



CMA.(MD)Nos.1220 and 1221 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

CMA(MD)Nos.1220 and 1221 of 2023

and

CMP(MD)Nos.16130 and 16133 of 2023

(1)CMA(MD)No.1220 of 2023:-

The Manager,
Tamil Nadu State Transport Corporation,
Periyamilaguparai, Trichy. : Appellant/Respondent

Vs.

1.S.Barveen Banu
2.Minor S.Safreen Banu
3.Minor S.Syed Usman
(R2 and R3 represented by
their mother/natural guardian
1st respondent
4.Bathrunnisha : Respondents/Petitioners

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the common order, dated 10/06/2022 made in MCOP No.713 of 2018 on the file of the Motor Accident Claims tribunal/The Special District Judge, Trichy and pass such further or other orders.

For Appellant : Mr.K.Ramaiah
For Respondents : Mr.N.Sudhagar Nagaraj

(2)CMA(MD)No.1221 of 2023:-

The Manager,
Tamil Nadu State Transport Corporation,
Periyamilaguparai, Trichy. : Appellant/Respondent



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Vs.

1.S.Sabiyabegam
2.S.Mohamed Sabarulla (Minor)
3.S.Abrojabegum (Minor)
(2nd and 3rd minor respondents
are represented by their mother/
natural guardian 1st respondent)

4.Mumtaj : Respondents/Respondents

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the common order dated 10/06/2022 made in MCOP No.916 of 2018 on the file of the Motor Accident Claims tribunal/The Special District Judge, Trichy and pass such further or other orders.

For Appellant : Mr.K.Ramaiah

For Respondents : Mr.N.Sudhagar Nagaraj

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed to set aside the common order, dated 10/06/2022 passed in MCOP Nos.713 and 916 of 2018 by the Motor Accident Claims Tribunal (Special District Judge), Trichy.

2.The facts in brief:-

On 05/08/2018 at about 05.10 pm, the deceased Sahul Hameed riding his two wheeler bearing registration No.TN-45-AT-8562 along with the deceased Sabeeran as pillion rider from south-north direction. At that time, a Bus bearing registration No.TN-67-N-0493 was driven by



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its driver in a rash and negligent manner, came in the very same direction and hit the two wheeler. As a result of which, both of them sustained grievous injuries. They were admitted in the the Government Hospital, Trichy, but without responding to the treatment, Sahul Hameed died. Sabeeran was taken to Retna Global Hospital, Trichy and was taking further treatment from 05/08/2018 to 12/08/2018. But he died on 12/08/2018 without responding to the treatment.

3.The deceased Sabeeran was aged about 35 years at the time of the occurrence. He was working as a Driver in Saudi Arabia and earning Rs.75,000/- per month. Claiming compensation of Rs.70,00,000/-, claim petition in MCOP No.713 of 2018 was moved by the dependents before the Tribunal.

4.That was resisted by the Appellant Transport Corporation by filing a counter contending that the occurrence took place because of the rash and negligent riding of the two wheeler namely Sahul Hameed along with the pillion rider namely Sabeeran. He drove the vehicle in a rash and negligent manner and hit the Bus. A case in Crime No.154 of 2018 was registered by the Trichy North Police Station only against the two wheeler's rider; The



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rider was not having proper registration certificate and the deceased were not wearing the helmet.

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5. Similarly MCOP No.914 of 2018 was filed by the dependents Sahul Hameed claiming compensation of Rs.20,00,000/-. The very same counter was adopted by the appellant Transport Corporation in that matter also.

6. Common enquiry was made by the Tribunal in both the matters.

7. Before the Tribunal, on the side of the claimants, 3 witnesses were examined and 15 documents marked. On the side of the Appellant Transport Corporation, 2 witnesses examined and no document was marked. Apart from that, two documents marked through the witnesses as Exs.X1 and X2.

8. At the conclusion of the trial process, regarding the aspect of negligence, the Tribunal recorded a finding that the occurrence took place because of the rash and negligent driving of both the deceased and the appellant vehicle driver. It was fixed at 75% upon the appellant vehicle driver and 25% upon the deceased person.



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9.Regarding the compensation amount for the deceased Sabeeran, age was fixed at 37 years and his monthly was fixed at Rs.25,000/-. To that, 40% future prospect is added. After deducting the personal expenses of 1/4th, it assessed the monthly loss of income of Rs.26,250/-. To that, 10% income tax amount was deducted. Multiplier was taken as per the judgment of the Hon'ble Supreme Court in **Sarla Verma's case** and the Loss of Dependency was fixed at Rs.42,52,500/-. To that, conventional heads were also added and it finally arrived at Rs.45,36,500/-. To that amount, 25% toward the contributory negligence was deducted and the balance amount of Rs.34,02,375/- was awarded. So from that, he contributed negligent portion of 25%. After deducting, **Rs.34,02,375/-** was awarded by the Tribunal in respect of MCOP No.713 of 2018.

10.The learned counsel appearing for the Appellant Transport Corporation submits that this is on the higher side. Regarding the negligence also, he submits that since the case was registered against the deceased, the Tribunal ought not to have fixed the liability of 75:25. Since it is a head on collusion, it ought to have fixed 50:50; No income document was produced; Only visa and Passport is filed and no Bank Statement was filed. So, according to the appellant, not only on the point of



negligence the Tribunal has committed the error, but also on the point of income.

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11.Now let us go to the evidence on record.

12.With regard to the first point of negligence, now it is admitted by both sides that both the vehicles were proceeding in the opposite direction. So it is nothing, but head on collision. When there is a head on collusion, according to the appellant, the responsibility ought to have been fixed at 50:50.

13.But here, the appellant vehicle was a heavy vehicle. The deceased was riding the light motor vehicle namely the two wheeler. So the responsibility and duty cast upon the appellant vehicle driver is more. Being the heavy vehicle driver, he ought to have taken proper care and caution. Coming in the opposite direction by a heavy vehicle will always invite the higher contributory negligence. So fixation of 75:25 appears to be proper and reasonable considering the nature of the occurrence and the nature of the vehicle involved. I find absolutely no reason to differ from the percentage of contribution made by the Tribunal. So, I find no reason to interfere into the findings of the Tribunal on that aspect.



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15.Regarding the compensation amount for the deceased Sabeeran in MCOP No.713 of 2018, as mentioned above, he was working as a Driver in abroad. As per the Passport entry, the date of birth is 10/02/1979. The date of occurrence is 05/08/2018. So, he was aged about 37 years at the time of the occurrence.

16.It is also seen that he was frequently visiting India and working as a Driver in Saudi Arabia. Visa and Passport documents were produced. Apart from that, Bank statement for sending money from abroad. Even though, it was stated that he was earning Rs.75,000/- per month in Saudi Arabia, there was no proper document to show the correct monthly salary. So, it was reasonably fixed at Rs.25,000/-. To that effect, future prospects 40% was added. 1/4th amount was deducted towards personal and living expenses. Multiplier '15' was adopted and the Loss of Dependency was estimated at Rs.42,52,500/-. To that conventional amounts were added, which is indicated below.

Loss of Dependency	Rs.42,52,500/-
Transport charges to the hospital	Rs. 11,000/-
Loss of estate	Rs. 10,000/-
Medical expenses as per bills	Rs. 1,13,000/-
Loss of consortium	Rs. 35,000/-
Parental Consortium	Rs. 70,000/-



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Filial Consortium	Rs. 35,000/-
Funeral expenses	Rs. 10,000/-
Total	Rs.45,36,500/-

17. So from that, he contributed negligent portion of 25%. After deduction, **Rs.34,02,375/-** was awarded by the Tribunal. So the assessment of compensation made by the Tribunal appears just and reasonable. A person working in Abroad might have earned not less than Rs.25,000/- per month, which cannot be considered to be on the higher side. I find no reason to interfere the award passed in respect of Sabeeran.

18. In respect of Sahul Hameed, his aged was fixed as 39, on the basis of the entry made in the driving licence. Regarding the occupation, no evidence was available. Since he is having driving licence, it assessed at Rs.10,000/- as monthly notional income. On the basis of that, he would have earned not less than Rs.10,000/-. To that, 40% future prospects was added. 1/4th deducted towards personal and living expenses. By adopting the multiplier of 12, it determined the loss of income as Rs.18,90,000/-. To that, conventional amounts were also added. The Tribunal finally fixed the compensation as indicated below:-



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Loss of Dependency	Rs.18,90,000/-
Transport charges to the hospital	Rs. 10,000/-
Loss of estate	Rs. 10,000/-
Loss of consortium	Rs. 35,000/-
Loss of Parental Consortium	Rs. 70,000/-
Filial Consortium	Rs. 35,000/-
Funeral expenses	Rs. 10,000/-
Total	Rs.20,60,000/-

19. So far as Sabeeran's case is concerned, he was only a pillion rider. The rider was Sahul Hameed. But so far as Sabeeran is concerned, the deduction of 25% towards contribution may not be proper. Sahul Hameed is the rider of the vehicle and he only contributed towards the accident with the appellant.

20. So far as Sabeeran is concerned, since it is a composite negligence, 75% of the compensation ought to have been ordered to be paid by the appellant and 25% by the Insurance Company on the vehicle bearing registration No.TN-45-AT-8562 driven by the Shaul Hameed was insured. But unfortunately, the Insurance Company of the two wheeler was not added. Even in the absence of non inclusion of one of the composite negligent vehicle Insurance Company, the order can be passed directing one of the composite negligent parties to pay the entire compensation and recover the balance from the other



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person. But here, as mentioned above, such a order was not passed by the Tribunal. So, the common award passed by the Tribunal requires no interference at the hands of this court, since the Insurance Company of the two wheeler driver is not added as party.

21.In the result, both civil miscellaneous appeals are **dismissed**. No costs. Consequently, connected Miscellaneous Petitions are closed.

13/06/2024

Index:Yes/No
Internet:Yes/No
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To,

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



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G.ILANGOVAN, J

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