



C.M.A(MD)No.361 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

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.361 of 2022
and
C.M.P.(MD)No.3259 of 2022

The Managing Director,
M/s.Tamilnadu State Transport Corporation,
Kumbakonam (Division-II),
Periyamilaguparai,
Trichy – 1.

...Appellant

Vs.

1.Pushpadevi
2.S.Krishnan
3.Vinitha kumari

...Respondents

*(Name of R3 is amended vide Court Order dated 20.10.2023 in
CMP(MD)No.12510 of 2023.)*



C.M.A(MD)No.361 of 2022

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 08.01.2020 passed in M.C.O.P.No.933 of 2015 on the file of the Motor Accident Claims Tribunal (Special District Judge), Tiruchirapalli.

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 (Special District Judge), Tiruchirapalli in M.C.O.P.No. 933 of 2015, dated 08.01.2020, the Transport Corporation has filed the present appeal.

2.The claimants filed the claim petition in M.C.O.P.No.933 of 2015, claiming a sum of Rs.1,50,00,000/- (Rupees One Crore and Fifty Lakhs only) as compensation for the death of the husband of the third



C.M.A(MD)No.361 of 2022

respondent. By the award, dated 08.01.2020, the Tribunal awarded a sum of Rs.69,50,175/- (Rupees Sixty Nine Lakhs and Fifty 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 claimants, on 02.06.2015, when the deceased was riding his two wheeler bearing Reg.No.TN 45 AV 7219 on the extreme left side of Mannarpuram service road, the TNSHC bus bearing Reg.No.TN 45 N 2468 was driven in a rash and negligent manner by its driver in an uncontrollable speed from the same direction and hit against the deceased, due to which, he died on the spot. FIR was also registered against the driver of the TNSHC bus. The accident occurred only due to the rash and negligent driving of the driver of the TNSHC bus. Therefore, the claimants filed the claim petition, claiming a sum of Rs.1,50,00,000/- (Rupees One Crore and Fifty Lakhs only) as compensation.

4.The appellant Transport Corporation filed the counter statement and denied all the averments made in the claim petition. The Transport



C.M.A(MD)No.361 of 2022

Corporation contended that the deceased without lifting the side stand, drove the bike and it dashed against a stone, due to which, he fell down on the left rear wheel of the bus 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 7 documents were marked as Ex.P1 to P7. On the side of the appellant Transport Corporation, R.W.1 and R.W.2 were examined and Ex.R1 and Ex.R2 were marked. On the side of the Court, documents Ex.X1 to Ex.X4 were marked.

6.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 negligent driving by the driver of the TNSTC bus bearing Reg.No. TN 45 N 2468 and directed the appellant Transport Corporation, to pay a sum of Rs.69,50,175/- (Rupees Sixty Nine Lakhs and Fifty Thousand One Seventy Five only) as compensation to the claimants under the following



C.M.A(MD)No.361 of 2022

heads:-

WEB COPY

<i>Heads</i>	<i>Rs.</i>
Loss of Dependency	Rs.66,94,175/-
Consortium to 2 nd respondent, wife of the deceased.	Rs. 40,000/-
Filial Consortium to the petitioners No.1 and 2, parents of the deceased Rs.40,000/- each (40,000 x 2 = 80,000)	Rs. 80,000/-
Love and Affection to the petitioners No.1 and 2 and 2 nd respondent.	Rs. 1,00,000/-
Transporation Expenses	Rs. 6,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Total	Rs.69,50,175/-

7. Aggrieved against the said award dated 08.01.2020, 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 deceased was riding his two wheeler without lifting the side stand and the same was not considered by the Tribunal and hence, he seeks contributory negligence against the deceased. He further



C.M.A(MD)No.361 of 2022

submits that the Tribunal has also erred in awarding a sum of Rs.80,000/- (Rs.40,000/- each claimant) towards parental consortium and also erred in awarding another sum of Rs.1,00,000/- towards loss of love and affection including the wife of the deceased. Hence, he prays to set aside the award.

9.Submission of the learned counsel for the Respondents:

Per contra, the learned counsel appearing for the claimants submits that the evidence of both R.W.1 and R.W.2 are to be disbelieved as they are interested witnesses and their evidence cannot be believed for showing that the deceased drove the two wheeler without lifting the side stand and seeks for dismissal of appeal.

10.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.

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

11.1.Whether the negligence is correctly fixed on the driver of the TNSTC bus?



C.M.A(MD)No.361 of 2022

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

WEB COPY

12. Discussion on the negligence: On perusal of the records from the evidence on record and the deposition of R.W.1 it is clear that on the date of the accident, the deceased was riding his two wheeler without lifting the side stand and dashed against the stone on the road side and lost his balance and fell down on the left rear wheel of the bus. It is also revealed from the evidence that the deceased was riding his two wheeler without wearing helmet and fell down into the left rear wheel of the bus and died due to head injury. Overall assessment of the above circumstances, requires the application of the theory of contributory negligence. Hence, this Court fixes the contributory negligence upon the deceased to the extent of 10% for his act of riding the two wheeler without lifting the side stand. Further, The deceased was riding his vehicle even without wearing helmet and hence, this Court fixes the contributory negligence upon the deceased to additional extent of 10%. In total, the contributory negligence fixed upon the deceased is to the extent of 20% and upon the Transport Corporation to the extent of 80%.



13. Discussion on quantum:

WEB COPY

The age of the deceased Loganathan is fixed as 27 years. The deceased was serving as Artisan in BHEL at Trichy. Ex.X3 is the pay bill of the deceased for the month of May 2015. the monthly income of the deceased is fixed as Rs.35,417.25/- .Hence, the learned Tribunal Judge has correctly applied 50% of future prospects and deducted income tax and also applied multiplier of 17 and also deducted 1/3 for his personal expenditure and arrived the calculation of Rs.69,50,175/-. There is no reason to interfere with the same.

14. In result, the order of the learned Tribunal Judge in fixing the entire negligence upon the appellant corporation bus is hereby set aside and this Court fixes 20% contributory negligence upon the deceased and 80% of the contributory negligence upon the appellant corporation bus.

15. Conclusion:

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



C.M.A(MD)No.361 of 2022

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Re-quantified amount by this Court</i>	<i>Status</i>
Loss of Dependency	Rs.66,94,175/-	Rs.63,08,836/-	Reduced
Consortium to 2 nd respondent, wife of the deceased.	Rs. 40,000/-	Rs. 40,000/-	Confirmed
Love and Affection to the petitioners No.1 and 2	Rs. 1,00,000/-	Rs. 80,000/-	Reduced
Transporation Expenses	Rs. 6,000/-	Rs. 6,000/-	Confirmed
Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
Total	Rs.69,50,175/-	Rs. 64,64,836/-	Reduced
Less: 20% negligence of the deceased		Rs. 12,94,967/-	
Total (after deduction)		Rs. 51,69,869/-	

16. Accordingly, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded in M.C.O.P.No.933 of 2015, on the file of the Motor Accident Claims Tribunal (Special District Judge), Tiruchirapalli, dated 08.01.2020, is hereby reduced from Rs.69,50,175/- to Rs.51,61,869/-. The appellant Transport Corporation is directed to deposit the modified award amount with accrued interest and costs, less any 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 claimants are permitted to withdraw the award amount, less the amount, if any



C.M.A(MD)No.361 of 2022

already withdrawn on making necessary application before the Tribunal
as per the apportionment mentioned herein:

<i>Sl.No.</i>	<i>Rank</i>	<i>Amount</i>
1.	Wife of the deceased Vinithakumari	Rs.30,00,000/-
2.	Mother of the deceased Pushpa Devi	Rs.11,61,869/-
3.	Father of the deceased	Rs.10,00,000/-

There shall be no order as to 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/sbn



C.M.A(MD)No.361 of 2022

To

WEB COPY

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



WEB COPY



C.M.A(MD)No.361 of 2022

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

sm/sbn

C.M.A(MD)No.361 of 2022
and
C.M.P.(MD)No.3259 of 2022

21.03.2024