



C.M.A(MD)No.384 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.384 of 2022,
CROS.OBJ(MD).No.3 of 2024
and
C.M.P.(MD)No.3379 of 2022

C.M.A(MD)No.384 of 2022:

The State Express Transport Corporation Limited,
Represented by its Managing Director,
Chennai.

... Appellant

Vs.

1.S.R.Dhyanesh Babu
2.C.S.Sharmila Devi

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the award and decree made in M.C.O.P.No.361 of 2017 dated 22.11.2021 on the file of the Motor Accident Claims Tribunal/Special District Court (MACT), Madurai.

For Appellant : Mr.P.Prabhakaran
For R1 and R2 : Mr.K.Sekar

CROS.OBJ(MD).No.3 of 2024:

1.S.R.Dhyanesh Babu
2.C.S.Sharmila Devi

... Appellants



C.M.A(MD)No.384 of 2022

Vs.

The State Express Transport Corporation Limited,
Represented by its Managing Director,
Chennai.

... Respondent

PRAYER: Cross Appeal is filed against the award and decree made in M.C.O.P.No.361 of 2017 dated 22.11.2021 on the file of the Motor Accident Claims Tribunal/Special District Court (MACT), Madurai.

For Appellants : Mr.K.Sekar
For R : Mr.P.Prabhakaran

JUDGMENT

This Civil Miscellaneous Appeal is preferred by the State Express Transport Corporation Limited.

2. It is a case of fatal. The nature of accident is that the deceased was riding the two-wheeler with a pillion rider. According to the claimants, the deceased was travelling in a normal speed but the Transport Corporation bus was plying in high speed in rash and negligent manner. The right side of the bus had hit the two-wheeler, due to the same the deceased person fell down and succumbed to the injuries.



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3. The Transport Corporation had filed the appeal on quantum alone. The contention of the Transport Corporation is that the deceased was an Engineering student who was only 19 years old. Since he was a student, notional salary ought to be fixed to the tune of Rs.10,000/- only but the Tribunal has fixed the same as Rs.18,000/-. The contention of the Transport Corporation is refuted by the claimants stating that the deceased was an engineering student and hence the Tribunal had taken appropriate notional salary and relied on the judgment rendered by the Hon'ble Division Bench of this Court in the case of ***Jeyakannan Vs. Divya Impex*** reported in ***2017 (1) TN MAC 510 (DB)***. The Hon'ble Division Bench had held whether the deceased is a medical student or engineering student but they should be treated alike and there cannot be difference in fixation of notional income and the Court had fixed the notional monthly income as Rs. 18,000/-. Therefore, the claimants vehemently opposed for reducing the salary of the deceased.

4. This Court is of the considered opinion that the job opportunities to engineering students are reduced, some of engineering students are opting for bank jobs or any other lesser jobs due to non-availability of engineering jobs. Therefore, engineering course cannot be treated like medical course and hence,



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this Court is fixing the notional monthly income as Rs.15,000/-.

5. The next contention of the Transport Corporation is that the bus was plying on the Highway, therefore it cannot be stated that the bus was running in higher speed. Further the two-wheeler ought to have plied cautiously. In the present case, the deceased was travelling without helmet and succumbed to head injuries which would indicate that the Driver of the two-wheeler was driving without helmet and hence, contributory negligence ought to be fixed on the deceased two-wheeler.

6. As far as the contributory negligence is concerned, the version of the Transport Corporation ought to be accepted but this was vehemently opposed by the claimants stating that there is no contra evidence let in by the Transport Corporation. This Court is of the considered opinion that as rightly pointed out by the Transport Corporation any SETC Bus ought to ply in a higher speed in the national highways. In such circumstances, the person who is travelling on the cross road ought to be very careful. In the present case, the deceased was only 19 years teen age and there is all possibility that the deceased would have plied on high speed. Therefore, contributory negligence ought to be fixed on the deceased



as well. This Court is fixing contributory negligence of 10% on the deceased.

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7. Hence, this Court is modifying the loss of income and is fixing the contributory negligence on the part of the deceased. The modified compensation granted by this Court is as under:

i.	Monthly income of the deceased	Rs.15,000/-
ii.	Future prospects (40%)	Rs.6,000/-
Total		Rs.21,000/-
50% of income deducted towards personal expenses		50% of Rs.21,000/- =Rs.10,500/-

Sl.No.	Head of Compensation	Modified award granted by this Court	Award granted by the Tribunal
1.	Loss of income (Rs.10,500/- * 12 * 18)	Rs.22,68,000/- (reduced)	Rs.27,21,600/-
2.	Loss of parental consortium	Rs.80,000/- (confirmed)	Rs.80,000 /-
3.	Funeral Expenses	Rs.15,000/- (confirmed)	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/- (confirmed)	Rs.15,000/-
5.	Transport expenses	Rs.5,000/- (confirmed)	Rs.5,000/-
Total		Rs.23,83,000/-	Total = Rs. 28,36,600/-
Deducting 10% contributory negligence		- Rs.2,38,300/-	
Total compensation granted by this Court		Rs.21,44,700/- (reduced)	



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8.The appellant Transport Corporation is directed to deposit Rs.21,44,700/- with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their equal shares with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal.

9. With the above said directions, the Civil Miscellaneous Appeal is partly allowed and the Cross Objection is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

01.02.2024

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

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To

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- 1.Motor Accident Claims Tribunal /
Special District Court (MACT), Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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