



C.M.A(MD)No.599 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.07.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

**C.M.A(MD)No.599 of 2021
and
C.M.P(MD)No.5817 of 2021**

Tamil Nadu State Transport Corporation
(Kumbakonam Division),
Rep. by its Managing Director,
Having Office at
Managiri Road,
Karaikudi.

... Appellant/Respondent

Vs.

Kalaimani

...Respondent/Claimant

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.270 of 2018, dated 12.12.2019 on the file of the Motor Accidents Claims Tribunal (VI Additional District Court), Madurai.



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For Appellant : Mr.P.M.Vishnuvarthanan

For Respondent : Mr.R.Jenifarbibin

JUDGMENT

(Judgment of the Court was delivered by **P.VADAMALAI, J.**)

The Civil Miscellaneous Appeal is preferred challenging the Award, dated 12.12.2019 passed in M.C.O.P.No.270 of 2018 by the Motor Accident Claims Tribunal/VI Additional District Court, Madurai.

2. The appellant/TN State Transport Corporation (Kumbakonam Division) has preferred this appeal.

3. For the sake of convenience, the parties as arrayed in M.C.O.P.No.270 of 2018 is adopted hereunder.

4) The brief facts of the case:

On 24.07.2017 at midnight 0.45 hours, the deceased Vivekmano was riding his two wheeler bearing registration number TN 65 AY 7779 along



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the Madurai - Rameshwaram NH Road near Indira Nagar bus stop from west to east. At that time, the respondent corporation bus bearing registration number TN 63 N 1327 was driven by its driver from opposite direction in a rash and negligent manner and dashed against the deceased's vehicle. Due to impact, the deceased Vivekmano sustained multiple grievous injuries all over the body and he died on the way to hospital. F.I.R. was registered against the driver of the respondent corporation bus. The deceased was aged 29 years at the time of death. He was working as an engineer in a private company and was earning Rs.30,000/- p.m. The deceased was unmarried and the petitioner being the mother of the deceased depending on the income of the deceased. Hence, the petitioner filed the claim petition seeking compensation of Rs.50,00,000/-.

5. The respondent/TN State Transport Corporation objected the claim petition by contending that the respondent's driver had driven the bus TN 63 N 1327 at moderate speed by observing traffic rules. When he was nearing at Indira Nagar bus stop, Maranadu bridge, the deceased Vivekmano without wearing helmet was riding his two wheeler in a rash and negligent



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manner with high speed and dashed against the bus on its right side.

The accident took place due to the sole negligence on the part of the deceased. The petitioner is not entitled to claim from the respondent.

6. The Tribunal has tried the claim petition. Both sides adduced oral and documentary evidence. On the side of the petitioner, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.20 were marked. On the respondent's side R.W.1 was examined, but no exhibit was marked.

7. After hearing both and after considering the evidences, the Tribunal has passed the impugned order and awarded a total compensation of Rs.29,33,000/- with interest. Aggrieved by the said award, the respondent/ Tamil Nadu State Transport Corporation preferred this Civil Miscellaneous Appeal.

8. Heard both sides and perused the records in this Civil Miscellaneous Appeal.



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9. The learned counsel for the appellant/respondent/TN State Transport Corporation has mainly argued that the rider of the two wheeler did not wear helmet and failed to indicate the light in his two wheeler and he himself invited the accident. The deceased violated the traffic rules. The respondent's bus driver was not at all responsible for the accident. The Tribunal without any material evidence fixed the income of the deceased.

10. It is contended on the side of the petitioner/claimant that the respondent's bus, which was driven by its driver in a rash and negligent manner, hit against the bike from opposite direction and thereby the accident occurred and the deceased was died on fatal injuries.

11. On perusal of records, it is clear that Ex.P.1 – F.I.R. was registered against the driver of the bus. Moreover, the eye witness P.W.2 cogently deposed about the accident. The respondent has not filed any counter complaint. The Investigating Officer investigated the case and filed the final report Ex.P.2 against the driver of the respondent bus. The evidence of



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R.W.1 is not sufficient to reject the Ex.P.1 - FIR and Ex.P.2 - charge sheet as rightly held by the Tribunal. Hence, the Tribunal correctly appreciated the evidence and held that the accident happened due to rash and negligent driving of the bus driver and the finding of the Tribunal does not need any interference by this Court.

12. The next contention raised by the appellant/respondent is that the deceased was not wearing helmet at the time of accident. However, the respondent has not substantiated the same before the Tribunal, but the final report was filed only against the driver of the respondent corporation. It is not disputed by the respondent.

13. The next contention raised by the appellant/respondent is that the Tribunal fixed the income of the deceased without any material. The respondent/petitioner says that her son was a graduate in the Engineering Department and filed documents Ex.P.8 to Ex.P.12 and her son was working as an engineer in various companies by producing Ex.P.13 to Ex.P.17. On perusal of order of the Tribunal, the Tribunal fixed the monthly income at



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Rs.20,000/- on the basis of decision of this Court reported in **2019 (2) TNMAC 153 (DB)**. This Court in the reported case **2019 (2) TNMAC 153 (DB)** fixed the notional income at Rs.20,000/- to a deceased who was doing 4th year Engineering course. There is no contra material produced by the respondent, whereas the deceased was earning Rs.17,000/- p.m. as seen from Ex.P.17. So, the deceased was earning Rs.17,000/- p.m. upto June 2016 as evidenced from Ex.P.17. So, the Tribunal has not erred in fixing monthly income of deceased at Rs.20,000/- p.m. Admittedly, the deceased was an engineer and also had experience in working few private companies. The Tribunal has also added 40% future prospects in view of the settled proposition of law in **Pranay Sethi case** reported in **2017 (2) TNMAC 609 (SC)**. The deceased was aged 29 years and also a bachelor at the time of accident. The Tribunal correctly deducted 50% towards personal expenses and also adopted multiplier '17' as per the settled proposition in **Sarla Verma case**. Thus the monthly income of the deceased is fixed at Rs.20,000/-, by adding 40% future prospectus the income would come to Rs.28,000/- if so per annum Rs.3,36,000/-, after deduction of 50% towards personal expenses the loss of income to the petitioner is Rs.1,68,000/-



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per annum. So, the Tribunal correctly arrived at the total loss of income of the petitioner/claimant, who is dependant of the deceased, was correctly arrived at Rs.1,68,000/- x 17 = Rs.28,56,000/-. In other respect, the appellant/respondent has not raised any objection against awarding of incidental benefits to the petitioner/claimant at Rs.15,000/- under the funeral expenses, Rs.15,000/- under the loss of life estate and Rs.40,000/- under the head consortium. In view of the above discussion, this Civil Miscellaneous Appeal fails.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the Award, dated 12.12.2019 passed in M.C.O.P.No.270 of 2018 by the Motor Accident Claims Tribunal/VI Additional District Court, Madurai is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

(N.S.S.,J.)

(P.V.M.,J.)

04.07.2024

NCC : Yes / No
Internet : Yes / No
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To

- 1.The Motor Accident Claims Tribunal /
VI Additional District Court,
Madurai
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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