



C.M.A(MD)No.102 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.02.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.102 of 2021

and

C.M.P(MD)No.901 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation,
Kudanthai Kottam (Karaikudi Branch),
Kashba Kumbakonam,
Kumbakonam,
Nearby Railway Station,
Thanjavur District.

: Appellant/1st Respondent

Vs.

1.Tamil Selvi
2.Abinaya
3.Vishal

**: Respondents 1 to 3/
Petitioners**

4.The Branch Manager,
Oriental Insurance Company Limited,
No.3607/21, 2nd Floor,
Sathyamoorthy Road,
Kasbha Pudukottai,
Pudukottai.

**: 4th Respondent/
2nd Respondent**



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PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order dated 13.02.2020 passed in M.C.O.P.No.134/2018 on the file of the Motor Accident Claims Tribunal-cum-III Additional District and Sessions Court, Thanjavur at Pattukottai.

For Appellant : Mr.A.V.B.Krishnakanth
For R1 to R3 : No appearance
For R4 : Mr.A.Elango

JUDGMENT

[Judgment of the Court was made by
MRS.V.BHAVANI SUBBAROYAN.J.]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal-cum-III Additional District and Sessions Court, Thanjavur at Pattukottai in M.C.O.P.No.134 of 2018, dated 13.02.2020, the Transport Corporation has filed the present appeal.

2.The appellant Transport Corporation is the first respondent in M.C.O.P.No.134 of 2018, on the file of the Motor Accident Claims Tribunal-cum-III Additional District and Sessions Court, Thanjavur at Pattukottai. The respondents 1 to 3 are the claimants, the fourth



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respondent is the insurer of the two wheeler of the deceased vehicle. The respondents 1 to 3 filed the claim petition in M.C.O.P.No.134 of 2018, claiming a sum of Rs.1,00,00,000/-(Rupees One Crore only) as compensation for the death of the husband of the first respondent and father of the respondents 2 & 3 in the accident that occurred on 01.01.2018. By the order, dated 13.02.2020, the Tribunal awarded a sum of Rs.45,51,200/- (Rupees Forty five Lakhs Fifty one Thousand Two Hundred only) as compensation.

3.Facts of the Case:-

According to the respondents 1 to 3, on 01.01.2018 at about 09.30 hours, while the deceased was going from East to West on the left side of the road in a two wheeler near Kurichi Pannaivayal Vaikal, the Government bus bearing Registration No.TN-63-N-1364, which came in the opposite direction was driven at a high speed by its driver and dashed against the deceased Govindaraj, and due to the said impact, the deceased died on the spot. The deceased was aged about 56 years at the time of accident and he was working as Special Sub-Inspector of Police, Thiruchitrambalam and earning a sum of Rs.65,000/- per month. The FIR



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was registered against the driver of the Government bus. The accident occurred only due to the rash and negligent driving by the driver of the bus belonging to the appellant. Therefore, the respondents 1 to 3 filed the claim petition, claiming a sum of Rs.1,00,00,000/- (Rupees One Crore only) as compensation.

4.The appellant filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the bus. The deceased himself is the cause for the accident and prayed for dismissal of the claim petition.

5.Before the Tribunal, the first respondent examined herself as P.W.1 and another witness one Sundarraaj was examined as P.W.2, who is an eye witness to the occurrence and marked 11 documents as Ex.A1 to A.11. The appellant examined Ramasubramanian the driver of the bus as R.W.1 and has not marked any exhibits.



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6.Finding of the Tribunal:

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The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants held that the accident occurred only due to the rash and negligent driving by the driver of the appellant Corporation and directed the appellant transport corporation to pay a sum of Rs.45,51,200/-(Rupees Forty Five Lakhs Fifty One Thousand Two Hundred only) as compensation and the details are as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Transportation	5,000/-
2	Funeral Expenses	20,000/-
3	Loss of Estate	15,000/-
4	Loss of Consortium	40,000/-
5	Loss of Income	44,71,200/-
<i>Total</i>		<i>45,51,200/-</i>

Aggrieved over the same, the appellant filed this appeal.

7.Submission of the learned counsel for the appellant:

(i)The learned counsel for the appellant submitted that the Tribunal, without properly appreciating the evidence of R.W.1 and the various



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circumstances, which shows negligence on the part of the deceased, erroneously came to the conclusion that the bus driver of the appellant corporation was responsible for the accident. He also submitted that P.W. 2 is an interested witness and hence, his testimony is to be rejected.

(ii)The learned counsel further submitted that the Tribunal granted exorbitant award without following the guidelines issued by the Hon'ble Supreme Court.

8.Submission of the learned counsel for the respondent:

The learned counsel for the respondent claimants submitted that P.W.2 is not an interested witness and that he is an independent witness and he cogently deposed about the accident and that there is no reason to disbelieve his version. The FIR and final report were also filed against the driver of the appellant corporation, namely, R.W.1. The appellant has not disputed the above filing of the final report and the involvement of the vehicle in question. Hence, he seeks for confirmation of the finding of the Tribunal on negligence.



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(ii)The learned counsel further submitted that on the basis of the salary certificate, the Tribunal has properly calculated the quantum. Further, 10% as future prospect awarded by the Tribunal is correct. The multiplier adopted by the Tribunal as 9 is also correct and hence, no interference is warranted by this Court. He further submitted that no amount was awarded under the head of “Love and affection” to the children of the deceased, and the same may also be awarded. Hence, he seeks for confirmation of the finding of the Tribunal on negligence and also seeks for dismissal of this appeal.

9.We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the fourth respondent and also perused all the materials available on record.

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

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

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



11.Discussion on the negligence:

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It is the case of the claimants that on 01.01.2018 at 10.00p.m., when the deceased was riding his two wheeler near the Thiruchitrambalam Kurichi agricultural channel to attend his duty as a Special Sub Inspector of Police, the appellant bus came in the opposite side in a rash and negligent manner and dashed against the two wheeler and due to the impact he died on the spot. The FIR was registered against the bus driver of the appellant in Crime No.3 of 2018 for the offence punishable under Sections 279 and 304(A) of IPC. After the investigation, final report was filed against the driver of the bus. P.W.2 an independent witness cogently deposed that when he was proceeding behind the two wheeler of deceased, the appellant company's bus driven by R.W.1 in a rash and negligent manner from the opposite direction dashed against the two wheeler of the deceased. Even though, he was subjected to cross-examination, no material was elicited on the side of the appellant's corporation to disbelieve his evidence. His evidence is trustworthy and no materials were let in on the side of the appellant to doubt his testimony. Further, R.W.1/driver of the vehicle was examined and he deposed that FIR was registered against him and final report was



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filed against him and the criminal case was pending against him. Even as per his version, the deceased rode the two wheeler with overloaded goods and lost balance and dashed against the bus. But the evidence of the independent witness P.W.2 and the materials collected by the investigation officer clearly proved that R.W.1 drove his vehicle in a rash and negligent manner. Further, the Motor Vehicle Inspector's report of the bus and two wheeler marked as Ex.P.10 and Ex.P.11 show the damages on both the vehicles which clearly corroborated the version of P.W.2. In view of the above discussion, this Court finds no perversity in the findings of the Tribunal in fixing the negligence on the appellant's driver. Therefore, this Court confirms the finding of the Tribunal that R.W.1 drove his vehicle in a rash and negligent manner and dashed against two wheeler of the deceased and caused the accident. Hence, the appellant Transport Corporation is liable to pay the compensation.

12.Discussion on quantum

The learned trial Judge granted compensation of Rs.45,51,200/-
The learned counsel for the appellant submitted that the learned Tribunal, granted exorbitant amount as compensation. To appreciate the said



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contention, this Court perused the salary certificate of the deceased and other relevant documents and observes as follows:

12.1. The deceased was working as Special Sub-Inspector of Police and he is aged about 56 years and his salary certificate was marked as Ex.P6. As per Ex.P6 his salary is Rs.56,450/- and no contrary evidence was let in to disbelieve the above monthly income. Therefore, this Court is fixing the monthly income of the deceased as Rs.56,450/-. He was a Government servant and hence, 10% for future prospects also is fixed as per the judgment in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**. 10% for the future prospects comes around Rs. 56,450 X 10/100 = Rs.5,645/-. Hence, the total monthly income of the deceased is Rs.56,450/- + Rs.5,645/= Rs.62,025/-.

12.2. The age of the deceased is 56 years and since there are three dependents, 1/3rd is deducted for personal expenses and applying the multiplier of “9” the amount comes around as follows:

$$62,095 \times 12 \times 9 \times \frac{2}{3} = \text{Rs.}44,71,200/-.$$



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12.3.The non pecuniary damages as per the Pranay sethi case is calculated as follows:

Loss of consortium for the wife of the deceased is calculated as Rs. 40,000/-

Transport expenditure Rs.5,000/-

Funeral Expenses Rs.20,000/-

Loss of Estate Rs.15,000/-

12.4.Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference.

13. Conclusion

In the light of the above said discussion, claimants would be entitled to claim the following amounts as compensation under the various heads enumerated hereunder:



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S.No.	Under the head	a) Calculation	b) Amount in Rupees
1	Monthly income (monthly income + future prospects 10%)	Rs.56,450 + Rs.5,645 = Rs.62,095/-	62,095/-
2.	Deduction of 1/3 for his personal expenses	Rs.62,095 – Rs.20,695 = Rs.41,400/-	41,400/-
3	Annual Loss of Income	Rs.41,400 X 12 = Rs.4,96,800/-	4,96,800/-
4	Loss of Income after applying the multiplier “9”	Rs.4,96,800 X 9 =Rs.44,71,200/-	44,71,200/-
5	Compensation		Amount in Rupees
	a) Loss of Income		44,71,200/-
	b)Transport expenses		5,000/-
	c)Funeral Expenses		20,000/-
	d)Loss of Estate		15,000/-
	e)Loss of Consortium		40,000/-
	Total		45,51,200/-

14. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Accidents Claims Tribunal – cum- III Additional District and Sessions Judge, Thanjavur at Pattukottai in M.C.O.P.No.134 of 2018, dated 13.02.2020 is hereby confirmed. The appellant Transport Corporation is directed to deposit the award amount



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with proportionate accrued interest and costs, deducting the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous petition is closed.

**(V.B.S.J.) (K.K.R.K.J.)
19.02.2024**

Index :Yes/No
Internet :Yes/No
am/vsg

To

- 1.The Motor Accident Claims Tribunal-cum-III Additional District and Sessions Court, Thanjavur at Pattukottai.
- 2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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and

K.K. RAMAKRISHNAN.J.,

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