



C.M.A(MD)No.157 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.03.2024

CORAM:

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

C.M.A(MD)No.157 of 2021

and

C.M.P.(MD)No.1356 of 2021

The Manager,
Tamil Nadu State Transport Corporation,
Having Office at
Railway Station Road,
Kumbakonam.

...Appellant

Vs.

1.Sundaralakshmi
2.Minor Surajkumar
3.Minor Nithisri
4.Sadagopan
5.Parimala

...Respondents

(R2 & R3 are represented by their mother, 1st respondent.)



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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 30.09.2019 passed in M.C.O.P.No.518 of 2018 on the file of the Motor Accident Claims Tribunal (Special District Court), Thanjavur.

For Appellant : Mr.P.M.Vishnuvarathanan

JUDGMENT

[Judgment was made by **MRS.V.BHAVANI SUBBAROYAN, J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal (Special District Court), Thanjavur in M.C.O.P.No.518 of 2018, dated 30.09.2019, the Transport Corporation has filed the present appeal.

2.The appellant Transport Corporation is the respondent in M.C.O.P.No.518 of 2018 on the file of the Motor Accident Claims Tribunal (Special District Court), Thanjavur. The respondents 1 to 5



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herein are the claimants. They filed the claim petition in M.C.O.P.No.518 of 2018, claiming a sum of Rs.2,00,00,000/- (Rupees Two Crores only) as compensation for the death of the husband of the first respondent. By the award, dated 30.09.2019, the Tribunal awarded a sum of Rs.72,73,096/- (Rupees Seventy Two Lakhs Seventy Three Thousand and Ninety Six 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 respondents, on 02.01.2018 at about 13.00 hours, when the deceased was riding his bike bearing Reg.No.TN 57 AY 8127 in Tanjore-Kumbakonam road, the TNSC bus bearing Reg.No.TN 68 N 0700, coming from the opposite direction in a rash and negligent manner dashed against the two wheeler, due to which, the deceased sustained grievous head injuries and died on spot itself. FIR was registered against the TNSC bus driver. The accident occurred only due to the rash and negligent driving of the driver of the TNSC bus. Therefore, the respondents filed the claim petition, claiming a sum of Rs.2,00,00,000/- (Rupees Two Crores only) as compensation.



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4.The appellant Transport Corporation filed the counter statement and denied all the averments made in the claim petition. The learned counsel for the appellant Transport Corporation contended that the accident occurred only due to the carelessness of the deceased and he himself invited the accident while he was trying to cross the road and hence, he prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and 23 documents were marked as Ex.P1 to P23. On the side of the Transport Corporation, R.W.1 was examined and Ex.R1 to Ex.R3 were marked on his side.

6.Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, especially the evidence of the independent witnesses, P.W.2 and P.W.3 and arguments of the counsel for the appellant and claimants and also considering the specific fact that the driver of the TNSTC bus was insisted to work overtime, held that the accident occurred only due to the



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rash and negligent driving by the driver of the TNSTC bus and fixed the 90% negligence upon the driver of the TNSTC bus and fixed 10% negligence upon the deceased on account of non-wearing of the helmet and directed the appellant Transport Corporation, to pay a sum of Rs.72,73,096/- (Rupees Seventy Two Lakhs Seventy Three Thousand and Ninety Six only) as compensation along with 7.5% interest from the date of filing of the claim petition under the heads, which are as follows:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of Income	Rs.63,685/-
2	Future Prospects	(Rs.63,685/- + Rs.19,105/-) = Rs.82,790/-
3	Personal Expenses 1/4	(Rs.82,790 – Rs.20,697) = Rs.62,093/-
4	Annual Income	(Rs.62,093/- X 12) = Rs.7,45,116/-
5	Multiplier 15	(Rs.7,45,116/- X 15) = Rs.1,11,76,740/-
6	Less: Income Tax	(Rs.1,11,76,740 – Rs.31,65,522) = Rs.80,11,218/-
7	Loss of Consortium	Rs.40,000/-
8	Funeral Expenses	Rs.15,000/-
9	Loss of Estate	Rs.15,000/-
10	Total Compensation Amount	Rs.80,81,218/-



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	<u>Less:</u> 10% negligence on the part of the deceased.	Rs. 8,08,122/-
	Total Compensation Amount(After deduction)	Rs.72,73,096/-

7. Aggrieved against the said award dated 30.09.2019 on the negligence aspect, the appellant Transport Corporation has filed the present appeal.

8.Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant Transport Corporation submits that the Tribunal has erred in considering the evidence of independent witnesses, P.W.2 and P.W.3, who are interested witnesses and hence, fixing the negligence at 90% on the driver of the TNSTC bus is not correct.

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



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

10.1.Whether the negligence is correctly fixed on the appellant Transport Corporation bus?

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

11. Discussion on the negligence:

According to the respondents, on 02.01.2018 at about 13.00 hours, when the deceased was riding his bike bearing Reg.No.TN 57 AY 8127 in Tanjore-Kumbakonam road, the TNSCTC bus bearing Reg.No.TN 68 N 0700, coming from the opposite direction in a rash and negligent manner dashed against the two wheeler, due to which, the deceased sustained grievous head injuries and died on the spot itself. FIR was registered against the TNSCTC bus driver. The accident occurred only due to the rash and negligent driving of the driver of the TNSCTC bus. It is an admitted case that the driver of the TNSCTC bus was insisted to drive the bus overtime even as per the evidence of RW1. It is clearly deposed by P.W.2 that the accident took place due to the rash and negligent driving of the TNSCTC bus driver. Further, in the FIR itself, it is clearly stated that the negligence is on the part of the TNSCTC bus driver. Hence, the Tribunal



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has rightly fixed the negligence at 90% on the part of the TNSTC bus driver. Therefore, this Court confirms the finding of the Tribunal that the driver of the appellant Transport Corporation bus, drove the bus in a rash and negligent manner and dashed against the two wheeler of the deceased and caused the accident. Hence, the appellant Transport Corporation is liable to pay the compensation.

12.Discussion on quantum:

The deceased was a Government Servant and aged about 40 years and as per Ex.P.23 the deceased salary is Rs.63,685/-. Hence, 30% for future prospects also is fixed as per the Judgment of the Hon'ble Supreme Court in the case of *National Insurance Co.Ltd., Vs. Pranay Sethi* reported in **2017(2) TNMAC 609(SC)**, 30% of the future prospects comes around Rs.63,685/- X 30/100 (Rs.19,105/-) = Rs.82,790/-. Hence, the total monthly income of the deceased is Rs.82,790/-. The age of the deceased is 40 years and since there are four dependents, 1/4th is deducted for personal expenses and the same is calculated as follows:-



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$$(Rs.82,790 - Rs.20,697) = Rs.62,093/-$$

$$(Rs.62,093/- \times 12) = Rs.7,45,116/-$$

Hence, Annual Income of the deceased is Rs.62,093/- and applying the multiplier of '15' the amount comes around as follows:-

$$(Rs.7,45,116/- \times 15) = Rs.1,11,76,740/-$$

$$\text{Loss of Income} = Rs.1,11,76,740/-$$

In the above said amount, calculated the Loss of Income of deceased, is calculated after deducting the income tax amount Rs.31,65,522/- and the same is calculated as follows:-

$$(Rs.1,11,76,740 - Rs.31,65,522) = Rs.80,11,218/-$$

$$\text{Loss of Income} = \text{Rs.80,11,218/-}$$

12.2. The non pecuniary damages as per the *Pranay Sethi case* is calculated as follows:-



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<i>Heads</i>	<i>Amounts</i>
Loss of Consortium	Rs.40,000/-
Funeral Expenses	Rs.15,000/-
Loss of Estate	Rs.15,000/-

12.3. The Tribunal, deducted 10% negligence on the part of the deceased. The compensation amount after 10% negligence comes to Rs.72,73,096/- to the claimant.

Total Compensation Amount	Rs.80,81,218/-
<u>Less:</u> 10% negligence on the part of the deceased.	Rs. 8,08,122/-
Total Compensation Amount awarded by the Tribunal	Rs.72,73,096/-

12.4. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference.

13. Conclusion:

For the forgoing reasons, this Court is of the view that there is no infirmity in the award passed by the Tribunal which is as follows and the same does not warrant any interference.



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Sl. No	Heads	Amount awarded by the Tribunal
1	Loss of Income	Rs.63,685/-
2	Future Prospects	(Rs.63,685/- + Rs.19,105/-) = Rs. 82,790/-
3	Personal Expenses 1/4	(Rs.82,790 – Rs.20,697) = Rs. 62,093/-
4	Annual Income	(Rs.62,093/- X 12) = Rs. 7,45,116/-
5	Multiplier 15	(Rs.7,45,116/- X 15) = Rs.1,11,76,740/-
6	Less: Income Tax	(Rs.1,11,76,740 – Rs.31,65,522) = Rs. 80,11,218/-
7	Loss of Consortium	Rs. 40,000/-
8	Funeral Expenses	Rs. 15,000/-
9	Loss of Estate	Rs. 15,000/-
10	Total Compensation Amount	Rs. 80,81,218/-
	Less: 10% negligence on the part of the deceased.	Rs. 8,08,122/-
	Total Compensation awarded by the Tribunal	Rs. 72,73,096/-

In view of the above, this Court finds no merit in the contention of the learned counsel appearing for the appellant Transport Corporation.

14. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Accident Claims Tribunal (Special District Court), Thanjavur in M.C.O.P.No.518 of 2018, dated



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30.09.2019 is hereby confirmed. The appellant Transport Corporation is directed to deposit the award amount with proportionate accrued interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are 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. The Tribunal shall deposit the shares of the minor claimant in a Fixed Deposit under the cumulative deposit scheme in any one of the Nationalized Banks, till they attain majority. The mother / guardian of the minors is permitted to withdraw the interest accrued thereon once in three months directly from the bank. No costs. Consequently, connected miscellaneous petition is closed.

**(V.B.S.J.) (K.K.R.K.J.)
12.03.2024**

Index: Yes/No

Internet: Yes/No

sm/sbn

Note: Registry is directed to issue order copy to the respondents.



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To

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- 1.The Motor Accident Claims Tribunal
(Special District Court),
Thanjavur.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.
and
K.K. RAMAKRISHNAN, J.

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C.M.A(MD)No.157 of 2021
and
C.M.P.(MD)No.1356 of 2021

Dated:12.03.2024