



CMA(MD)Nos.1335 of 2014 and 545 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CMA(MD)Nos.1335 of 2014 and 545 of 2022
and
M.P.(MD).No.2 of 2014

CMA(MD)No.1335 of 2014:

The Tamil Nadu State Transport Corporation Limited,
Periamilaguparai,
Tiruchirappalli.

... Appellant

vs.

1.Subramanian
2.Saroja

... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 10.10.2013 passed in M.C.O.P.No.3821 of 2013 on the file of the Motor Accident Claims Tribunal/Special Court, Tiruchirappalli.

For Appellant : Mr.P.Prabhakaran

For Respondents : Mr.R.Rajaraman



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CMA(MD)No.545 of 2022:

1.Subramanian
2.Saroja

... Appellants

vs.

The Tamil Nadu State Transport Corporation Limited,
Periamilaguparai,
Tiruchirappalli.

... Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award as granted by the learned Tribunal from Rs. 6,71,300/- (Rupees Six Lakhs and Seventy One Thousand Three Hundred Only) to Rs.50,00,000/- (Rupees Fifty Lakhs Only) with interest as prayed for in the claim petition and also award costs thereof.

For Appellants : Mr.R.Rajaraman

For Respondent : Mr.P.Prabhakaran

COMMON JUDGMENT

(Order of the Court was made by K.K.RAMAKRISHNAN, J.)

Challenging the judgment and decree dated 10.10.2013 made in MCOP.No.3821 of 2013 on the file of the Motor Accidents Claims Tribunal/Special District Court, Tiruchirappalli, the Transport Corporation filed CMA(MD)No.1335 of 2014. Seeking enhancement of compensation, the claimants have filed CMA(MD)No.545 of 2022.



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2.The deceased Karthikeyan and five of his class mates were studying BE at MIET Engineering College, Thiruverambur, Trichy. All were going to Samayapuram temple in three two wheelers. On 07.05.2008, at 10.20 a.m. the deceased and one Vinayagam were riding the motorcycle bearing Registration No.TN 50 E 8149. When their motorcycle reached near the National Highways Quality Control Office in Kollitam bridge, the appellant corporation bus came from south to north side in a rash and negligent and in high speed suddenly came to the right side of the road and dashed against the deceased's motorcycle and the deceased sustained grievous injuries on head and chest and his friend Vinayagam/pillion rider escaped with minor injuries. Immediately, the deceased was taken to the hospital and the doctor declared he was dead. Hence, a case in Crime No.119 of 2018 for the offence under Section 304(A) of IPC was registered on the file of North Traffic Police Station, Trichy. The deceased was studying BE at MIET Engineering college and he was working as part time computer operator in a private company namely, S.K.Software company, Thiruverumpur, Trichy. He was offered a job in a private company namely Sathyam Computer Service, Hyderabad, after his campus interview with an attractive salary of Rs.3,00,000/- per annum. Parents of the deceased filed claim petition claiming



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compensation of Rs.50,00,000/- with interest of 12% p.a. The appellant corporation filed a counter denying the negligence on the part of the driver of the corporation bus and stated that the motorcyclist namely deceased himself is responsible for the accident. Even otherwise he pleaded that in this case, contributory negligence ought have been fixed on the part of the motorcyclist. Apart from that, they also stated that the deceased had no valid driving license and they also disputed the earning of Rs.6,000/- salary of the deceased as stated by the parents of the deceased and seeks dismissal of the claim petition.

3.In order to prove the claim, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and Exs.P1 to P8 were marked. On the side of the Transport Corporation, neither witnesses were examined nor documents were marked.

4. The Tribunal after considering the oral and documentary evidence adduced on either side, fixed the entire negligence on the part of the driver of the appellant corporation and also considering the date of the accident, namely, 07.05.2008 and the deceased was studying BE and there was no evidence to prove that he was working as part time worker



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and earned Rs.6,000/-, p.m., awarded compensation of Rs.6,71,300/-.

Challenging the judgment and decree, the present appeals are filed as stated above.

5.The learned counsel for the appellant Transport corporation submitted that from the evidence P.W.2 and FIR registered against the appellant corporation driver, the learned Tribunal judge ought to have fixed contributory negligence on the part of the deceased. He further submitted that the deceased rode the two wheeler without license. Hence, the learned tribunal judge ought to have fixed the contributory negligence on the part of the deceased. Hence, he seeks for interference in the award.

6.Per contra, learned counsel for the claimants submitted that from the evidence of P.W.2/eye witness it is seen that the Tribunal has rightly fixed negligence on the part of the driver of the appellant corporation and hence, no contra evidence was adduced in this regard. Further, the driver of the appellant corporation was not examined. Therefore, the learned Tribunal Judge correctly fixed the entire negligence on the part of the driver of the appellant corporation.



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6.1.As far as the quantum of compensation is concerned, the learned Tribunal Judge failed to consider Ex.P.6, which shows that he was selected in the campus interview with the monthly salary of Rs. 3,00,000/-. The same was not considered by the learned Tribunal Judge. Hence, he seeks enhancement on the quantum of compensation. He also relied the following judgements of the Hon'ble Supreme Court:

6.1.1.In the case of ***S.Vasanthi and another Vs. M/S.Adhiparasakthi Engineering Colleged and another*** reported in ***2022 15 SCC 316***.

6.1.2.In the case of ***New India Assurance Company Limited Vs. Dilip Kumar and Others*** reported in ***2018 SCC Online Del 9263***.

6.1.3.In the case of ***Ram Rati and another Vs. United India Insurance company Limited*** reported in ***2023 SCC Online Del 4739***.

6.1.4.In the case of ***Babli Dixit and another Vs. Satendra Kumar and others*** reported in ***2018 SCC Online Del 13153***.

6.1.5.In the case of ***Raj Bala and another Vs. Sumit Dahiya and others*** reported in ***2018 SCC Online Del 12086***.



7. We have considered the rival submissions and also perused the documentary evidence marked before the Tribunal and also perused the impugned judgment of the Tribunal and the precedents relied upon by them. From the above submission, this Court frames the following points for determination:-

7.1. Whether the tribunal correctly fixed the negligence on the part driver of the transport Corporation?.

7.2. Whether the case of the claimants to enhance the compensation can be accepted?

8. Discussion of Negligence:

P.W.2 specifically deposed that the deceased rode the motorcycle with him and he was travelling as pillion rider of the said two wheeler and the deceased was riding the said two wheeler with caution and the corporation bus suddenly turned to the right side and in the result, the accident happened and the FIR was registered against the driver of the corporation. The said evidence was also corroborated with the version in the FIR. From the evidence of P.W.2, in the absence of the contra evidence on the side of the corporation, this Court concurs with the finding of the learned Tribunal Judge that the accident happened due



to the rash and negligent driving of the driver of the corporation. Hence, this Court finds no merit in the contention of the Transport Corporation.

It was argued that the learned Tribunal Judge failed to consider the fact that the deceased was not having licence and hence, the contributory negligence should have been fixed. It is well settled that mere violation of the statutory requirement is not a ground to fix the negligence automatically on the part of the deceased. In the said circumstances, this Court confirms the finding of the learned Tribunal Judge that the accident happened due to the negligence of the driver of the Transport Corporation.

9.Discussion on quantum:

As far as the quantum is concerned, even though the parents of the deceased took a plea that he was working as part time worker and earned Rs.6,000/-, but no evidence was adduced. Apart from that, Ex.P.6 was produced to prove the selection in the campus interview. The campus interview document was marked and no body was examined to prove that he was selected and he was offered to work in a annual salary of Rs.3,00,000/-. To prove that the said document there is no corroboration by examining the author of the document. Hence, this Court is unable to



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accept the plea of the learned counsel appearing for the appellant in C.M.A.(MD).No.545 of 2022. The deceased is a student and the age of the deceased was 22 at the time of death and considering his educational qualification, the Tribunal has taken a sum of Rs.4,500/- as monthly income of the deceased. This Court concurs with the finding of fixing a sum of Rs.4,500/- as monthly income. The learned Tribunal judge also granted 30% for future prospects. Further, the deceased is a bachelor and his parents are the claimants. Therefore, this Court deducts $\frac{1}{2}$ towards personal expenses. As per the judgment of the Hon'ble Supreme Court in the case of ***Smt.Sarla Varma and Ors. vs. Delhi Transport Corporation & another*** reported in ***2009(2) TN MAC 1 (SC)***, multiplier 18 can be taken into account and calculates the Loss of income as Rs.6,31,800/- and awarded Rs.39,500/- under the head of the non conventional damages. This Court finds no grounds to enhance the compensation.

11. Accordingly, both Civil Miscellaneous Appeals are dismissed. The compensation awarded in M.C.O.P.No.3821 of 2013 on the file of the Motor Accident Claims Tribunal/Special District Court, Tiruchirappalli, dated 10.10.2013, is hereby confirmed. The appellant/Transport Corporation is directed to deposit the award amount



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with proportionate accrued interest and costs, after deducting the amount if already deposited, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Neutral Citation : Yes / No
vsg/sbn

(P.V.J.) (K.K.R.K.J.)
27.09.2024

To

- 1.The Special District Court,
Motor Accident Claims Tribunal, Trichy.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

vsg

COMMON JUDGMENT MADE IN
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DATED : 27.09.2024