



C.M.A.(MD) Nos.1047 & 1048 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.1047 & 1048 of 2024

and

C.M.P.(MD) Nos.10943 & 10945 of 2024

The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Pugaivandi Nilaya Salai,
Kumbakonam, Branch Manager Office,
Karanthai, Thanajavur District.

... Appellant in
C.M.A.(MD)No.1047/24

The Managing Manager,
Tamil Nadu State Transport Corporation Ltd.,
Railway Station Road,
Kumbakonam, Branch Manager Office,
Karanthai, Thanajavur.

... Appellant in
C.M.A.(MD)No.1048/24

Vs.

1.Kaliaperumal
S/o.Velan

2.Parameswari
W/o.Kaliaperumal

... Respondents in
C.M.A.(MD)No.1047/24

1.K.Vairakannu
S/o.Kathan



C.M.A.(MD) Nos.1047 & 1048 of 2024

2.V.Kaveriyammal

W/o.Vairakannu

... Respondents in

C.M.A.(MD)No.1048/24

Common Prayer:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the common Judgment dated 27.06.2023 passed by the Motor Accident Claims Tribunal [Special District Court], Thanjavur, in M.C.O.P.Nos.402 & 403 of 2020.

For Appellant

in both C.M.As. : Mr.S.Micheal Heldon Kumar

For Respondents

C.M.As. : Mr.A.Sivasubramanian

COMMON JUDGMENT

The instant appeals have been filed by the Tamil Nadu State Transport Corporation, challenging the finding on negligence by the Tribunal in the common award dated 27.06.2023, passed in M.C.O.P.Nos. 402 & 403 of 2020, which were filed by the dependents of the rider and the pillion rider of the two-wheeler.

2. The respondents in both appeals filed the claim petitions before the Tribunal stating that on 15.01.2020, at about 08:30 p.m., while the deceased were travelling in their two-wheeler, the bus belonging to the



C.M.A.(MD) Nos.1047 & 1048 of 2024

appellant, State Transport Corporation, came in the opposite direction in a rash and negligent manner and dashed against the two-wheeler, as a result of which both the rider and the pillion rider sustained fatal injuries.

3. The appellant, State Transport Corporation, filed a counter before the Tribunal denying the averments made in the claim petitions and stating that the accident took place only because of the two-wheeler rider, and in any case, the compensation claimed was excessive.

4. The claimants examined P.W.1 to P.W.3 and marked Exs.P1 to P18. The respondent examined R.W.1 and marked Exs.R1 and R2.

5. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the negligence of the bus driver and directed the appellant to pay the compensation of Rs.19,27,400/- in M.C.O.P.No.402 of 2020, which is subject matter of C.M.A.(MD) No.1047 of 2024, and Rs.19,27,400/- in M.C.O.P.No.403 of 2020, which is subject matter of C.M.A.(MD) No. 1048 of 2024.



C.M.A.(MD) Nos.1047 & 1048 of 2024

WEB COPY 6. The learned counsel for the appellant, State Transport Corporation, submitted that the evidence of P.W.3, who is a relative of the deceased, cannot be believed; that his presence in the scene of occurrence is highly doubtful; that the evidence of R.W.1, the bus driver, inspires confidence; that Exs.R1 and R2, which are the Chemical Analysis Reports for both the deceased, suggest that both the deceased were under the influence of alcohol at the relevant point of time; that the evidence further suggests that both the deceased did not wear helmet and the rider of the two-wheeler did not have a valid driving licence; that even according to the evidence of P.W.3, it was a head-on collision; and that considering all the facts, the Tribunal ought to have fixed the contributory negligence on the rider and the pillion rider of the two-wheeler.

7. The learned counsel for the respondents/claimants, per contra, submitted that the evidence of P.W.3 has not been controverted, except for the examination of the bus driver, who is an interested witness, and that merely because the pillion rider had consumed alcohol, contributory negligence cannot be presumed and that there is no evidence to show that the deceased did not wear the helmet and the rider of the two-wheeler did



C.M.A.(MD) Nos.1047 & 1048 of 2024

not have a valid driving licence, and therefore, the award of the Tribunal is just and reasonable and has to be confirmed.

8. The only point for consideration in the instant appeal is whether the finding on negligence by the Tribunal is justified.

9. The claimants had examined P.W.3, the eyewitness to the occurrence. According to P.W.3, the two-wheeler was proceeding from west to east, and the bus was proceeding from east to west in the opposite direction, and the bus driver caused the accident by driving the bus in a rash and negligent manner. An FIR was registered against the bus driver. The final report was also filed against the bus driver.

10. Per contra, the appellant had examined R.W.1, the bus driver, who had stated that the rider and the pillion rider of the two-wheeler did not wear the helmet and both were in an inebriated condition and came in the wrong side of the road and invited the accident by causing a head-on collision with the bus and that there was a barricade kept on the side of the road where the deceased was proceeding, and hence, the rider of the two-wheeler, in order to avoid the barricade, came on the wrong side and



C.M.A.(MD) Nos.1047 & 1048 of 2024

caused the accident. To corroborate the version of R.W.1, the appellant had marked Exs.R1 and R2, the Chemical Analysis Reports, which suggest that both the deceased had consumed alcohol. It is seen from the Reports that the stomach of the rider contained 460 mg. of ethyl alcohol, and the stomach of the pillion rider contained 184 mg. of ethyl alcohol. The quantity of ethyl alcohol would show that the fact that both the deceased were under the influence of alcohol cannot be ruled out.

11. Neither of the parties have produced evidence before the Tribunal to ascertain as to which vehicle went on the wrong side. P.W.3, in his cross-examination, had admitted that it was a head-on collision. Considering the above facts, this Court is of the view that the rider of the two-wheeler was under the influence of alcohol and also contributed to the accident. Further, in the light of the evidence of R.W.1 and the Postmortem Reports, which suggest that the deceased died due to the head injuries, this Court is of the view that the deceased did not wear helmet at the time of the accident.

12. Hence, considering the fact that there was a head-on collision and the deceased died due to the head injuries and also the fact that the



C.M.A.(MD) Nos.1047 & 1048 of 2024

rider of the two-wheeler was under the influence of alcohol at the time of the accident, this Court is of the view that 40% contributory negligence can be fixed on the rider of the two-wheeler. As regards the pillion rider, it is seen from the records that he also did not wear the helmet and sustained head injuries, and he was also under the influence of alcohol and went along with the rider knowing that he was under the influence of alcohol. Therefore, 20% contributory negligence can be fixed on the pillion rider of the two-wheeler.

13. The learned counsel for the appellant was unable to point out any infirmity in the quantum of compensation awarded by the Tribunal. Therefore, the award as regards the quantum of compensation is confirmed.

C.M.A.(MD) No.1047 of 2024 [M.C.O.P.No.402 of 2020 - pillion rider] : **20% contributory negligence**

14. The compensation of Rs.19,27,400/- awarded by the Tribunal is reduced to Rs.15,41,920/- [Rs.19,27,400 x 80/100].



C.M.A.(MD) Nos.1047 & 1048 of 2024

WEB COPY 15. The appellant, State Transport Corporation, shall deposit the aforesaid amount of Rs.15,41,920/- together with interest at 7.5% per annum from the date of the claim petition till the date of the realization (except for the default period, if any) and costs, after deducting the amount already deposited, if any, within a period of 4 weeks from the date of receipt of a copy of this Judgment.

16. On such deposit, the respondents/claimants are permitted to withdraw the same as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

17. The appellant, State Transport Corporation, is permitted to withdraw the excess amount, if any, by filing an application before the Tribunal.

C.M.A.(MD) No.1048 of 2024 [M.C.O.P.No.403 of 2020 - rider] :

40% contributory negligence



C.M.A.(MD) Nos.1047 & 1048 of 2024

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18. The compensation of Rs.19,27,400/- awarded by the Tribunal is reduced to Rs.11,56,440/- [Rs.19,27,400 x 60/100].

19. The appellant, State Transport Corporation, shall deposit a sum of Rs.11,56,440/- together with interest at 7.5% per annum from the date of the claim petition till the date of the realization (except for the default period, if any) and costs, after deducting the amount already deposited, if any, within a period of 4 weeks from the date of receipt of a copy of this Judgment.

20. On such deposit, the respondents/claimants are permitted to withdraw the same as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

21. The appellant, State Transport Corporation, is permitted to withdraw the excess amount, if any, by filing an application before the Tribunal.



C.M.A.(MD) Nos.1047 & 1048 of 2024

22. In the result, both these Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

11.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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Copy To:

- 1.The Special District Court,
Motor Accident Claims Tribunal,
Thanjavur, Thanjavur District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court, Madurai.



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SUNDER MOHAN, J.

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