



C.M.A.(MD).No.354 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.354 of 2022
and C.M.P.(MD).No.3220 of 2022

The Branch Manager,
Tamil Nadu State Transport Corporation Ltd.,
Karaikudi Branch,
Karaikudi. ... Appellant/Respondent

Vs.

1.Mariyasalomia
2.Mariya Deemat
3.Mariya Dimorcha
4.Mariya Anthony Dibonsan ... Respondents 1 to 4/Claimants

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the impugned award passed in MCOP.No.266 of 2019 dated 28.10.2020, on the file of the MACT (Principal District Court), Ramanathapuram.

For Appellant : Mr.P.M.Vishnu Varthanan

For Respondents : Mr.G.Vishnuram for R1 to R4



C.M.A.(MD).No.354 of 2022

JUDGMENT

WEB COPY

This appeal has been filed to set aside the impugned award passed in MCOP.No.266 of 2019 dated 28.10.2020, on the file of the MACT (Principal District Court), Ramanathapuram.

2.The facts in brief:

On 31.08.2019 at about 08.00 p.m., in the night the deceased Arockia Raj was riding his two wheeler bearing registration No.TN 65 AC 3498 on the Bamban Puyalkappagam Seashore Road. At that time, he was hit by the vehicle bearing registration No.TN 63 N 1464, which was driven by the appellant's driver, sustained injuries, taken to the hospital, where, he was declared to be dead. The occurrence took place because of the rash and negligent driving on the part of the appellant driver. Claiming compensation amount of Rs.15 lakhs, this petition was filed.

3.That was resisted by the appellant stating that it was self accident occurred due to the rash and negligent driving on the part of the deceased. The appellant's vehicle drove on the left hand side of the road. Without noticing the same the rider of the two wheeler namely the



C.M.A.(MD).No.354 of 2022

deceased drove the vehicle and hit the vehicle suddenly and invited the accident. So the appellant is not responsible for the occurrence and disputed the negligence.

4.To substantiate case of the claimants, two witnesses were examined on the side of the claimants and 13 documents were marked. On the side of the respondent/appellant two witnesses were examined and no documents were marked.

5.At the conclusion of the enquiry, with regard to the negligent aspect the Tribunal recorded the finding that the appellant vehicle was suddenly stopped by applying sudden brake, as a result of which, the deceased happened to hit the vehicle behind. Because of the rashness on the part of the appellant driver only the occurrence took place.

6.Regarding the compensation, the age was fixed as 45. Considering the avocation of the deceased namely fish vending business the Tribunal taken the notional income as Rs.9,000/-. To that 20% of future prospects was added and monthly loss of income was assessed as



C.M.A.(MD).No.354 of 2022

Rs.11,250/-. From that amount 1/3rd was deducted towards personal and living expenses. Multiplier 14 was taken and arrived on the following compensation amount by adding the customary categories.

<i>Sl. No.</i>	<i>Nature of Head</i>	<i>Award (Rs.)</i>
1.	<i>Loss of Income</i>	6,30,000
2.	<i>Funeral expenses</i>	15,000
3.	<i>Loss of Estate</i>	15,000
4.	<i>Loss of consortium for first claimant/wife</i>	40,000
	<i>Total</i>	<i>7,00,000</i>

7.Challenging the same, the appellant filed this appeal stating that the accident was invited by the negligence on the part of the deceased. The criminal case that was registered against the appellant's driver was closed. Apart from that it is also stated that the occurrence took place because of the over taking the stationed vehicle in a rash and negligent manner. He was not wearing helmet and no driving licence was produced.

8.As stated in the preamble portion, it is the specific case of the appellant that the deceased in the process of overtaking the stationed



C.M.A.(MD).No.354 of 2022

vehicle hit behind. But, it is a evidence to the effect that the appellant driver suddenly applied brake. As a result of which, the rider of the two wheeler namely the deceased happened to hit the vehicle back. The evidence on record to the effect that PW2 was examined as eye witnesses and as stated that the appellant driver suddenly applied the brake in the place of occurrence, so the accident.

9.The appellant vehicle driver was examined as RW1. Another passenger in the vehicle was examined as RW2. The evidence of PW2 was believed than that the evidence of RW1 and RW2 were rejected stating that they are interested witnesses. Naturally, the offending vehicle driver is to support his act. It is also in evidence to show that RW1 was assisted by RW2. So naturally, they would support each other. But PW2 is independent witness. He is not interested in either of the parties. From the evidence of PW2, it stand established that due to sudden braking the occurrence took place. But, however, considering the circumstantial evidence, it fixes the responsibility as 50/50. So, I absolutely find no reason to differ from the finding by the Tribunal.



C.M.A.(MD).No.354 of 2022

award amount as apportioned by the Tribunal and they can withdraw their respective share as per the procedure. Consequently connected miscellaneous petition is closed.

10.07.2024

Index : Yes / No
Internet : Yes / No
TM

To

- 1.The Principal District Judge, Motor Accident Claims Tribunal ,
Ramanathapuram.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.M.A.(MD).No.354 of 2022

G.ILANGOVAN,J.

TM

C.M.A.(MD).No.354 of 2022

10.07.2024