



CMA.(MD)No.117 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.117 of 2022

and

C.M.P.(MD)No.1083 of 2022

The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai-600 002.

... Appellant

Vs.

1.P.Vanitha
2.Minor P.Karthika
3.Minor P.Sivasakthi
4.R.Saraswathi

... Respondents

[R2 and R3 Minor respondents are representing through
their Guardian / Next Friend / Mother P.Vanitha]

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the order passed in MCOP.No.390 of 2017 on the file of MACT (Special District Court), Madurai dated 26.06.2019 and praying to set aside the same.

For Appellant : Mr.P.M.Vishnuvarthanan

For R1 to R3 : Mr.V.S.Kishok Kumar

R4-Dismissed.



CMA.(MD)No.117 of 2022

J U D G M E N T

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The instant Civil Miscellaneous Appeal has been filed by the Transport Corporation challenging the finding on negligence and the quantum of compensation awarded by the Motor Accident Claims Tribunal (Special District Court), Madurai in MCOP.No.390 of 2017 dated 26.06.2019.

2.The respondents filed a claim petition stating that on 1.04.2017 while the deceased was walking from west to east at Madurai-Dindigul fourway road, the bus belonging to the appellant came in a rash and negligent manner and dashed against the deceased and caused fatal injuries to him.

3.The appellant filed a counter stating that the deceased had suddenly jumped and crossed the road, due to which, the driver of the bus could not control the vehicle and inspite of his best efforts, could not prevent the accident.

4.Before the Tribunal, the respondents examined P.W.1 and P.W.2 and marked Exs.P1 to P8. The appellant examined R.W.1.



5.The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the rash and negligent driving of the driver of the bus and directed the appellant to pay compensation of Rs.14,46,250/-.

6.The learned counsel for the appellant/transport corporation submitted that the Tribunal had ignored the evidence of R.W.1, that the evidence of the bus driver clearly established that the accident took place only since the deceased suddenly crossed the road; that the evidence of P.W.2 cannot be believed and that in any case, the compensation awarded by the Tribunal was excessive.

7.Per contra, the learned counsel for the respondents/claimants submitted that the Tribunal had rightly fixed the entire liability on the appellant, since the appellant had not established that the deceased contributed to the accident and that the award passed by the Tribunal is just and reasonable.

8.This Court has given its anxious consideration to the rival submissions and perused the evidence on record.



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

a.Whether the Tribunal was right in fixing the entire liability on the appellant?

b.Whether the Tribunal had awarded a just and reasonable compensation?

10.As regards the first issue, it is seen from the records that the respondents had examined P.W.2, an eye witness to the occurrence. They had also marked Ex.P.1/FIR, which corroborates the evidence of P.W.2. Though the appellant had examined R.W.1 in support of their case that it was the deceased, who crossed the road suddenly, they had not marked the plan or rough sketch or examined any other independent witnesses to corroborate his version. The evidence of R.W.1 does not inspire the confidence. Hence, the finding of the Tribunal, in holding that the driver drove the bus in a rash and negligent manner, is in accordance with law and the same has to be confirmed.

11.As regards the second issue, it is seen that P.W.1, wife of the deceased, had stated that the deceased was doing business and had marked Ex.P.5 to prove the avocation of the deceased. However, no document had been produced to prove the income of the deceased. In the absence of



any proof, the Tribunal rightly computed the compensation on the basis of notional income. Hence, the compensation under the head of loss of dependency has to be confirmed. However, the Tribunal had awarded a sum of Rs.1,00,000/- under the heads of loss of love and affection and loss of consortium to the four claimants. This Court is of the view that the Tribunal ought to have awarded Rs.1,60,000/- under the head of loss of consortium to the four claimants. The award passed under the other heads is confirmed. Hence, the award passed by the Tribunal is hereby modified as follows:-

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of Dependence	Rs.13,16,250/-	Rs.13,16,250/-	Confirmed
2	Loss of Love and Affection and Loss of Consortium	Rs.1,00,000/- (Rs.60,000/- + Rs.40,000/-)	Rs.1,60,000/-	Enhanced
3	Funeral Expenses	Rs.25,000/-	Rs.25,000/-	Confirmed
4	Transport Charges	Rs.5,000/-	Rs.5,000/-	Confirmed
Total		Rs.14,46,250/-	Rs.15,06,250 /-	Enhanced by Rs.60,000/-



CMA.(MD)No.117 of 2022

12.The appellant Transport Corporation is directed to deposit the modified compensation of Rs.15,06,250/- (Rupees Fifteen Lakhs Six Thousand Two Hundred and Fifty only) together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs, less the amount already deposited, if any, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

13.On such deposit, the respondents/claimants are entitled to withdraw the aforesaid amount together with proportionate interest and costs, as per the apportionment fixed by the Tribunal, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal. The respondents/claimants are directed to pay the necessary Court Fee, if any, on the enhanced amount.

14.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
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To

MACT (Special District Court),
Madurai



CMA.(MD)No.117 of 2022



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CMA.(MD)No.117 of 2022

SUNDER MOHAN, J.

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C.M.A.(MD) No.117 of 2022

22.08.2024