



C.M.A(MD)No.281 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 09.08.2024

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THE HONOURABLE MR JUSTICE SUNDER MOHAN

C.M.A(MD)No.281 of 2021

and

C.M.P(MD)No.2327 of 2021

Tamil Nadu State Transport Corporation (Madurai) ltd,
Through its Managing Director,
Bye pass Road,
Palanganatham
Madurai.

... Appellant/2nd Respondent

Vs.

1.Navamani
2.M.Subbaiyya
3.Kamilini
4.Minor Venkatesan
(R4 is the minor represented by
his next friend guardian father
second respondent)

...Respondents1 to 4/
Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the award and decree made in MCOP No.54 of 2019, dated 16.07.2019 on the file of the Motor Accident Claims Tribunal/Additional District Court, Karur.



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For Appellants	:Mr.P.Prabhakaran
For R1 to R4	:Mr.P.Suriliraja
For R5	:Given up

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellant/Transport Corporation challenging the award and decree made in MCOP No.54 of 2019, dated 16.07.2019 passed by the Motor Accident Claims Tribunal/Additional District Court, Karur.

2.The respondents 1 to 4 filed the claim petition before the Tribunal stating that on 05.07.2015 at about 7.20 a.m., when the daughter(aged 23 years) of the first and second respondents was travelling as a pillion rider of the two wheeler bearing Registration No.TN-45-AM-0488 from Karur to Coimbatore Main Road; a bus bearing Registration No.TN-72-N-1499 owned by the appellant Corporation had hit the two wheeler; as a result of which, the deceased fell down from the vehicle and was crushed by the rear wheel of the bus.



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3.The appellant filed a counter stating that the accident took place only due to the negligence of the rider of the two wheeler, who had cut across into the main road without any warning; that the manner of the accident would suggest that the bus driver was not responsible for the accident; and that in any case the compensation claimed by the claimants was excessive.

4.Before the Tribunal, on the side of the claimants, two witnesses were examined as P.Ws.1 and 2 and 12 documents were marked as Exs.P.1 to P.12. On the side of the respondents, one witness was examined as R.W.1 and one document was marked as Ex.R.1.

5.The Tribunal, after considering the oral and documentary evidence, held that the accident took place only due to the negligent driving of the driver of the bus belonging to the appellant Corporation and awarded total compensation of Rs.16,42,000/-.



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6.The learned counsel for the appellant submitted that the driver of the bus had deposed that the accident took place only due to the negligence of the rider of the two wheeler, in which, the deceased travelled; that the cross-examination on the side of the claimants has not affected the testimony of R.W.1; that the Tribunal ought not to have fixed the liability on the appellant Corporation; and that in any case, the Tribunal ought to have fixed the contributory negligence on the side of the rider of the two wheeler; and that the notional income fixed by the Tribunal at Rs. 10,000/- per month, is on the higher side, in the absence of any proof of income filed by the claimants, and prayed for allowing the appeal.

7.Per contra, the learned counsel appearing for the respondents/claimants submitted that P.W2-Eye witness to the occurrence had clearly stated that while the deceased and the rider of the two wheeler were traveling in the bike, the driver of the bus overtook their two wheeler and dashed against the two wheeler,



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which had caused the accident. The learned counsel further submitted that the Tribunal has rightly believed the evidence of P.W.2 to hold that the bus driver was responsible for the rash and negligent driving. As regards the notional income, the learned counsel submitted that the claimants marked Exs.P.8 to P.12, which would show that the deceased was holding a Diploma in Nursing and also was working in a private hospital at the relevant point of time, and hence, the notional income fixed by the Tribunal is just and reasonable.

8.This Court has carefully considered the rival submissions made on either side and also perused the materials available on record.

9.The questions involved in the instant appeal are as follows:

(i)Whether the Tribunal was right in holding that the driver of the bus belonging to the appellant Corporation was liable for



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rash and negligent driving?

(ii)Whether the compensation awarded by the Tribunal is just and reasonable?

10.As regards the first question, it is seen from the evidence of the eye witness(P.W.2) that while she was waiting near the accident spot for her husband to pick her up she witnessed the occurrence. She deposed that the driver of the bus came in a rash and negligent manner and overtook the two wheeler and dashed against the two wheeler, as a result of which, the deceased fell down and died. Nothing has been elicited in the cross examination to disbelieve her version. Though the driver of the bus was examined as R.W1, his evidence does not inspire confidence. The version in Ex.P.1, the FIR also corroborates the version of P.W.2. Further it is the admitted case that the two wheeler was hit by the rear side of the bus. This Court is of the view that the version of the bus driver that the two wheeler had suddenly crossed the road and she saw that cannot be accepted. Therefore, the tribunal was



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right in holding that the driver of the bus belonging to the appellant Corporation was guilty of negligence.

11.As regards the compensation, this Court is of the view that the Tribunal had taken into consideration the fact that the deceased was working as a Nurse in a private hospital and she had a diploma in Nursing. In such circumstances, considering the avocation of the deceased and the year of the accident, this Court is of the view that the notional income fixed by the Tribunal at Rs.10,000/- is just and reasonable. The award under the other heads is also just and reasonable and hence the same are confirmed.

12.In the result, the Civil Miscellaneous appeal is dismissed. The appellant/Transport Corporation is directed to deposit the compensation amount of Rs.16,42,000/-, within a period of 8 weeks from the date of receipt of a copy of this order, if not deposited earlier. The fourth respondent/claimant would have



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attained majority and therefore, he is directed to file a petition before the Tribunal to record his majority. On such a deposit, the claimants are entitled to withdraw their shares as apportioned by the Tribunal, less the amount already withdrawn if any. No costs. Consequently, connected Miscellaneous Petition is also closed.

09.08.2024

NCC:Yes/No

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To

- 1.The Motor Accident Claims Tribunal/
Additional District Court,
Karur.
- 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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