



C.M.A(MD)No.875 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **04.01.2024**

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THE HON'BLE MR.JUSTICE S.SRIMATHY

C.M.A(MD)No.875 of 2021
and
C.M.P.(MD)No.8230 of 2021

The General Manager,
Tamil Nadu State Transport Corporation,
Bye Pass Road, Dindigul.

... Appellant

Vs.

1.Ramar
2.Eswari

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree, dated 27.06.2019, passed in M.C.O.P.No.333 of 2014 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Dindigul.

For Appellant : Mr.K.Sudalaiyandi

For Respondents : Mr.V.Malaiyendran

JUDGEMENT

The State Transport Corporation has preferred this appeal against the award passed in M.C.O.P.



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2. It is a case of fatal accident. The contention of the appellant is that the deceased was a foot board traveller, at a speed breaker he fell down and died. The main issue that was raised by the Transport Corporation is that the Tribunal had fixed 100% negligence on the part of the appellant but ought to have fixed contributory negligence on the deceased as well. And the next contention is that for loss of love and affection, the Tribunal has fixed as Rs.50,000/-, also granted Rs.40,000/- for loss of consortium, but the Tribunal ought to grant either for loss of love and affection or for loss of consortium and not both.

3. As far as the contributory negligence is concerned, the plea of the appellant is that the deceased had travelled on the foot board and hence the negligence ought to be fixed on the deceased as well. Atleast, the Tribunal ought to have taken 30% contributory negligence on the deceased. However, this Court is not able to accept the contention for a sole reason that the Transport Corporation ought to have refused to take the passenger (deceased) if he is foot board traveller. And also ought to have directed the passenger to alight from the bus and they should not allow any foot board traveller at all. Since the Transport Corporation has



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failed in their duty, the entire negligence is fixed on the Transport Corporation.

4. As far as the compensation for love and affection the Tribunal had granted Rs.50,000/- and for loss of Consortium the Tribunal had granted Rs.40,000/- and the Tribunal cannot grant compensation on both heads. It is seen that the mother and the father of the deceased are the claimants and they are entitled to Rs.40,000/- each under any one of the head and in such circumstances, they are entitled to Rs.80,000/- for both under any one of the head. It is seen the Tribunal had granted Rs.50,000/- under Love and Affection and Rs.40,000/- under Loss of Consortium and the total is only 90,000/-, which is just compensation under one head. The head may differ, but the amount is just compensation. It can be taken either under loss of love and affection as Rs.90,000/- or under loss of consortium as Rs.90,000/-. Therefore, there is no difference in the award amount if the total amount is taken (even though it is under different heads). Therefore, both the grounds are not legally sustainable grounds.

5. Therefore, this Court is not inclined to interfere in the award.



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Hence, the Civil Miscellaneous Appeal is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

04.01.2024

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

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To

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- 1.Motor Accident Claims Tribunal (Principal District Judge),
Dindigul.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
C.M.A(MD)No.875 of 2021

04.01.2024