



C.M.A.(MD).Nos.1072 of 2016 and 628 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

and

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).Nos.1072 of 2016 and 628 of 2017

and

C.M.P.(MD).No.6534 of 2027

C.M.A.(MD).No.1072 of 2016:

1.Priya

2.Minor Srikan

*(Rep. By his mother and Natural Guardian,
the 1st petitioner herein)*

3.Manimekalai

... Appellants/Petitioners

Vs.

1.The Managing Director,
Metropolitan Transport Corporation (MTC) Ltd.,
Pallavan Salai, Chennai.

2. The Managing Director,
Tamil Nadu State Transport Corporation (TNSTC) Ltd.,
New Railway Station Road,
Kumbakonam, Thanjavur District.

... Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to modify the Judgment and Decretal order dated 15.06.2016 and to enhance the award amount made in M.C.O.P.No.655 of 2013 by the Motor Accident Claims Tribunal cum Special District Court, Thanjavur.



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For Appellants : Mr.V.S.Kumaraguru
For R1 : Mr.P.Prabhakaran
For R2 : Mr.A.V.B.Krishnakanth

C.M.A(MD).No.628 of 2017:

The Managing Director,

Tamil Nadu State Transport Corporation Limited,

(Kumbakonam Division I)

Railway Station New Road,

Kumbakonam.

... Appellant/Respondent No.2

Vs.

1.Priya

... Respondent No.1/Petitioner No.1

2.Minor Srikanth

... Respondent No.2/Petitioner No.2

(Minor is represented through his mother and natural guardian Priya, the 1st respondent herein)

3.Manimekalai

... Respondent No.3/Petitioner No.3

4.The Managing Director,

Metropolitan Transport Corporation (MTC) Ltd.,

Having Office at Pallavan Salai,

Chennai within the City Civil Court,

Jurisdiction.

... Respondent No.4/Respondent No.1

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed by the Motor Accident Claims Tribunal, Special District Court, Thanjavur, in M.C.O.P.No. 655 of 2013, dated 15.06.2016.



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For Appellant : Mr.A.V.B.Krishnakanth
For R1 to R3 : Mr.V.S.Kumaraguru
For R4 : Mr.P.Prabhakaran

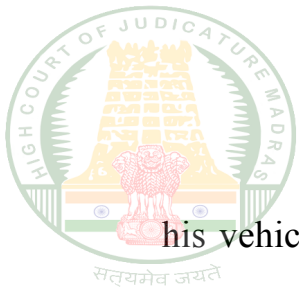
COMMON J U D G M E N T

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

The claimants have filed appeal in C.M.A.(MD).No.1072 of 2016 to enhance the compensatin awarded in M.C.O.P.No.655 of 2013 and the Tamil Nadu State Transport Corporation Ltd, Kumbakonam, have filed this appeal challenging the award passed in M.C.O.P.No.655 of 2013, dated 15.06.2016 by the Motor Accident Claims Tribunal, Special Distrit Court, Thanjavur. The claimants in M.C.O.P.No.655 of 2013 are the legal heirs of the deceased/Rajkumar.

2.Brief Facts of the Case:

On 16.10.2012, at about 3.45 p.m., when the deceased was proceeding in his two-wheeler bearing registration number TN-49 AH 5313, on Pattukottai Main Road near Palaniyappan Street, Mariya Medical, the driver of the appellant corporation bus, bearing registration number TN-01 N 3791, drove

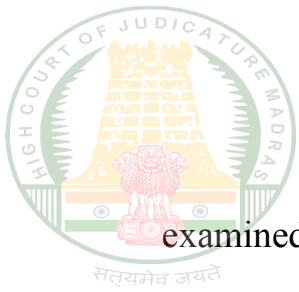


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his vehicle in a rash and negligent manner dashed against the two-wheeler of the said Rajkumar and the rear wheel of the bus crushed the head of the deceased and he died on the spot. Therefore, FIR was registered against the driver of the bus. The claimants filed claim petition in M.C.O.P.No.655 of 2013, before the the Motor Accident Claims Tribunal, Special District Court, Thanjavur, claiming compensation of Rs.1,50,00,000/-.

3.The claimants wrongly included the managing director of Metropolitan Transport Corporation, Chennai, and they filed a counter stating that the bus does not belonging to the said corporation. The appellant corporation filed a separate counter denying the manner of the accident and also the negligence pleaded by the claimants in the petition. In the counter, it is stated that the accident happened only due to the negligence and careless driving of the deceased, who rode the two-wheeler in a rash and negligent manner and he was trying to overtake a private bus and hit the rear side left wheel of the bus and sustained injuries. Hence, the appellant corporation bus is not liable to pay compensation as he was responsible for the accident.

4.The claimants to prove their case examined P.W.1 and P.W.2 and marked Ex.P1 to Ex.P.29. On the side of the respondent, R.W.1 to R.W.4 were



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examined and exhibited Ex.X.1 and Ex.X2.

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5.The learned Tribunal Judge considering the medical evidence and also the post-mortem certificate and viscera report found that the deceased had consumed alcohol and therefore, he also contributed 50% negligence on his part and hence he fixed 50% negligence on the appellant corporation bus and 50% negligence on the deceased. So, the Tribunal applied the Contributory Negligence Theory. The learned Tribunal Judge further awarded compensation of Rs.1,06,19,600/-determining the income of the deceased on the basis of the salary certificate and the other documents and arrived the compensation amount of Rs.1,09,14,600/-and then deducted 50% for contributory negligence and granted compensation of Rs.54,57,300/-with interest of 9% p.a. Challenging the same, the claimants filed the appeal before this court in C.M.A.(MD).No.1072 of 2016 and the corporation bus also filed the appeal in C.M.A.(MD).No.628 of 2017.

6.The learned counsel appearing for the Transport Corporation would submit that when the adequate evidence was produced and established that the deceased had consumed alcohol and he lost his control and while he was overtaking the bus, himself fell down into the rear wheel of the appellant



corporation bus and hence, the learned tribunal judge ought not to have fixed the 50% contributory Negligence on the part of the appellant corporation bus and hence he seeks for interference with the negligence aspect. The learned Tribunal Judge without considering the evidence and proof of the income granted the compensation of Rs.1,06,19,600/- for loss of income. He has erroneously taken the monthly income of the deceased as Rs.69,138/-. The learned counsel further submitted that under the head of consortium and the love and affection, the Tribunal Judge granted more than a sum of Rs.40,000/-. Hence, he seeks for the interference in the award passed by the learned Tribunal Judge.

7.The learned counsel appearing for the claimants submitted that merely because there was presence of alcohol in the viscera report and postmortem report it does not mean that the deceased was under influence of alcohol and responsible for the accident. Without any evidence, the Court has applied the contributory negligence theory. The independent witness clearly deposed about the negligence on the part of the bus driver. Moreover, the driver of the bus was not examined and only the conductor of the bus was examined. In the said circumstances, the learned Tribunal Judge was not correct in applying the theory of the contributory negligence. Hence, he seeks to set aside the same.



The learned counsel further submitted that considering the prevailing circumstances, the learned Tribunal Judge awarded Rs.1,00,000/- under the head of love and affection and Rs.1,00,000/- under the head of loss of consortium and the same need not be disturbed. The learned counsel also submitted that the deceased was working in foreign country and the salary certificate was marked under Ex.P.29 and the same was supported by Ex.P.27 and Ex.P.28 and also the bank account of the deceased and also the passport under the Ex.P.14, Ex.P.13 and Ex.P.17. All documents clearly show that the deceased earned monthly salary of more than Rs.69,138/-. Therefore, the learned Tribunal Judge correctly arrived the monthly income of the deceased. In the said circumstances, he seeks to confirm the same.

8.This Court considered the rival submissions made on either side and perused the record.

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

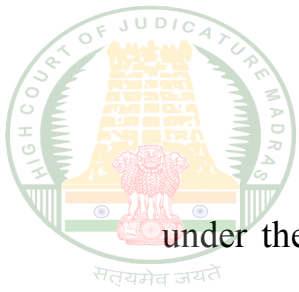
9.1.Whether the learned Tribunal Judge is correct in fixing the contributory negligence on the appellant corporation bus driver and the deceased in the ratio of 50%-50% is correct or not?

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



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10. It is the specific evidence of P.W.2 that on 16.10.2012, at about 3.45 p.m., when the deceased was riding his two wheeler bearing Registration No. TN 49 AH 5313 on Pattukottai Main Road near Palaniyappan Street, Mariya Medical, the appellant corporation bus came in the opposite direction in a rash and negligent manner and dashed against the two wheeler of the deceased and hence, the deceased fell down at the rear wheel of the bus and it ran over the head of the deceased and he sustained head injury and died on the spot. In the said circumstances, the driver of the bus was not examined. This evidence remains unchallenged. Per contra, P.W.2 conductor of the bus was examined. He specifically deposed that the deceased in a rash and negligent manner rode his two wheeler and tried to overtake the private bus and lost the balance while he was riding the two wheeler in between the appellant corporation bus and the private bus and fell down in the back wheel of the bus and he alone is responsible for the accident. The said evidence of loss of balance under the influence of alcohol was substantiated by the appellant corporation by examining the doctors and also filing the viscera report and the post-mortem report. The doctors specifically deposed that the deceased had consumed alcohol at the time of the accident and also the visra report and the post-mortem report revealed the said fact. Hence, the deceased had ridden his two wheeler



under the influence of alcohol and lost his balance and fell into the wheel of corporation bus. The driver of the appellant corporation bus also ought to have reduced his speed and gave way to the oncoming overtaking vehicle. Therefore, the learned Tribunal Judge correctly assessed the above factual circumstances and fixed the contributed negligence upon the deceased and the appellant corporation in the ratio of the 50%-50%. Therefore, there is no need for interference in the said finding of the fact. Hence, this Court is not inclined to accept either the submission of the appellant corporation bus or the claimants. Hence, both the appeals under the said aspect, are dismissed.

11. The appellant corporation submitted that the learned Tribunal Judge has not correctly fixed the income of the deceased. This Court perused the entire records in C.M.A.(MD).No.628 of 2017 and in C.M.A.(MD).No.1072 of 2016. The deceased was employed in the foreign country and to show that, exhibit Ex.Ps.11, 12, 13, 15 to 17 and 22 to 29 were marked and Ex.P.29 is the last salary certificate of the deceased. From the above documents, it is clear that deceased was permanently employed in the foreign country and earned sufficient income as pleaded by him. This Court does not disagree with the documents produced by them and there was no contra evidence adduced by the appellant corporation. Therefore, the learned Tribunal Judge correctly fixed the



amount of Rs.69,139/- as monthly salary and applied the future prospect and also deducted 1/3 and also reduced 20% of the income tax and applied multiplier as 16 and arrived the compensation of Rs.1,09,14,600/-. But, the learned Tribunal Judge is not correct in awarding Rs.1,00,000/- under the heads of love and affection for his son, namely, second claimant and Rs.1,00,000/- to his wife under the head of loss of consortium and Rs.50,000/- to his mother. As per ***Pranay Sethi Case***, Rs.40,000/- has to be granted each under the said heads. Hence, the above amount is modified to that extent. In these circumstances, the award amount granted by the tribunal Judge will be reduced to that extent alone. In other aspect, the compensation is confirmed.

12. Discussion on Interest;

Section 171 of the MV Act empowers the Tribunal to direct that “in addition to the amount of compensation simple interest shall also be paid at “such rate”.

Such rate was interpreted by the Hon'ble Supreme Court in the case of ***Kaushnuma Begum v. New India Assurance Co.Ltd*** reported in ***2001 (2) SCC 9*** percent, as interest has been granted by the Nationalized banks by observing that with a change in economy and policy of Reserve Bank of India, the interest rate has been lowest. But, the Courts usually granted rate of prevailing interest



of 7.5% and hence, in all cases, this Court reduced the interest from 9% to 7.5%.

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13.Conclusion

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

<i>S. No.</i>	<i>Under the Head</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>	<i>Award confirmed or enhanced or granted</i>
1	Loss of income	Rs.1,06,19,600/-	Rs.1,06,19,600/-	Confirmed
2	Funeral Expenses	Rs.25,000/-	Rs.25,000/-	Confirmed
3	For Loss of Estate	Rs.10,000/-	Rs.10,000/-	Confirmed
4	Transportation charges	Rs.10,000/-	Rs.10,000/-	Confirmed
5	For loss of love and affection to the second respondent	Rs.1,00,000/-	Rs.40,000/-	Reduced
6	For loss of love and affection to the third respondent	Rs.50,000/-	Rs.40,000/-	Reduced
7	For loss of consortium	Rs.1,00,000/-	Rs.40,000/-	Reduced
<i>Total</i>		<i>Rs.1,09,14,600/-</i>	<i>Rs.1,07,84,600/-</i>	<i>By reducing a sum of Rs. 1,30,000/-</i>



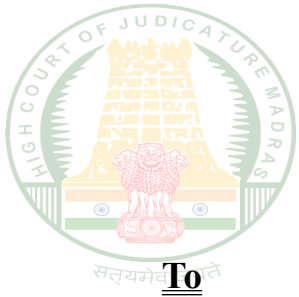
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14. Accordingly, the appeal filed by the Transport Corporation in C.M.A. (MD).No.628 of 2017 is partly allowed and the award passed by the Motor Accidents Claims Tribunal, Special District Court, Thanjavur, in M.C.O.P.No. 655 of 2013, dated 15.06.2016, is hereby modified. The Transport Corporation is directed to deposit the award amount after deducting 50% of the amount fixed for negligence on the part of the deceased ie., Rs.53,92,300/- along with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation. The Transport Corporation is directed to deposit the modified amount of Rs.53,92,300/- with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. The claimants are entitled to withdraw the deposited amount as per the ratio fixed by the Tribunal. Further, the appeal filed by the claimants in C.M.A.(MD).No.1072 of 2016 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[P.V.J.] [K.K.R.K.,J.]
28.08.2024

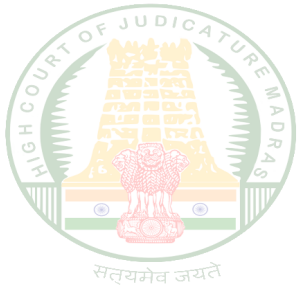
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1. The Motor Accident Claims Tribunal,
Special District Court, Thanjavur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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and
K.K.RAMAKRISHNAN,J.

vsg

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Dated:28.08.2024