



C.M.A(MD)No.804 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 25.07.2024

Pronounced on : 14.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.A(MD)No.804 of 2024

and

C.M.P(MD)No.8837 of 2024

- 1.The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Ranithottam, Nesamony Nagar,
Nagercoil.
 - 2.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Office at Number 2, Trivandrum Road,
Vannarpettai,
Tirunelveli District. ... Appellants / Respondents 1 and 2
- Vs.
- 1.Nalini Kumari
 - 2.Pratheeba
 - 3.Rajamani ... Respondents 1 to 3 / Petitioners
 - 4.Praveena ... 4th Respondent / 3rd respondent



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PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to set aside the order of the Motor Accident Claims Tribunal cum Sub Court, Kuzhithurai made in M.C.O.P.No.1071/2022 dated 26.04.2023 and allow the appeal with costs.

For Appellant : Mr.S.Micheal Heldon Kumar

For R1 to R3 : Mr.V.Sasi Kumar

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the order of the Motor Accident Claims Tribunal cum Sub Court, Kuzhithurai made in M.C.O.P.No.1071/2022 dated 26.04.2023.

2. The case of the prosecution is that on 02.01.2021 at about 7.55 p.m., the deceased Pushparaj was riding an Auto bearing registration number TN 74 AL 5701 on the Thingal Nagar, Thottiyode main road from West to East direction. When he was nearing the place of occurrence, a bus bearing registration number TN 74 N 2086 which belongs to the first respondent came



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in the opposite direction in a rash and negligent manner and hit the auto. As a result of which, he sustained grievous injuries. He was taken to Government Hospital, Thuckalay, where he was found dead. A case in Crime No.7 of 2021 was registered against the deceased by the Inspector of Police, Thuckalay Police Station, on the false information given by the first respondent vehicle driver. The deceased was the owner cum driver of the Auto and earning Rs.25,000/- per month and he was aged about 45 years at the time of occurrence. Claiming compensation amount of Rs.40,00,000/- the claim application was filed.

3. That was resisted by the appellant herein by filing counter stating that, the accident took place because of the rash and negligent driving on the part of the deceased himself. He drove the vehicle in a rash and negligent manner and suddenly crossed the road. Finding a ditch in the road he turned the auto and hit the front side of the bus. Therefore, the deceased was responsible for the accident and not the driver. Other customary denials were made.



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4. With respect to the first aspect of negligence, the Tribunal recorded a finding that it occurred due to the rash and negligent driving on the part of the appellant driver and not on the part of the deceased. Regarding the compensation, he recorded a finding that the age of the deceased is 46 years and notional income was fixed at Rs.12,000/- and by adding 25% of future prospects, the monthly income of the deceased was fixed at Rs.15,000/-. Thereby, loss of dependency was fixed at Rs.17,55,000/- by taking 13 as the multiplier. To that other customary amounts were added and finally awarded the following amounts as compensation:

Head of Compensation	Award
Transportation	Rs. 5,000/-
Funeral Expenses	Rs. 15,000/-
Loss of Consortium to the 1st petitioner	Rs. 40,000/-
Loss of Love and Affection (3 x 50,000)	Rs. 1,50,000/-
Loss of dependency	Rs.17,55,000/-
Loss of Estate	Rs. 15,000/-
Total	Rs.19,80,000/-



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5. Challenging the same, this Civil Miscellaneous Appeal is preferred by the Transport Corporation. Learned counsel for the appellant would submit that the FIR was registered only against the deceased and not against the appellant driver. He was also drew the attention of the Court to the sketch preferred by the Investigation Officer wherein it shows that the accident took place in the north portion of the road. So according to the learned counsel for the appellant, only the deceased came in the wrong direction and hit the bus. The learned counsel for the appellant relied upon a judgment reported in **2016 (1) TN MAC 527 in the case of Managing Director, Tamil Nadu State Transport Corporation Ltd., and others Vs Pandi Devi and others.**

6. Per contra, learned counsel for the respondent would submit that the place of occurrence is on the southern side of the road. Only the appellant driver came in the wrong direction and caused the accident. Regarding the quantum, there is a dispute by the appellant.

7. It is true that the FIR was registered against the deceased. Whether that alone will show that he was rash and negligent in causing the accident is



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to be seen. Now we will go to the evidence on record as to the manner of accident, without being influenced by the FIR being registered by the deceased. The complaint was given by the first respondent vehicle driver naturally he would have supported by his own version. That could not be given any importance. It is the case of the appellant that the deceased was riding the three wheeler from West to East direction. Naturally, the northern portion is the left hand for the deceased. The appellant vehicle was coming in the opposite direction. That is from the East - West direction. For the appellant driver, South is the left hand side.

8. As per the evidence of the eye witness namely P.W.2, the deceased on noting a ditch turned to his right side. Since the appellant vehicle came in an opposite direction, the deceased hit the appellant bus. The sketch drawn by the police shows that the place of occurrence is on the south side of the road. Tyre marks were also present in the place of occurrence which indicates that the appellant driver tried to stop the vehicle on seeing the deceased in the middle of the road. There is a heap of sand on the Northern portion of the road. As stated by P.W.2, it is seen that the deceased was crossing that area. On seeing the ditch he came on the middle of the road and at that time, the



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appellant vehicle came in the place. So the deceased was also, to some extent contributed towards the negligence. The appellant driver who was a heavy vehicle ought to have been careful in his driving on seeing the ditch on the northern portion of the vehicle, while passing through the area. Had he slowed down the bus, he would have avoided the accident. Naturally, he also contributed to the occurrence. Even though the Tribunal finding that it solely rests on the shoulders of the appellant driver, but as seen in the manner of the accident, both of them have contributed to the accident. The appellant being the heavy vehicle, must be fixed with 75% of contributory negligence and that of the deceased at 25%. This point is decided accordingly.

9. Regarding the compensation amount, the Tribunal has taken the income of the deceased at 12,000/- per month. In the absence of any direct evidence to show the correct monthly income that amount cannot be considered to be improper. That is maintained. The age was also fixed on the basis of the entries made in the post mortem report. A proper multiplier was adopted. 1/4 was deducted towards the personal and living expenses. 25% was taken as future prospects. So I find absolutely no error in assessing the compensation on those points. While the Tribunal has committed the error in



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awarding Rs.50,000/- towards love and affection for petitioners 2 and 3. The second petitioner who is the daughter and the third petitioner who is the mother entitled for Rs.40,000/- each towards loss of parental consortium for the second petitioner and filial consortium for third claimant. So that amount is reduced to Rs.80,000/-. Recalculation of the award is made as follows:

Head of Compensation	Modified Award
Transportation	Rs. 5,000/-
Funeral Expenses	Rs. 15,000/-
Loss of Consortium to the 1st petitioner	Rs. 40,000/-
Loss of Love and Affection for Appellants 2 and 3 (2 x 40,000)	Rs. 80,000/-
Loss of dependency	Rs.17,55,000/-
Loss of Estate	Rs. 15,000/-
Total	Rs.19,10,000/-

Out of the amount, the claimants are entitled only for 75%, since 25% of the award is deducted towards contributory negligence upon the deceased. Deducting 25%, the claimants are entitled for a total compensation of **Rs. 14,32,500/-**.



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10. The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is modified as follows:

(i) The quantum of compensation awarded by the Tribunal is reduced to **Rs.14,32,500/- (Rupees Fourteen Lakhs Thirty Two Thousand and Five Hundred only)** with interest at the rate of 7.5% per annum.

(ii) The appellants are directed to deposit the award amount together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost to the credit of M.C.O.P.No.1071/2022 Motor Accident Claims Tribunal cum Sub Court, Kuzhithurai, within a period of two months from the date of receipt of a copy of this judgment, if not already deposited.

(iii) On such deposit being made, the the 1st claimant / 1st respondent is entitled for a share of **Rs.10,00,000/- (Rupees Ten Lakhs only)** , the 2nd claimant / 2nd respondent is entitled for a share of **Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand only)** and the third claimant / 3rd respondent is entitled for a sum of **Rs.82,500/- (Rupees Eighty Two Thousand and Five Hundred only)** with interest at the rate of 7.5% per annum. The claimants are at liberty to withdraw the compensation amount,



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after following the due process of law, less any amount already received by them.

(iv) No costs. Consequently, connected miscellaneous petition stands closed.

14.08.2024

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

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To

- 1.The Motor Accident Claims Tribunal cum Sub Court, Kuzhithurai.
- 2.The Section Officer, Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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Pre-Delivery Judgment made in
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