



C.M.A.(MD).No.183 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.02.2024

CORAM

**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

C.M.A.(MD).No.183 of 2019
and
C.M.P.(MD).Nos.2462 and 9023 of 2019

Tamil Nadu State Transport Corporation,
Periyamilaguparai,
Trichirappalli.

... Appellant

Vs.

1.Theivarani
2.Purusothaman
3.P.Deepa

... Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award made in M.C.O.P.No.239 of 2015, dated 31.07.2018 on the file of Motor Accident Claims Tribunal, Special District Judge, Tiruchirappalli.

For Appellant : Mr.A.V.B.Krishnakanth
For Respondents : Mr.D.Boopal



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J U D G M E N T

(Judgment of the Court was delivered by **V.BHAVANI SUBBAROYAN, J.**)

Aggrieved over the award passed by the Motor Accident Claims Tribunal, Special District Judge, Tiruchirapalli in M.C.O.P.No.239 of 2015, dated 31.07.2018, the present appeal has been filed by the State Transport Corporation.

2. According to the claimants, on 19.12.2014, the deceased Nagaraj was riding his motorcycle bearing Registration No.TN 45 BB 6822 towards Melaputhur to Palakarai. At that time, a bus bearing Registration No.TN 45 N 205 came in a rash and negligent manner in the same direction and dashed against the two wheeler of the deceased and the right side rear wheel ran over the head of the deceased and he died on the spot. At the time of accident, the deceased was working as Turner in Maass Industries, Kattur, Trichy and drawing a sum of Rs.18,000/- as salary per month. The first respondent is the wife of the deceased, the second respondent is the father of the deceased and the third respondent is the sister of the deceased. Hence, they filed the claim petition seeking compensation of Rs.15,00,000/-.



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3. The appellant/Transport Corporation resisted the claim petition contending that the driver of the appellant Corporation is no way responsible for the accident and the accident occurred only due to the rash and negligent driving of the motorcycle by the deceased. Further, the Traffic North Police registered a case in Crime No.330 of 2014, based on the complaint given by the father of the deceased and investigated the same and filed a final report before the Judicial Magistrate No.I, Trichy as 'Mistake of Fact' on 20.01.2015. The age, occupation and monthly income of the deceased are not admitted and they prayed for dismissal.

4. Before the Tribunal, on the side of the claimants, P.Ws.1 and 2 were examined and Exs.P1 to P4 were marked and on the side of the respondents, R.Ws.1 and 2 were examined and no document was marked. Exs.X1 to X3 were marked.

5. Finding of the Tribunal:

The Tribunal, after considering the oral and documentary evidence, came to the conclusion that the accident occurred only due to the rash and negligent driving of the Transport Corporation driver and the Transport Corporation is liable to pay compensation to the claimants and awarded a sum of Rs.



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21,05,400/- as compensation, even though they claimed only Rs.

15,00,000/-. Challenging the same, the present appeal has been filed by the

Transport Corporation and the heads are as follows:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of Income	Rs.20,30,400/-
2	For Funeral Expenses	Rs. 15,000/-
3	Loss of Estate	Rs. 15,000/-
4	Consortium for the wife	Rs. 40,000/-
5	Transport	Rs. 5,000/-
Total		Rs.21,05,400/-

6. Submission of the learned counsel for the appellant:

According to the appellant/Transport Corporation, the deceased was riding the two wheeler in a rash and negligent manner and while of overtaking the bus, he dashed against the right side body of the bus and fell down and sustained injuries. The driver of the bus cannot be held responsible for the accident. Further, the Tribunal failed to note that the F.I.R was registered against the driver of the bus wrongly and subsequently it was closed as 'Mistake of Fact' after proper investigation by the police authority, which clearly shows that the deceased was responsible for the accident. The Tribunal erred in fixing the income of the deceased at Rs.10,000/- per month, in the absence of any substantial, oral and documentary evidence to prove his income



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and the Tribunal is not justified in awarding the compensation of Rs.21,05,400/-, which is highly excessive and improper.

7. Heard the learned counsel for the appellant/Transport Corporation and the learned counsel appearing for the respondents and perused the materials available on record.

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

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

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

9. Discussion on the negligence:

According to the claimants, on 19.12.2014, the deceased Nagaraj was riding his motorcycle bearing Registration No.TN 45 BB 6822 towards Melaputhur to Palakarai. At that time, a passenger bus bearing Registration No.TN 45 N 205 came in a rash and negligent manner in the same direction and dashed against the two wheeler of the deceased and the right side rear wheel ran over the head of the deceased and he died on the spot. At the time of accident, the deceased was working as Turner in Maass Industries, Kattur,



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Trichy and drawing a salary of Rs.18,000/- per month. The first respondent is the wife of the deceased, the second respondent is the father of the deceased and the third respondent is the sister of the deceased. But contradictory statement was made by the driver of the bus, who stated that he heard some noise and he stopped the bus and got down and saw the accident. But in the cross-examination, he has stated that he viewed the same through the side mirror. The contradictory statement made by the driver of the bus cannot be accepted. It is also seen that only to avoid the payment of money to the claimants, they have invented a new story that the deceased, who tried to overtake the bus without any indication in a hectic speed and in a rash and negligent manner, has lost control, when he saw the oncoming motorcycle and dashed against the motorcycle and because of that, the deceased fell on the right rear wheel of the bus. It is seen that there is no material available on record to show that the deceased was trying to overtake the bus and fell down into the wheels of the bus. Further, it is seen that a letter was issued to the driver of the bus stating that he should not drive the bus in such a manner and the admission of the driver of the bus would show that the driver of the bus could have avoided the accident, if he had been careful. It is also seen that there was no material available on record even in the rough sketch to show where the motorcycle was lying down or the bus was standing and it is seen that the



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Inspector of Police, who has closed the said complaint as ‘Mistake of Fact’ has not seen the occurrence place and on his own, written something and then closed the matter as ‘Mistake of Fact’. It is settled principle that acquittal of criminal case is not a ground to disbelieve the oral evidence produced before the Tribunal for the reason that the burden of the proof in the criminal trial is beyond reasonable doubt and the burden of proof in the summary proceedings of the Motor Vehicle Accident Claims Tribunal is less than the preponderance of probability. In this case, P.W.2 eyewitness clearly deposed about the accident said to have happened due to the rash and negligent driving of R.W.1. He was subjected to the cross examination and nothing was elicited to disbelieve his version. The driver of the respondent corporation, namely, R.W.1 was negligent in not giving way to overtake and acted carelessly and failed to avoid the accident as admitted by him in the cross examination that he has affirmatively stated before the departmental enquiry that “*if he had thought of averting the accident, the same would have been avoided*” in the following words:

“எங்கள் நிறுவனத்தின் அதிகாரிகள் விபத்தை பற்றி விசாரித்தார்கள். எங்கள் நிறுவனத்தில் நான் நினைத்திருந்தால் இந்த விபத்தை தவிர்த்திருக்கலாம் என்றும் எதிர்காலத்தில் இதுபோல் நடக்காமல் கவனமாக வாகனத்தை ஓட்ட வேண்டுமென்று அறிவுறுத்தி ஒரு கடிதம் கொடுக்கப்பட்டது என்றால் சரி தான்”

There is no material available on record to disprove the case of the claimants.



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Hence, the driver of the appellant Corporation cannot claim that the accident had occurred only due to the negligence of the deceased himself and hence, the order of the Tribunal need not be interfered with.

10.Discussion on quantum:

The deceased worked as a Turner in the Maass Industries Kattur, Trichy and to prove the same, Ex.P4 was produced. In Ex.P4 his monthly salary was mentioned as Rs.18,000/-. The learned Tribunal Judge has taken into account of the photostat copy of Ex.P4 and the non-examination of the proprietor of the industry and fixed the notional income of Rs.10,000/- as monthly salary and added 40% future prospects and applied the multiplier of 18 and deducted 1/3 for his personal expenditure and awarded as sum of Rs.21,05,400/- after adding the conventional damages. This Court finds no reason to differ with the finding of the learned Tribunal Judge in the determination of the said award amount.

10.1.Calculation of the amount:

The age of deceased was 25 years, hence adding future prospects of 40% , and deduction 1/3 for personal expenses and applying the multiplier as 18, of the monthly income of the deceased is correct and the same are as follows:

$$[\text{Rs.10,000} + 4000 (40/100)] = \text{Rs.14,000/-}$$



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$$\begin{aligned} & [\text{Rs.14,000} - 4670 (1/3)] = \text{Rs. 9,330/-} \\ & \quad (4667 \text{ rounded at Rs.4670/-}) \quad (9330 \text{ rounded at Rs.9,400/-}) \\ & \text{Rs.9,400/-} \times 12 \times 18 = \text{Rs.20,30,400/-} \\ & \textbf{Loss of Income} = \textbf{Rs.20,30,400/-} \end{aligned}$$

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

For Funeral Expenses	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-
Consortium for the wife	Rs. 40,000/-
Transport	Rs. 5,000/-

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

11.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants under the heads are as follows:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
1	Loss of Income	Rs.20,30,400/-
2	For Funeral Expenses	Rs. 15,000/-
3	Loss of Estate	Rs. 15,000/-
4	Consortium for the wife	Rs. 40,000/-
5	Transport	Rs. 5,000/-
Total		Rs.21,05,400/-



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In view of the above, the claim made by the appellant/Transport Corporation is rejected.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Accident Claims Tribunal, Special District Judge, Tiruchirappalli, in M.C.O.P.No.239 of 2015, dated 31.07.2018, is hereby confirmed. The appellant/Transport Corporation is directed to deposit the entire award amount with accrued interests and costs within a period of four weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the claimants are permitted to withdraw their share as apportioned by the Tribunal, with accrued interests and costs. No costs. Consequently, the connected Miscellaneous Petitions are closed.

[V.B.S.,J.] [K.K.R.K.,J.]
19.02.2024

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

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- To
- 1.The Motor Accident Claims Tribunal,
Special District Judge,
Tiruchirapalli.
 - 2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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