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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1079 of 2023

and

C.M.P(MD)No.6874 of 2023

1. Valarmathy

2. Annamalai

... Appellants

Vs.

The Managing Director,
Tamilnadu State Transport Corporation,
Kumbakonam,
Division I.

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside Judgment and Decree, dated 02.08.2019 in M.C.O.P. No.28 of 2019 on the file of the Motor Accidents Claims Tribunal/Special District Court, Thanjavur and enhance the compensation to a sum of Rs.5,00,000/-.

For Appellants : Mr.N.Sudhagar Nagaraj

For Respondent : Mr.K.Ramaiah

JUDGEMENT

The claimants have preferred this appeal for enhancing the compensation to a sum of Rs.5,00,000/-.



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2. It is a case of fatal. The contention of the claimants is that the Tribunal has wrongly fixed contributory negligence on the deceased as 75%.

The nature of accident as described is that the deceased and his wife while travelling in the bus, the deceased wife was sitting in the front portion of the bus and when a seat was vacant adjacent to her, she called her husband who was sitting on the backside of the bus to occupy the seat. While he was coming from the backside to front side, he fell down from the running bus and died on the spot.

3. The contention of the claimants is that if the door is available the alleged accident would not have happened and there is no safety in the bus. Further the bus was running on high speed, while the driver of the bus has applied break the deceased fell down. However, the respondents denied that the driver was running the bus in high speed.

4. After hearing the arguments, this Court is of the considered opinion that the fact remains that the deceased fell down from the running bus and died on the spot. Also, the fact remains that door was not available, hence there is no stay measure in the bus. The Transport Corporation is bound to grant proper safety to the passengers. When the doors are not available then there is a clear lapse on the Transport Corporation for not granting any safety measures.



Further, the deceased also ought to have been careful while travelling in the bus from the backside to the front side. He ought to have travel with abandon cautious by holding. Therefore, contributory negligence ought to have fixed on the deceased as well. But the Tribunal has wrongly fixed contributory negligence on the deceased person is 75% and the Transport Corporation is 25%. Therefore, this Court is inclined to reverse the contributory negligence fixed by the Tribunal on the deceased person. Hence, this Court is fixing contributory negligence on the deceased person is 25% and the driver of the Transport Corporation is 75%.

5. The next contention that was raised by the claimant is that the deceased was running grocery shop, but the Tribunal has fixed the notional income as Rs.6,000/-, which is on the lower side. This Court is of the considered opinion that notional income without any proof ought to be fixed as Rs.8,000/-. In the present case, since the deceased person was running a grocery shop this Court is inclined to fix the notional income as Rs.10,000/-.

6. The 2nd claimant is father of the deceased, but the Tribunal has failed to grant consortium to the father. Therefore, this Court is granting a sum of Rs.40,000/- as consortium to the 2nd claimant.



Monthly salary is Rs.10,000/-
ADD 25% future prospectus Rs. 2,500/-

Rs.12,500/-

DEDUCT 1/3 personal
expenses Rs. 4,167/- is round to
Rs. 4,165/-

Rs.8,335/-
Annual income is Rs. 8,335 x 12
Rs.1,00,020/-

Since the deceased was 48 years
at the time of accident
the multiplier 13 is to be applied.

Rs.1,00,020/- x 13
Loss of income is Rs.13,00,260/-

7. Accordingly, the claimants are entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	This Court	
1.	For Loss of income	Rs.7,80,000/-	Rs.13,00,260/-	enhanced
2.	For loss of consortium to the 1 st claimant	Rs.40,000/-	Rs. 40,000/-	confirmed
3.	For loss of filial consortium to the 2 nd respondent		Rs. 40,000/-	granted
4.	For Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	confirmed
5.	For loss of estate	Rs.15,000/-	Rs.15,000/-	confirmed
Total		Rs. 8,50,000/-	Rs.14,10,260/-	



From the total compensation of Rs.8,50,000/- this Court is enhancing the compensation to Rs.14,10,260/-. Since this Court is fixing contributory negligence on the deceased person as 25% after deducting a sum of Rs.3,52,565/- from the total compensation Rs.14,10,260, this Court is fixing the compensation as Rs.10,57,695/-.

8. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The Transport Corporation is directed to deposit a sum of Rs.10,57,695/- as compensation, within a period of 12 weeks from the date of receipt of a copy of the order with 7.5% interest from the date of filing the petition till the date of realization along with Costs, less the amount if already deposited. On such deposit being made, the claimants are permitted to withdraw their respective share as apportioned by the Tribunal. The claimants are directed to pay the balance Court fee or the same shall be deducted from the amount before disbursing. No Costs. Consequently, connected miscellaneous petition is closed.

23.02.2024

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

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1.The Motor Accident Claims Tribunal / Special District Court,
Thanjavur.

2.The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam,
Division I.

3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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**Order made in
C.M.A(MD)No.1079 of 2023**

23.02.2024