wheeler, as a result of which the deceased sustained fatal injuries.

5. The State Transport Corporation filed a counter stating that no such accident took place; that the deceased was lying on the road and the driver, on humanitarian grounds, stopped the bus, called an ambulance, and had the deceased admitted to the hospital; and that, in any case, the compensation claimed by the claimants was excessive.

6. Before the Tribunal, the claimants examined P.W.1 and P.W.2 and marked Exs.P1 to P13. The State Transport Corporation examined the driver of the bus as R.W.1.



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7. The Tribunal, after taking into consideration the documents on record, held that the accident took place only due to the rash and negligent driving of the bus driver belonging to the State Transport Corporation and determined the compensation at Rs.16,94,400/- .

8. The learned counsel for the State Transport Corporation submitted that in spite of the evidence of R.W.1, the driver of the bus, the Tribunal had erroneously held that the accident took place due to the negligence of the bus driver; and that the compensation awarded by the Tribunal is excessive inasmuch as the multiplier applicable is 16, but not 17 as adopted by the Tribunal, as the deceased was 33 years old at the time of the accident, and therefore prayed for allowing the appeal and dismissing the cross-objection filed by the claimants.

9. The learned counsel for the claimants, per contra, submitted that the notional income fixed by the Tribunal at Rs.7,000/- per month is meagre, and therefore, the compensation awarded by the Tribunal has to be enhanced.



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10. This Court has given its anxious consideration to the rival submissions.

11. The questions involved in the instant appeal and the cross-objection are as follows:

(a) whether the Tribunal was right in holding that the State Transport Corporation is liable to pay compensation.

(b) whether the quantum of compensation awarded by the Tribunal is just and reasonable.

12. As regards the first question, it is seen that the claimants had examined two witnesses. P.W.2 was examined to prove the manner of the accident. P.W.2 is the eyewitness to the occurrence, who deposed that he was following the deceased in another two-wheeler and that the driver of the bus had dashed the two-wheeler of the deceased in a rash and negligent manner from behind, which caused the fatal injuries to the deceased.



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13. The claimants marked Ex.P1, FIR, which was lodged against the driver of the bus. Further, the driver of the bus, who was examined as R.W.1, admitted that the investigation officer had also filed a final report against him. In such circumstances, this Court is inclined to believe the evidence of P.W.2 and other evidence on record as against the evidence of R.W.1. Further, the evidence of R.W.1 does not inspire confidence.

14. The other submission made by the learned counsel for the State Transport Corporation is that the deceased sustained head injuries as per the claim petition and the medical reports, and therefore, it has to be presumed that the deceased rode the two-wheeler without a helmet. R.W. 1, who was examined on the side of the State Transport Corporation, had not adverted to this fact. In the absence of any evidence to conclusively prove that the deceased did not wear the helmet at the time of the accident, this Court cannot presume the said fact on the basis of the injury sustained by the deceased. Therefore, the contributory negligence cannot be fixed on the presumption that the deceased did not wear a helmet. Therefore, Point No.1 is answered accordingly.



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15. As regards the quantum of compensation, it is seen that though P.W.1 has stated that the deceased was working as a sweeper-cum driver, no document has been produced either to prove the avocation or the income of the deceased. The Tribunal, after taking into consideration the age of the deceased, fixed the notional income of the deceased at Rs.7,000/- per month. Considering the fact that the accident took place in 2020, the nature of the evidence let in by the claimants, and the age of the deceased, this Court is inclined to fix the notional income at Rs.10,000/- per month.

16. Since the deceased was 33 years old at the time of the accident, 40% has to be added to the income towards future prospects. The correct multiplier is 16, but not 17, as adopted by the Tribunal. Hence, the compensation under the 'loss of dependency' has to be modified as follows:

Loss of dependency:

Age of the deceased – 33 years

Notional monthly income – Rs.10,000/-



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Annual Income [Rs.10,000 x 12]	: Rs.1,20,000/-
Add: Future Prospects [Rs.1,20,000/- x 40/100]	: Rs. 48,000/-

	: Rs.1,68,000/-
Less : Personal Expenses at 1/4 th [1,68,000 x 1/4] *	: Rs. 42,000/-

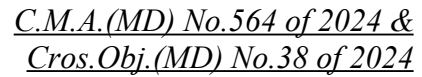
	: Rs.1,26,000/-
Multiplier - 16 [Rs.1,26,000/- x 16]	- Rs.20,16,000/-

[* since there are four dependents of the deceased]

17. The award of compensation under the heads 'loss of consortium', 'loss of estate', 'transport expenses', and 'funeral expenses' is just and reasonable and is confirmed.

18. Thus, the total compensation awarded by the Tribunal is enhanced as follows:

<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 Dependency	Rs.14,99,400/-	Rs.20,16,000/-	Enhanced
2	Loss of Consortium	Rs. 1,60,000/-	Rs. 1,60,000/-	Confirmed

**Total**

20. The claimants [the respondents in C.M.A.(MD) No.564 of 2024
the cross-objectors and the second respondent in Cros.Obj.(MD) No.
[2024] are entitled to the compensation as per the apportionment
by the Tribunal.

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respondent in Cros.Obj.(MD) No.38 of 2024] are permitted to withdraw their shares along with proportionate interest and costs, less the amount already withdrawn, if any, by filing a suitable application before the Tribunal.

22. Since the second and third claimants [the second and third respondents in C.M.A(MD) No.564 of 2024 and the second and third cross-objectors in Cros.Obj.(MD) No.38 of 2024] are minors, their shares are directed to be deposited in an interest-bearing fixed deposit [F.D.] in any nationalized bank until they attain majority. The first claimant [the first respondent in C.M.A(MD) No.564 of 2024 and the first cross-objector in Cros.Obj.(MD) No.38 of 2024] is permitted to withdraw the accrued interest once every six months.

23. The claimants [the respondents in C.M.A.(MD) No.564 of 2024 and the cross-objectors and the second respondent in Cros.Obj.(MD) No. 38 of 2024] are directed to pay the necessary court fee, if any, for the enhanced amount of compensation.



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24. In the result, C.M.A.(MD) No.564 of 2024, filed by the State Transport Corporation, is dismissed. Cros.Obj.(MD) No.38 of 2024, filed by the first to third claimants, is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

20.08.2024

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

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Copy To:

- 1.The Special District Judge,
Motor Accident Claims Tribunal,
Madurai.
- 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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