



C.M.A(MD)No.701 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.701 of 2023

and

C.M.P.(MD)No.1845 of 2024

The State Express Transport Corporation
Tamil Nadu Limited,
Chennai,
Represented by its Managing Director.

... Appellant

Vs.

Gangeswri Thankachy (Died)

- 1.Padmaja
- 2.Anand
- 3.Shylaja Kumari
- 4.Lekshmi Ganga
- 5.Sivasankar
- 6.Muthuswamy

... Respondents

*(2nd respondent is declared as major vide
order dated 30.10.2019 in I.A.No.3 of 2019)*

*(4th respondent is minor represented by her
next friend mother 3rd respondent)*

*(5th respondent is the Driver of appellant and
that given up)*



C.M.A(MD)No.701 of 2023

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the award and decree, dated 29.07.2022, passed in M.C.O.P.No.57 of 2016, on the file of the Motor Accident Claims Tribunal / Sub-Court, Kuzhithurai.

For Appellant	: Mr.P.Prabhakaran
For R1 to R4	: Mr.C.Godwin
R4	: Represented by R3
R5	: Given up
R6	: Exparte, vide order, dated 03.08.2023

JUDGMENT

The Transport Corporation has filed this Civil Miscellaneous Appeal.

2. It is a case of fatal. The deceased was an employee in the Transport Corporation. The contention of the Transport Corporation is that the lorry was parked on the road without switching on the indicator and without glowing the parking light. Without noticing the same, the Bus has hit the stationed lorry and the Conductor who was travelling in the Bus died on the spot. The contention of the Transport Corporation is that the Tribunal ought to have fixed the contributory negligence on the stationed lorry. Further the Tribunal ought to have ascertained whether the lorry is insured. If ascertained the appellant would have recovered from the Insurance Company once the contributory negligence is fixed.



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3. This Court is of the considered opinion that any stationed lorry should indicate that it is parked, especially, when it was travelling in a highway the lorry ought to have indicated that the lorry is stationed with indicator or parking lights. Therefore, the contributory negligence ought to be fixed on the lorry as well. And the Tribunal has erred in not fixing the same. The Tribunal has awarded Rs. 43,85,481/- with interest at the rate of 7.5% on Rs.30,84,928/- from the date of order to till the date of realization with costs excluding the period of dismissal for default.

4. Therefore, this Court is of the considered opinion that the case ought to be remitted back to the Tribunal for reconsideration. However, the claimants cannot suffer. Therefore, the appellant is directed to deposit Rs.15,00,000/- with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their shares with proportionate accrued interests and costs in the ratio fixed by the Tribunal, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. The Tribunal is directed to deposit the share of the minor child in a



C.M.A(MD)No.701 of 2023

WEB COPY

nationalized bank until the child attains majority. The third respondent herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months. Once the minor claimant attains majority, the claimant shall withdraw the same. For the balance amount, the parties are directed to contest the same before the Tribunal. The parties are at liberty to file additional pleadings and the Tribunal shall dispose the case within a period of six months from the date of receipt of a copy of this judgment.

5. With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.02.2024

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

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C.M.A(MD)No.701 of 2023

To

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



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C.M.A(MD)No.701 of 2023

S.SRIMATHY, J.

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C.M.A(MD)No.701 of 2023

14.02.2024