



C.M.A(MD)No.236 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.236 of 2022,
Cross.Obj(MD)No.24 of 2022
and
C.M.P.(MD)No.2108 of 2022

C.M.A(MD)No.236 of 2022:

The Divisional Manager,
Tamil Nadu Transport Corporation,
Kumbakonam Division,
Karaikudi.

... Appellant

Vs.

1.Bhanupriya
2.Minor Yazhi Sri
3.Muthu Krishnan
4.Jeyalakshmi

... Respondents

***(2nd respondent represented through her
mother and natural guardian 1st respondent)***

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the order passed in M.C.O.P.No.95 of 2015, dated 19.05.2020, on the file of the MACT (Additional District Judge), Ramanathapuram.

For Appellant : Mr.P.M.Vishnu Varthanan



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For R1 to 4 : Mr.P.M.Hassanul Bazari
R2 : Minor represented by R1

Cross.Obj(MD)No.236 of 2022:

- 1.Bhanupriya
- 2.Minor Yazhi Sri
- 3.Muthu Krishnan
- 4.Jeyalakshmi

... Cross Objectors / Respondents

***(2nd respondent represented through her
mother and natural guardian 1st respondent)***

Vs.

The Divisional Manager,
Tamil Nadu Transport Corporation,
Kumbakonam Division,
Karaikudi.

... Cross Respondent / Appellant

PRAYER: Cross Objection is filed under Order 41 Rule 22 of Civil Procedure Code to enhance the compensation awarded in M.C.O.P.No,95 of 2015 on the file of Motor Accident Claims Tribunal / Principal District Court, Ramanathapuram, dated 18.09.2018, against which C.M.A.(MD)No.236 of 2022 has been and allow this cross objection.

For Cross Objectors : Mr.P.M.Hassanul Bazari
For Cross Respondent : Mr.P.M.Vishnu Varthanan

JUDGEMENT

The Tamil Nadu Transport Corporation has preferred this appeal. It is a case of fatal.



2. The contention of the appellant is that the deceased is also liable for the accident and hence the contributory negligence ought to be fixed against the deceased. But the Tribunal had rendered a finding that the two-wheeler was running on the extreme left and the vehicle of the Transport Corporation was running on the wrong side.

3. The learned Counsel appearing for the Transport Corporation has not produced any evidence to reverse the said finding. Therefore, this Court is not inclined to accept the plea of contributory negligence. The compensation awarded by the Tribunal is a just and fair compensation.

4. The claimants have also filed cross objection in the present case. The learned Counsel appearing for the claimants submitted that the Tribunal has taken notional salary as Rs.7,500/- but the deceased was doing prawn business. There is no iota of evidence to prove that the deceased was doing prawn business. However, it is seen that the deceased is possessing ITI certificate, but it is not proved that he was employed elsewhere. There cannot be any enhancement in fixation of notional salary without evidence. Therefore, this Court is not able to accept the plea of the claimants as well. Therefore, the Tribunal award is



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confirmed.

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5.The appellant is directed to deposit Rs.18,91,000/- towards compensation with interest @ 7.5% per annum and costs, less the sum already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their shares with accrued interests and costs in the ratio fixed by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal. The Tribunal is directed to deposit the share of the minor child in a nationalized bank until the child attains majority. The first respondent herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months.

6. Hence, the Civil Miscellaneous Appeal and the Cross Objection are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.02.2024

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

- 1.MACT (Additional District Judge),
Ramanathapuram.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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