



C.M.A.(MD).No.591 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 20.11.2023 : Pronounced on 05 .01.2024

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**CMA(MD) No.591 of 2019
and
CMP(MD) No.7141 of 2019**

M/s.Tamil Nadu State Transport Corporation Limited,
Through its Managing Director,
Periyamilaguparai Street,
Trichirapalli.

... Appellant/ Respondent

Vs.

1.M.Sivagami
2.Minor M.Santhiya
3.Minor M.Saranya

... Respondents/Petitioners

[2nd and 3rd respondents represented by their mother/first 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.1141 of 2017 by the Motor Accident Claims Tribunal, (V Additional District Judge (FTC), Madurai, dated 20.02.2019.

For Appellant : Mr.P.M.Vishnuvarthan

For Respondents : Mr.K.Kumaravel



C.M.A.(MD).No.591 of 2019

J U D G M E N T

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RMT.TEEKAA RAMAN, J.

The Transport Corporation is the appellant herein. Challenging the award passed in M.C.O.P.No.1141 of 2017 dated 20.02.2019 by the Motor Accident Claims Tribunal, V Additional District Judge (FTC), Madurai, the transport corporation has filed this appeal on the ground of negligence and quantum.

2.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The first respondent herein, who is the wife of the deceased along with her daughters of the deceased, filed M.C.O.P.No.1141 of 2017 before the V Additional District Judge (FTC), Madurai, seeking compensation for the pecuniary loss sustained by the claimants/petitioners in a road transport accident.



C.M.A.(MD).No.591 of 2019

WEB COPY

4.Before the tribunal, the transport corporation filed counter statement alleging that the accident has taken place due to the negligence on the part of the deceased and not due to the negligence on the part of the driver of the transport corporation bus and accordingly, resisted the claim.

5.During trial, the claimant/petitioner No.1 examined herself as P.W.1 and also examined P.W.2-Sundar (occurrence witness), P.W.3-the staff attached to the office of the employer of the deceased and P.W.4-Satheeskumar (witness in Crime No.87 of 2017 on the file of the Melur Police Station) and marked Ex.P1 to Ex.P14. On the side of the respondent, the driver of the bus was examined as R.W.1 and copy of the referred charge sheet filed in Crime No.87 of 2017 on the file of the learned Judicial Magistrate was marked as Ex.R.1.

6.On consideration of both oral and documentary evidence, the Tribunal has come to the conclusion that the accident took place due to the rash and negligent driving of the driver of the transport corporation bus and based upon Ex.P.13-service register of the deceased, it has



C.M.A.(MD).No.591 of 2019

awarded a compensation of Rs.30,70,060/- with interest at 7.5% from the date of petition till the date of realization. Aggrieved by the same, the transport corporation is before this Court with this appeal.

7.The learned counsel for the appellant would contend that the evidence of R.W.1 coupled with Ex.R.1 goes to show that there is contributory negligence on the part of the deceased and that the compensation awarded by the Tribunal is excessive.

8.Per contra, the learned counsel for the respondents also relied on the decisions of this Court reported in **2011 (2) TN MAC 688 [Managing Director, Tamil Nadu State Transport Corporation, (Villupuram Division III) Ltd., Kancheepuram Vs. L.Chandramani]** and **2014 (1) TN MAC 295 (DB) [Managing Director, Tamil Nadu State Transport Corporation Limited, Madurai Division III, Rani Thottam, Nagercoil, Kanyakumari District Vs. S.Yobu and another]** and also made a submission in support of the award passed by the Tribunal.



C.M.A.(MD).No.591 of 2019

WEB COPY

9. On the point of quantum of contributory negligence, the evidence of P.W.2, P.W.4 and Ex.R.1 is available for appreciation of the manner of the accident alleged to have taken place was projected by both sides. P.W.2, the occurrence witness has categorically stated that due to the rash and negligent driving of the driver of the bus, the death was caused to the deceased and relied upon Ex.P.1-FIR registered against the driver of the bus. Per contra, R.W.1-driver of the bus, who entered the witness box, stated that as the deceased all of a sudden crossed over the road from north to south direction, the accident had taken place and he also further deposed that in order to avoid from hitting the deceased, R.W.1 stated that he has stopped his bus by hitting the center median of the said road. In spite of the same, the deceased could not control his vehicle, invited the accident by hitting the very same center median. Ex.R.1 was pressed into service by the transport corporation.

10. On perusal of Ex.R.1, it is a referred charge sheet filed by the Melur Police Station before the Judicial Magistrate in the concerned Crime No.87 of 2017. The contents reveal that though FIR was initially registered against the driver of the transport corporation bus, after



C.M.A.(MD).No.591 of 2019

WEB COPY

investigation, the investigation officer has chosen to close the file by filing a referred charge sheet. The basis of the referred charge sheet is the alleged statement recorded under Section 161 by one of the witnesses, Satheeskumar.

11.The said Satheeskumar, who is the listed witness No.1 in Ex.R.1-referred charge sheet filed by the Melur Police Station before the concerned Jurisdiction Magistrate, was examined as P.W.4 on the behalf of the claimants. On going through the evidence of P.W.4, he has categorically stated that it was due to the rash and negligent driving of the driver (R.W.1) of the bus, the accident had occurred and he has not supported Ex.R.1-final report and the version of P.W.4 runs contrary to the statement said to have been recorded under Section 161 of Cr.P.C. by the investigation officer. He was subjected to cross examination by the transport corporation bus. On a close perusal of the cross examination of P.W.4, we do not find anything being resisted in support of the transport corporation. After perusing the evidence of R.W.1, we find that there is no possible explanation as to why, he has severed the vehicle to the right hand side of the road.



C.M.A.(MD).No.591 of 2019

WEB COPY

12. On perusal of Ex.R.1, we find that it is only an outcome of the opinion of the investigation officer in the criminal case, which is said to be based upon the statement of the listed witness No.1, namely, Satheeskumar. However, the very same person by name Satheeskumar was examined on behalf of the claimants, he had disowned the statement and gave a statement against R.W.1 assumes significance and therefore, this Court finds that merely because the police have closed the case as 'Mistake of Fact' that will not lead to the conclusion that the driver of the transport corporation is not at fault. The standard of proof that is recorded to be proved in a criminal case beyond reasonable doubt, whereas, in the matters of claim petition filed before the Tribunal is to the level of preponderance of probability. Here, in this case, except Ex.R.1, there is no other document in support of the case of transport corporation. As stated supra, the version of R.W.1 in the witness box appears to be self serving statement in order to save his skin from the departmental proceedings. While the evidence of P.W.2-independent witness is duly corroborated by Ex.P.1-FIR, which came into force at the earliest points of time, besides the criminal law settled into motion by a third party. Furthermore, the basis of Ex.R.1 is the alleged statement said to have



C.M.A.(MD).No.591 of 2019

been given by one Satheeskumar to the police. However, the very same Satheeskumar has been supported the case of the claimants and hence, this Court finds that the oral evidence of P.W.2-independent witness is duly corroborated by documentary evidence of Ex.P.1 and supported by the evidence of P.W.4 and hence, we have no hesitation to come to the conclusion that the version of P.W.1, does not worth consideration and the driver of the transport corporation alone is liable to pay the compensation similar finding arrived at by the Tribunal, for the different reasoning is stated supra, is hereby confirmed. Consequently, the contention of the learned counsel for the appellant stands negated on the point of quantum of contributory negligence.

13.On the point of quantum of compensation, based upon Ex.P.12 and Ex.P.13, documentary evidence regarding the salary slip and service register, which were marked through P.W.3, who is working as an Assistant Accountant in the Tamil Nadu Agricultural College at Madurai, goes to show that the deceased was drawing Rs.16,667/- as a monthly salary and will be retiring from service on 30.06.2040 and accordingly, the very same amount was taken as a income and on the date of the



C.M.A.(MD).No.591 of 2019

WEB COPY

accident, the deceased was 36 years old and as per the ***Sarala Verma case***, multiplier 15 has to be adopted and as per the ***Pranay Sethi case***, 50% has to be added as a future prospects, since the deceased was working in the permanent job of the Government of Tamil Nadu and the pecuniary loss to the family members was arrived at Rs.45,00,090/- (Rs. 16,667/- + Rs.8,337.50 (50%) x 12 x 15) and deduction of 1/3rd is hereby confirmed and the income of the deceased was ascertained as Rs.30,00,060/- (Rs.45,00,090 x 1/3 = Rs.15,00,030 : Rs.45,00,090/- (-) Rs.15,00,030/-) and Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses and Rs.15,000/- towards transport charges and Rs.40,000/- towards consortium for the wife.

14.As far as the quantum of compensation is concerned, in ***2018 (1) TN MAC 592 (DB), [Managing Director, State Express Transport Corporation Limited, Vs. Radha and others]***, the Division Bench has held that though the appeal has been preferred by the Transport Corporation, considering the facts and circumstances of the case, the Court could take *suo motu* decision for enhancing the compensation amount awarded by the Tribunal, by re-appreciating the



C.M.A.(MD).No.591 of 2019

WEB COPY

evidence on record and applying the correct position of law, as on date and by invoking Order 41, Rule 33 C.P.C. and Section 151 CPC as well as Article 227 of the Constitution of India.

15.By relying upon the aforesaid decision, though this Appeal has been preferred by the Transport Corporation, on considering the facts and circumstances of the case, we find that with regard to loss of love and affection for the minor claimants 2 and 3, no award has been passed and hence, by invoking the *suo motu* powers, if compensation is awarded towards loss of love and affection, it would meet the ends of justice. Accordingly, an amount of Rs.75,000/- each is fixed to the daughters of the deceased. Accordingly, the amount of Rs.75,000/- each is awarded on the head of loss of love and affection.

16.In view of the above discussion, the compensation is reworked in the manner hereunder:

Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of income	Rs.30,00,060/-	Rs.30,00,060/-	confirmed



C.M.A.(MD).No.591 of 2019

2.Loss of consortium (1 st claimant)	Rs. 40,000/-	Rs. 40,000/-	confirmed
3.Loss of Love and affection (minor claimants 2 and 3)		Rs. 1,50,000/- each Rs. 75,000/-	awarded
4.Loss of estate	Rs.15,000/-	Rs.15,000/-	confirmed
5.Funeral expenses	Rs.15,000/-	Rs.15,000/-	confirmed
6.Transportation		Rs.15,000/-	awarded
Total Compensation	Rs. 30,70,060/-	Rs.32,35,060/-	enhanced

17.In fine, the award of the tribunal is partly modified and enhanced from Rs.30,70,060/- to Rs.32,35,060/- with interest at the rate of 7.5% per annum along with proportionate interest and costs.

18.The appellant / Transport Corporation is directed to deposit the modified award amount along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. Excess amount, already paid if any, shall be refunded to the appellant / Transport Corporation.



C.M.A.(MD).No.591 of 2019

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19. On such deposit being made, the first claimant is permitted to withdraw their share amount as apportioned by the Tribunal, along with interest and costs, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. In respect of the share of minors - claimants 2 and 3, the Tribunal is directed to deposit her share amount in any one of the Nationalised Banks till they attain the age of majority. Till then, the first claimant herein - mother of the minors shall be permitted to withdraw the interest accrued thereon, once in three months in order to maintain the minors. The appellant Transport Corporation and the respondents/claimants 1 to 3 are liable to pay Court fee for the enhanced compensation awarded.

20. In the result, the civil miscellaneous appeal is partly-allowed with the above modifications. No costs. Consequently connected Miscellaneous Petition is closed.

(T.K.R.,J.) (P.B.B.,J.)
05.01.2024

NCC : Yes/No
Index : Yes/No
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C.M.A.(MD).No.591 of 2019

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To

1.The Motor Accident Claims Tribunal,
V Additional District Judge (FTC), Madurai.

2.The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.591 of 2019

RMT.TEEKAA RAMAN,J.
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P.B.BALAJI, J.

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CMA(MD) No.591 of 2019

05.01.2024