



C.M.A(MD)No.9 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : **21.03.2024**

CORAM:

THE HON'BLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**
and
THE HON'BLE **MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.9 of 2022
and
C.M.P.(MD)No.66 of 2022

Tamilnadu State Transport Corporation

(Kumbakonam Ltd.),

Rep. By its Managing Director,

No.27, Railway Station Road,

Kumbakonam,

Thanjavur District.

...Appellant

Vs.

1.Suryagandhi

2.S.A.Krishnasamy

3.M/s.United India Insurance Company Ltd.,

Rep. By its Manager,

96-B, K.T.Complex,

New Scheme Road, Pollachi,

Coimbatore.

...Respondents



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PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 19.10.2019 passed in M.C.O.P.No.93 of 2019 on the file of the Motor Accident Claims Tribunal (Additional Sessions Court), Karur.

For Appellant : Mr.P.M.Vishnuvarthanan
For R1 to R2 : No appearance
For R3 : Mr.N.Sudhagar Nagaraj

JUDGMENT

[Judgment was made by **MR.K.K. RAMAKRISHNAN, J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal (Additional Sessions Court), Karur in M.C.O.P.No.93 of 2019, dated 19.10.2019, the Transport Corporation has filed the present appeal.

2.The claimant filed the claim petition in M.C.O.P.No.93 of 2019, claiming a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) as compensation for the death of the son of claimant, who is the first



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respondent herein. By the award, dated 19.10.2019, the Tribunal awarded a sum of Rs.22,72,000/- (Rupees Twenty Two Lakhs Seventy Two Thousand One Seventy Five only) as compensation along with 7.5% interest from the date of filing of the claim petition.

3.Facts of the Case:-

According to the claimant, on 08.05.2016 at 2.30 pm., when the deceased was travelling in a car bearing Reg.No.TN 41 AC 2000 on Madurai – Dindigul bypass road, driver of the TNSTC bus bearing Reg.No.TN 63 N 1323 drove in a rash and negligent manner and dashed the car, due to which, he died on the spot itself. FIR was also registered against the driver of the TNSTC bus. The accident occurred only due to the rash and negligent driving of the driver of the TNSTC bus. Therefore, the claimant filed the claim petition, claiming a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) as compensation.

4.The appellant Transport Corporation filed the counter statement and denied all the averments made in the claim petition. The appellant Transport Corporation contended that the driver of the car is responsible



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for the accident and therefore, he is not entitled for compensation and hence, he prayed for dismissal of the claim petition.

5.The second respondent and the third respondent insurance company filed the counter statement and denied all the averments made in the claim petition. The appellant Transport Corporation contended that the accident occurred only due to the rash and negligent driving of the driver of the car and hence, they prayed for dismissal of the claim petition against them.

6.Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and 7 documents were marked as Ex.P1 to P7. On the side of the appellant Transport Corporation and the second and third respondent, R.W.1 was examined and no documents were marked.

7.Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellant and the respondents held that the accident occurred only due to the rash and



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negligent driving by the driver of the TNSTC bus bearing Reg.No. TN 63 N 1323 and directed the appellant Transport Corporation, to pay a sum of Rs.22,72,000/- (*Rupees Twenty Two Lakhs Seventy Two Thousand One Seventy Five only*) as compensation along with 7.5% interest from the date of filing of the claim petition under the following heads:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
Loss of Income	Rs.21,42,000/-
Filial Consortium	Rs. 1,00,000/-
Loss of properties	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Total	Rs.22,72,000/-

8. Aggrieved against the said award dated 19.10.2019, the appellant Transport Corporation has filed the present appeal.

9.Submission of the learned counsel for the Appellant:

The learned counsel appearing for the appellant Transport Corporation submits that *though the appellant disputed the negligence in the grounds, now he confined his argument relating to the quantum*



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alone. He further submits that the learned Tribunal Judge, without any documents to prove the salary of the deceased, fixed the income as Rs. 15,000/- and the learned Tribunal Judge has granted compensation of Rs. 1,00,000/- towards love and affection, which is excessive.

10.Submission of the learned counsel for the respondents:

Per contra, the learned counsel appearing for the claimant submits that the learned Tribunal Judge has deducted 50% upon the income of the deceased and only considering the fact that the mother has lost his son at the age of 29 years, the compensation of Rs.1,00,000/- was awarded towards love and affection, which is in accordance with law and hence, he seeks for dismissal of this appeal by disputing the averments made by the appellant Transport Corporation.

11.We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents and also perused all the materials available on record.



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12. The following points arise for consideration of this appeal:

12.1. Whether the negligence is correctly fixed on the driver of the TNSCTC bus?

12.2. Whether the compensation granted is in accordance with law?

13. Discussion on the negligence:

It is the case of the claimant, on 08.05.2016 at 2.30 pm., when the deceased Gunasekar was travelling in a car bearing Reg.No.TN 41 AC 2000 on Madurai – Dindigul bypass road, TNSCTC bus bearing Reg.No.TN 63 N 1323 which was driven in a rash and negligent manner, dashed against the car, due to which, he died on the spot itself. FIR was registered against the driver of the TNSCTC bus. The independent witness PW2 clearly deposed that the accident occurred only due to the rash and negligent driving of the driver of the TNSCTC bus. Even though driver of the bus was examined, his testimony is against the record and same is not sufficient to disbelieve the testimony of the independent witnesses. Apart from that, he has not challenged the registration of the Criminal case against him. Hence, the learned Tribunal Judge has correctly fixed the negligence up on the appellant Transport Corporation. Therefore, this



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Court concurs with the finding of the learned Trial Judge that accident happened due to the rash and negligent driving of the appellant corporation bus driver.

14.Discussion on quantum:

The learned counsel for the appellant submitted that the Tribunal erroneously fixed the monthly income of the deceased as Rs.15,000/- without any evidence. Deceased was aged about 29 years. He completed Multimedia Visual Communication course and working as Editor in Cine field and earning Rs.30,000/-. The claimant also produced Ex.P.6 and Ex.P.7 to show the deceased's educational qualification. But, no document was produced to show the occupation of the deceased and monthly income of the deceased. The learned Trial Judge has considered the educational qualification and the evidence of PW 1, and has fixed the monthly income of the deceased as Rs.15,000/-. The Hon'ble Supreme Court in the case of Chandra Alias Chanda Alias Chandraram and another Vs. Mukesh Kumar Yadav and others reported in 2022 (1) SCC 198 has held as follows:



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9....In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because the claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income.

Therefore, the learned trial Judge correctly applied the above principle and considered the evidence of the P.W.1 and also there was no contra evidence adduced to downsize the income of the deceased, fixed as monthly income of the deceased at Rs.15,000/-. Hence, this Court is unable to accept the argument of the appellant Transport Corporation that the income was fixed without analyzing evidence and document. Hence, this Court confirms the monthly income of the deceased as awarded by the Tribunal.



15. Calculation of the amount:

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The deceased was aged about 29 years at the time of accident as per Ex.P.2. As per the judgment of the Hon'ble Supreme Court in the case of ***Smt.Sarla Varma and Ors. vs. Delhi Transport Corporation & another*** reported in ***2009(2) TN MAC 1 (SC)***, the deceased was unmarried at the time of accident, hence 50 % reduced in the monthly income and 17 multiplier is applied and 40% for future prospect is taken. Hence, Loss of Income is calculated as follows :-

$$(Rs.15,000- 50\%) = Rs. 7,500/-$$

$$(Rs.7,500 + 40\%) = Rs.10,500/-$$

$$Rs.10,500 \times 12 \times 17 = \textbf{Rs.21,42,000/-}$$

15.1.As per the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Co.Ltd., Vs. Pranay Sethi and others*** reported in ***2017(2) TNMAC 609(SC)***, The learned Tribunal Judge ought not to have awarded a sum of Rs.1,00,000/- under the head of Filial consortium, but claimant is entitled to get Rs.40,000/- only. The learned Tribunal Judge has correctly awarded Rs.15,000/- towards Funeral expenses and Rs. 15,000 towards Loss of Estate to the widowed mother of the deceased.



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Hence, this Court reduces the award fixed by the Tribunal from Rs. 22,72,000/- to Rs.22,12,000/-.

16.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-determined as follows:-

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Re-quantified amount by this Court</i>	<i>Status</i>
Loss of income	Rs.21,42,000/-	Rs.21,42,000/-	confirmed
Filial Consortium	Rs. 1,00,000/-	Rs. 40,000/-	reduced
Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	confirmed
Loss of Properties	Rs. 15,000/-	Rs. 15,000/-	confirmed
Total	Rs.22,72,000/-	Rs.22,12,000/-	Reduced

17.Accordingly, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded in M.C.O.P.No.93 of 2019, on the file of the Motor Accident Claims Tribunal (Additional Sessions Court), Karur, dated 19.10.2019 is hereby reduced from Rs.22,72,000/- to Rs.22,12,000/-. The appellant Transport Corporation is directed to deposit the modified award amount with accrued interest and costs, less any



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amount if already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the award amount as apportioned by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

**(V.B.S.J.) (K.K.R.K.J.)
21.03.2024**

Index:Yes/No
Internet:Yes/No
sm/vsg

To

- 1.The Motor Accident Claims Tribunal
(Additional Sessions Court), Karur.
- 2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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