



C.M.A(MD)No.721 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.02.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

C.M.A(MD)No.721 of 2020
and
C.M.P(MD)No.7313 of 2020

The Managing Director,
Tamil Nadu State Express Transport Corporation Ltd.,
Pallavan Salai, Chennai -1

... Appellant

Vs.

1.Roselin Nirmala
2.Minor angelin Nansi,
3.Minor Monishdharshan
(Minor respondents rep. through their
next friend, guardian mother, the first respondent).

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the impugned award dated 01.07.2020 made in MCOP No.312 of 2017 on the file of the Motor Accident Claims Tribunal (Sub Court), Kuzhithalai.



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For Appellant : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.D.Kirubakaran

JUDGMENT

[Judgment of the Court was delivered by K.K.RAMAKRISHNAN, J.]

This appeal arises out of the order passed by the Motor Accident Claims Tribunal (Sub Court), Kuzhithalai in MCOP No.312 of 2017, dated 01.07.2020.

Fact of this case

2. This is the case of the fatal accident. The case of the claimants is that on 10.02.2013 at about 14.00 hours, the deceased Sebastian was driving a two wheeler bearing Reg.No.TN-45AM-3668 at a normal speed in the Trichy to Pudukkottai main road. At that time, a bus bearing Reg.No.TN-01-AN-0057 belonging to the appellant Corporation driven by its driver in the same direction in a rash and negligent manner, dashed behind the deceased. In the impact, the deceased was thrown out and he fell down and sustained multiple injuries all over the body and he died on the spot. A postmortem was conducted by the



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Government Hospital, Trichy. In this regard, a criminal case in Crime No.43 of 2013 was registered against the driver of the bus. The first claimant is the wife and the claimants 2 and 3 are the son and daughter of the deceased. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the appellant Transport Corporation bus, the claimants filed a petition, claiming compensation of Rs.50,00,000/-.

3. Resisting the claim, the appellant Transport Corporation filed their counter, wherein, they stated that the accident had happened because of the careless act of the deceased person and the driver of the appellant Transport Corporation never drove the bus rashly or negligently. The deceased was drunk at the time of the accident. Due to which, he dashed against the iron rod standing in the roundabout. Further, the deceased was not wearing helmet. It was also contended that the claim is excessive and exorbitant.

4. To substantiate the case, on the side of the claimants, P.Ws.1 to 3 were examined and Exs.P1 to Ex.P.11 were marked. On the side of the appellant/Transport Corporation, R.W.1, one Mayandi, who was the driver of the



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appellant's bus, was examined, however, no document was marked.

5. Finding of the Tribunal

The Tribunal, after considering the oral and documentary evidence, held that the driver of the appellant's bus was responsible for the accident and awarded compensation of Rs.20,97,400/- to the claimants under the following heads:-

<i>Heads</i>	<i>Rs.</i>
Loss of Income	19,72,400/-
Loss of Love and Affection	60,000/-
Loss of Consortium (for 1 st claimant)	50,000/-
For Funeral Expenses	10,000/-
For Transportation	5,000/-
Total	20,97,400/-

Assailing the award, the appellant Transport Corporation has filed the present appeal.

6. Submission of the learned counsel for the appellant

The learned counsel appearing for the appellant Transport Corporation would submit that at the time of accident, the deceased has consumed alcohol, hence, he is responsible for the accident. To prove the negligence, on the side of



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the appellant Corporation, the driver of the appellant bus was examined, however, the same was not taken into consideration by the Tribunal. He would further submit that the award is on the higher side by wrongly fixing excessive monthly income and it requires reduction.

7. Submission of the learned counsel for the respondents

Per contra, the learned counsel appearing for the respondents/claimants argued that the impugned award awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

8. This Court carefully considered the submissions of the learned counsel for the appellant Transport Corporation and the learned counsel appearing for the respondents/claimants and perused the materials available on record.

9. The following points arise for consideration of this appeal:

9.1. Whether the negligence is correctly fixed on the appellant Transport Corporation bus?



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9.2. Whether the compensation granted is in accordance with law?

10. Discussion on the negligence:

A perusal of the records shows that the Tribunal, after considering Ex.P1 First Information Report and the evidence of P.W.2-eyewitness, came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the appellant's bus and fixed the liability on the part of the driver of the bus. We have perused the evidence of P.W.2-eyewitness, wherein, he cogently deposed about the occurrence. The appellant Corporation has not examined any witnesses apart from the driver of the bus (R.W1). We are of the view that since he is the interested witness, the Tribunal has not taken into consideration his evidence. Therefore, the contention of the learned counsel for the appellant Corporation that the evidence of the driver of the appellant's bus was not taken into consideration, is not acceptable. Further, the contention of the appellant that the deceased had consumed alcohol, has not been proved through any witnesses. In the Postmortem Report (Ex.P2), there is no remark to the effect that the deceased had consumed alcohol and under the influence of alcohol. Hence, the contention of the appellant that the deceased was in a drunken condition, is not



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acceptable. Therefore, we are of the view that the Tribunal has rightly fixed the liability on the driver of the bus.

11. Discussion on quantum

Insofar as the quantum is concerned, the learned counsel appearing for the appellant/Transport Corporation has contended that the award is on the higher side and it requires reduction. From the record, it is clear that the deceased was working in the Thokamalai Omsakthi Granite Private company and its manager was examined as P.W.3 to prove that the deceased's monthly income was Rs. 30,000/-. The deceased also was an income tax assessee and his income tax returns were filed under Ex.P.5 and Ex.P.7. In Ex.P.7, the annual income of the deceased was shown as Rs.1,84,596/-. He also submitted the income tax returns periodically and there is no suspicion over the said document. Therefore, the learned Tribunal Judge fixed the annual income of the deceased as Rs.1,84,066/- and 1/3 was deducted for his personal expenditure and the same was arrived as Rs.1,21,378/-. As per Ex.P.4, the age of the deceased is 46.

(i)As per the judgment of the Honourable Supreme Court reported in **2017(2) TNMAC 609(SC)** in the case of **(National Insurance Co. Ltd., Vs.**



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Pranay Sethi), 25% future prospect is to be taken, which is calculated as follows:

$1,21,378 \times 25 / 100 = 30,345/-$ and hence, the annual loss of income is calculated as Rs.1,51,723/- and applying 13 multiplier, it comes around Rs. 19,72,399/-.

Insofar as the loss of consortium is concerned, the Tribunal has awarded Rs.50,000/-, however, we are of the view that the same has to be reduced to Rs. 40,000/- and accordingly, the same is reduced to Rs.40,000/-. Likewise, the amount awarded under the head of loss of love and affection is also reduced to Rs.45,000/-. The amount of Rs.10,000/- awarded under the head of funeral expenses is enhanced to Rs.15,000/-. The amount of Rs.5,000/- awarded under the head of Transportation Expenses is confirmed. The rate of interest fixed by the Tribunal as 7.5% is unaltered.

12.Conclusion

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-



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Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of dependency	19,72,400/-	19,72,400/-	confirmed
Loss of Consortium	50,000/-	40,000/-	reduced
Loss of Love and Affection	60,000/-	45,000/-	reduced
Funeral Expenses	10,000/-	15,000/-	enhanced
For Transportation	5,000/-	5,000/-	confirmed
Total	20,97,400/-	20,77,400/-	Reduced

13. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The appellant/Transport Corporation is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. In the said amount, the first claimant/wife is entitled to Rs.10,77,400/- and the claimants 2 and 3/children are entitled to Rs.5,00,000/- each. On such deposit, the first claimant/wife is permitted to withdraw his share, less the amount already withdrawn, if any, together with proportionate interest and costs. Further, the Tribunal is directed to deposit the share of the minor claimants in any one of the nationalised banks, as fixed deposit under the Cumulative Deposit Scheme, till the minors attain the age of majors and the first claimant being mother and



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natural guardian is permitted to withdraw the interest once in six months directly from the Bank. The minor claimants on attaining majority are permitted to withdraw their share. No costs. Consequently, connected miscellaneous petition is closed.

[V.B.S.,J.] [K.K.R.K.,J.]
21.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes /No
skn/sbn

To

1. The Motor Accident Claims Tribunal (Sub Court),
Kuzhithalai.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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