



C.M.A.(MD).No.270 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 16.11.2023 : Pronounced on 05.01.2024

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**CMA(MD) No.270 of 2019
and
CMP(MD) No.3765 of 2019**

M/s.Tamil Nadu State Transport Corporation Limited,
Periyamilaguparai Street,
Tiruchirappalli.

... Appellant/ Respondent

Vs.

1.Geetha
2.Kannammal

... Respondents/Petitioners 1 and 2

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.2087 of 2012 dated 23.07.2018 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tiruchirappalli.

For Appellant : Mr.A.V.B.Krishnakanth

For Respondents : Mr.N.Sudhagar Nagaraj



C.M.A.(MD).No.270 of 2019

J U D G M E N T

RMT.TEEKAA RAMAN, J.

The Transport Corporation is the appellant herein. Against the award passed in M.C.O.P.No.2087 of 2012 by the Motor Accident Claims Tribunal, II Additional District Judge, Tiruchirappalli, dated 23.07.2018, the appellant has filed this appeal on the ground of negligence and quantum.

2.For the sake convenience, the parties are referred to as per their ranking before the Tribunal.

3.The respondents herein are the wife and mother of the deceased Sethurajan, filed the above claim petition seeking compensation for the death of the said Sethurajan in the road transport accident on 18.09.2011.

4.Before the Tribunal, the Transport Corporation filed counter statement alleging that due to the negligence on the part of the deceased, he had invited the accident and further, stated that the Lalgudi Police Station registered a criminal case against the motorcyclist (deceased) in



C.M.A.(MD).No.270 of 2019

Crime No.408 of 2011.

WEB COPY

5.During trial, the wife of the deceased was examined as P.W.1 and P.W.2-Gunasekaran, who is the occurrence witness and P.W.3 is the another occurrence witness were also examined and P.W.4 is the Chief Welfare Inspector in Tiruchirappalli Divisional Railway Office, wherein, the deceased was employed as Kalasi, was examined on Court summons, had marked service register and the salary slip, namely, Ex.X.1 to Ex.X.3 and Ex.P.5 was also shown and admitted by whom as a salary slip for the month of August 2007 issued by the Southern Railways to the deceased Sethurajan. On behalf of the Transport Corporation, the driver Athiyaman was examined as R.W.1 and Conductor of the bus was examined as R.W.2 and no document was marked.

6.Based upon the oral and documentary evidence, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the Transport Corporation bus and also awarded a compensation of Rs.30,50,080/- under various heads. Aggrieved by the same, the Transport Corporation has filed the above appeal.



C.M.A.(MD).No.270 of 2019

WEB COPY

7.The learned counsel for the appellant drew our attention to the plea in the counter statement that the criminal case, FIR was registered against the deceased and subsequently, it was abated on the death of the person and there is no negligence on the part of the driver of the Transport Corporation, namely, R.W.1.

8.The learned counsel for the respondents made a submission in support of the order passed by the Tribunal.

9.After hearing the rival submission and also perusing the award passed by the Tribunal, we find that on the date of the accident, the deceased Sethurajan drove his motorcycle from Lalgudi to Thirumangalam and as per the evidence of P.W.2 and P.W.3, he was driving by keeping his left hand side from east to west direction in the Lalgudi area and the driver of the transport corporation bus had driven his vehicle in a rash and negligent manner with high speed, came from the opposite direction and straightly dashed on the deceased, thereby, the said deceased Sethurajan was thrown out and sustained multiple injuries. On behalf of the Transport Corporation, R.W.1-driver and R.W.2-



C.M.A.(MD).No.270 of 2019

WEB COPY

conductor were examined. Their version is that “the respondent bus after loading the passengers at Lalgudi Santhaipettai bus stop, the respondent driver slowly moved the bus and noticed that a motorcyclist coming from the opposite direction in a rash and negligent manner and the respondent driver horned and switched the head lights and drove the bus to the extreme left side of the road and stopped the bus. In spite of the precautions indicated by the bus driver, the motorcyclist lost his balance and came to the wrong side i.e., to the right side and dashed against the front right portion of the just stopped bus. Hence, the respondent's driver is not responsible for the accident”. He further relied upon the fact that the Lalgudi Police Station have registered a criminal case against the motorcyclist (deceased) in Crime No.408 of 2011 and hence, he was alone responsible.

10.This Court has considered the nature of the proof that is required as a rash and negligence, in the matter arises under the claim petition, under the Motor Vehicles Act and Section 304A of IPC case, based upon the final report of the police before the learned Judicial Magistrate are two different things. They stand differ on the burden of proof. Furthermore, it is settled law that the First Information Report is not a conclusive proof nor an encyclopedia for deciding the case. The



C.M.A.(MD).No.270 of 2019

First Information Report is not a substantive piece of evidence, it has to be substantiated by an acceptable positive legal evidence. It is settled preposition of law that FIR from the point of informant is to set the criminal law in motion. Immediately after the accident, the motorcyclist due to the accidental injuries on the spot and hence, at that grave situation, it cannot be expected that the relative of the deceased to go to the police station to file an FIR rather will be interested in taking the injured to the hospital if so to make an attempt to revive the life and hence, the FIR in respect of the motorcycle accident is not a conclusive proof, it is not a substantive piece of evidence. Furthermore, as per the oral evidence of P.W.2 coupled with Ex.P.1, in the instant case, we find that at the instance of the wife of the deceased, the complaint has been lodged to the District Superintendent of Police and that due to the graveness of the situation, the relatives are not in a position to file the FIR immediately and taking advantage of the access of the relatives on the spot, the FIR has been registered against her husband and hence, she made a petition for reinvestigation of the matter. Furthermore, she also filed a petition under Section 156(3) of Cr.P.C., for a direction to register the FIR and case in C.C.No.5 of 2012 for the alleged offence under Section 304 A and the same is pending against the driver of the



C.M.A.(MD).No.270 of 2019

respondent (R.W.1)/Transport Corporation. The pendency of the above case as stated supra was admitted by R.W.1 in the cross examination assumes significance.

11(a).On perusal of the evidence of R.W.1-driver in the cross examination has admitted that he has not given any complaint to the police and the FIR was given by the conductor of the bus, namely, R.W.2. In the cross examination, he has categorically admitted that,

“ நான் மேற்கிலிருந்து கிழக்கிலும் இருசக்கர வாகனம் கிழக்கிலிருந்து மேற்கிலும் வந்தது, என்னுடைய முன் நடுப்பகுதியில் இருசக்கர வாகனம் வந்து மோதியது,

.....

விபத்து சம்பந்தமாக நான் நிர்வாகத்துக்கு எழுத்து மூலமாக தகவல் அல்லது வாக்குமூலம் எதுவும் கொடுக்கவில்லை,

....

என் மீது லால்குடி குற்றவியல் நீதிமன்றத்தில் சிசி 5/12 வழக்கு நிலுவையில் உள்ளது.□

11(b).R.W.1 has admitted the pendency of the criminal case and the complaint was not lodged by him, it was lodged by the conductor and he has not given anything in writing either to the Management or to the police and above all, he had admitted that his vehicle came in the opposite direction of the two wheeler and dashed against the two wheeler in the middle of the bus on the front side assumes significance, which is



C.M.A.(MD).No.270 of 2019

clearly spoken to by P.W.2(occurrence witness) and P.W.4.

11(c).R.W.2-conductor of the bus has categorically admitted in the cross examination that when the police came to the place for spot enquiry on the middle of the road, the corpus of the deceased was lying and on the spot, he has not lodged any complaint with a police and at the time, the driver is also present. He admitted that “இஐரு சக்கர ஓட்டுநர் தவறான பாதையில் வந்ததாக புகாரில் சொல்லவில்லை, நீதிமன்றத்தில் தான் கூறுகிறேன்.” Thus, in view of the admission made by R.W.2 in the cross examination and the version of R.W.1 in the chief examination, the deceased drove the motorcycle on the wrong side of the road, which was never spoken to by him in the complaint given at the time of the accident with police which has culminated into the FIR and hence, we find that the version of R.W.2 in the witness box is nothing but an exaggeration amounting to material contradictions as to the manner of the accident. After the accident, the corpus of the deceased was lying on the middle of the road as per the evidence of P.W.2, the bus dashed against the two wheeler and dashed against the road mediator and stopped. So also, the evidence of R.W.1 that the two wheeler dashed against the front middle of the bus. Hence, we find that the accident has taken place due to the rash and negligent



C.M.A.(MD).No.270 of 2019

driving of the driver of the transport corporation (R.W.1) and hence, a similar finding rendered by the Tribunal on the different reasoning is hereby confirmed.

12.The learned counsel for the respondents would contend that on the date of the accident, the deceased was not wearing helmet and hence, the contributory negligence at the rate of 10% or 5% to be fixed on the part of the deceased. On perusal of the counter statement, no such plea has been taken before the Tribunal and neither R.W.1 nor R.W.2 in the witness box had deposed regarding the alleged non-wearing of the helmet by the deceased and hence, for the plea of contributory negligence on the part of the non-wearing of the helmet, it has to be raised before the Tribunal in the absence of being raised in the pleadings or in the evidence. Such a plea of contributory negligence for non-wearing of the helmet cannot be allowed to be raised at the appellate stage. For want of both pleadings and evidence, the said plea of the appellant stands negatived and this Court is of the considered view that such a plea has been raised for the purpose of the appeal as an afterthought and hence, the same is hereby negatived.



C.M.A.(MD).No.270 of 2019

WEB COPY

13. On the point of quantum of compensation, we have perused the evidence of R.W.4, who is the Chief Welfare Officer of the Trichy Divisional Railways, through whom Ex.P.5 and Ex.X.1 to Ex.X.3 were marked to show the last pay certificate of the deceased Sethurajan. As per the Service Register (Ex.X.3), the date of birth of the deceased is 30.03.1973; the date of appointment is 05.05.2006; the date of accident of the deceased is 18.09.2011 and on the date of the accident, he has completed 37 years and hence, as per the **Sarala Verma case**, multiplier 15 has to be adopted. Since the deceased was a Kalasi in the Southern Railway, which is a permanent job and the age was 37 years, future prospects of 50% has to be added as per the **Pranay Sethi case**. In view of two persons being the dependents $1/3^{\text{rd}}$ has to be deducted and as per the salary certificate, gross salary of Rs.16,556/- that was received by him immediately a month before the accident and hence, the loss of income of the deceased at Rs.29,800,80/- [Rs.16,556 x 12 x 15]; Rs.15,000/- towards funeral expenses; Rs.15,000/- towards loss of estate; and Rs. 40,000/- towards loss of consortium for the wife awarded by the Tribunal is just and reasonable. However, loss of love and affection for the mother was not granted by the Tribunal and hence, we are inclined to grant Rs. 40,000/- towards loss of love and affection for the mother and Rs.



C.M.A.(MD).No.270 of 2019

15,000/- towards transportation. Accordingly, the contention raised by the transport corporation stands negatived and as we find that the necessary loss of love and affection and the transportation charges has to be granted by invoking the suo-motu powers of enhancement without cross objection being filed, we are inclined to grant the same.

14.In view of the above discussion, the compensation is reworked in the manner hereunder:

Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of income	Rs.29,80,080/-	Rs.29,80,080/-	confirmed
2.Loss of consortium (1 st claimant)	Rs.40,000/-	Rs. 40,000/-	confirmed
3.Loss of Love and affection (2 nd claimant)		Rs.40,000/-	awarded
4.Loss of estate	Rs.15,000/-	Rs.15,000/-	confirmed
5.Funeral expenses	Rs.15,000/-	Rs.15,000/-	confirmed



C.M.A.(MD).No.270 of 2019

6.Transportation		Rs.15,000/-	awarded
Total Compensation	Rs. 30,50,080/-	Rs.31,05,080/-	enhanced

15.In fine, the award of the tribunal is partly modified and enhanced from Rs.30,50,080/- to Rs.31,05,080/- with interest at the rate of 7.5% per annum along with proportionate interest and costs.

16.The appellant / Transport Corporation is directed to deposit the modified award amount along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. Excess amount, already paid if any, shall be refunded to the appellant / Transport Corporation.

17.On such deposit being made, the claimants are permitted to withdraw their share amount as apportioned by the Tribunal, along with interest and costs, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. The appellant Transport Corporation and the respondents/claimants are liable to pay Court fee for the enhanced compensation awarded.

18.In the result, the civil miscellaneous appeal is partly-allowed



C.M.A.(MD).No.270 of 2019

WEB COPY

with the above modifications. No costs. Consequently connected

Miscellaneous Petition is closed.

(T.K.R.,J.) (P.B.B.,J.)
05.01.2024

NCC : Yes/No

Index : Yes/No

sjj

To

1.The Motor Accident Claims Tribunal,
II Additional District Judge, Tiruchirappalli.

2.The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,Madurai.



WEB COPY



C.M.A.(MD).No.270 of 2019

RMT.TEEKAA RAMAN,J.

AND

P.B.BALAJI, J.

SJI

CMA(MD) No.270 of 2019

05.01.2024