



C.M.A.(MD) No.403 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.403 of 2024

and

C.M.P.(MD) No.5383 of 2024

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Virudhunagar Branch,
Virudhunaga.

... Appellant

Vs.

1.Eswari @ Rajeshwari
W/o.late Radhakrishnan

2.Vijayakumar,
S/o.late Radhakrishnan

... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Award dated 22.08.2022 passed in M.C.O.P.No.18 of 2015 on the file of the Motor Accidents Claims Tribunal (Special District Judge), Madurai.

For Appellant : Mr.K.Sudalaiyandi

For Respondents : Mr.P.Santhanakrishnan



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J U D G M E N T

WEB COPY The Tamil Nadu State Transport Corporation has filed the instant appeal challenging the Tribunal's finding of negligence and the compensation awarded.

2. The respondents herein filed a claim petition in M.C.O.P.No.18 of 2015 before the Motor Accidents Claims Tribunal (Special District Court), Madurai, stating that on 03.08.2014, while the deceased was riding his two-wheeler bearing Registration No.TN-59-AW-7494 from west to east, the bus bearing Registration No.TN-67-N-0859 belonging to the appellant State Transport Corporation came in a rash and negligent manner from north to south and collided with the two-wheeler ridden by the deceased near Vandiyur-Andarkottaram Ring Road Junction, as a result of which the deceased sustained fatal injuries.

3. The appellant State Transport Corporation filed a counter affidavit before the Tribunal stating that the accident took place only due to the negligence of the deceased; that the deceased did not wear a helmet at the time of the accident; that the deceased did not possess a valid driving licence, and hence they are not liable to pay any compensation.



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4. The respondents/claimants examined two witnesses as P.W.1 and P.W.2 and marked Exs.P1 to P6. P.W.1 is the first respondent/first claimant. P.W.2 is the eyewitness to the occurrence. The appellant State Transport Corporation, on their side, examined R.W.1, the conductor of the offending bus.

5. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the rash and negligent driving of the bus driver and determined the compensation payable by the appellant State Transport Corporation at Rs.14,35,800/-.

6. The learned counsel for the appellant State Transport Corporation submitted that the appellant State Transport Corporation had established the fact that the deceased was riding the two-wheeler without wearing a helmet; that the accident took place only due to the rash and negligent riding of the deceased; and that in any case, the Tribunal ought to have fixed the contributory negligence as the deceased suddenly cut into the main road on which the bus was proceeding.



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7. The learned counsel for the respondents/claimants, per contra, submitted that though the appellant State Transport Corporation claimed that the deceased did not have a valid driving licence, they produced the driving licence; that there is no evidence to show that the deceased did not wear a helmet at the time of the accident; and that the accident took place near the junction, where the driver of the bus ought to have been cautious while crossing the road. Therefore, the award of the Tribunal need not be interfered with.

8. The questions involved in the instant appeal are as follows:

- i. Whether the Tribunal was right in holding that the accident took place only due to the negligence of the driver of the bus belonging to the appellant State Transport Corporation?
- ii. Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

9. It is the case of the appellant State Transport Corporation that the deceased is guilty of contributory negligence for three reasons: (a) he did not wear the helmet at the time of the accident; (b) he did have a valid



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driving licence; and (c) he drove the two-wheeler in a rash and negligent manner and crossed the main road negligently.

10. This Court finds that the appellant had not established the fact that the deceased did not wear a helmet at the time of the accident and that he did not have a valid driving licence. In fact, the learned counsel for the respondents/claimants produced a copy of the driving licence, and submitted that the same had not been inadvertently produced before the Tribunal. Therefore, it cannot be said that there was contributory negligence on the part of the deceased on those grounds.

11. However, it is seen that the accident took place on the main road. The bus was proceeding on the main road in a north-to-south direction. The rider of the two-wheeler, i.e., the deceased, had proceeded from west to east, and the right side of the bus had dashed against the two-wheeler. It is the evidence of R.W.1, the conductor of the bus, that the rider of the two-wheeler had rushed into the main road to avoid a routine vehicle check-up by the police, and there was no way the bus driver could have anticipated the two-wheeler entering the main road.



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12. The respondents/claimants had examined P.W.2, who is said to have been following the deceased in another two-wheeler. Even according to his deposition, the bus was going on the main road from north to south, and the two-wheeler was going from west to east. When the deceased was crossing the main road, he ought to have looked for the vehicles on either side. He ought to have been careful while crossing the road. This is the basic rule that ought to have been followed by the deceased.

13. That apart, R.W.1, the bus conductor, has stated that the deceased crossed the road to avoid the vehicle check-up by the police. Further, the manner of the accident speaks for itself. Therefore, this Court is of the view that the deceased also contributed to the accident. Since it is a junction, the driver of the bus ought to have slowed down the bus, which could have avoided the accident. Hence, the accident predominantly took place due to the negligence of the driver of the offending vehicle. The deceased also contributed to it. Therefore, in the facts and circumstances of the case, this Court is of the view that it would be just and reasonable to fix the contributory negligence on the part of the deceased at 15%. Therefore, the first question is answered accordingly.



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14. As regards the quantum of compensation, it is seen that the notional income of Rs.9,000/- per month was taken by the Tribunal. The accident is of the year 2014. It is the version of P.W.1 and P.W.2 that the deceased was working as a mason. Considering the avocation and the year of the accident, the notional income fixed by the Tribunal is just and reasonable. The Tribunal had added 40% to the income towards future prospects, applied the principles laid down by the Hon'ble Supreme Court, deducted 50% towards his personal expenses, and adopted the multiplier as '18', as the deceased was aged 24 years at the time of the accident. This is justified.

15. The second respondent/second claimant is the brother of the deceased. The claim petition was dismissed against the second respondent/second claimant as he was not a dependent of the deceased.

16. The quantum of compensation awarded by the Tribunal is just and reasonable, and therefore, no interference is called for. However, considering the fact that this Court fixed the contributory negligence at 15%, the appellant State Transport Corporation is liable to pay compensation of Rs.12,20,430/- [Rs.14,35,800/- x 85/100] together with



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interest at 7.5% per annum from the date of the claim petition till the date of realization and costs.

17. The first respondent/first claimant is entitled to withdraw Rs.12,20,430/- together with accrued interest and costs, less the amount already withdrawn, if any, by filing a suitable application before the Tribunal.

18. It is reported by the learned counsel for the appellant, State Transport Corporation, that the appellant had deposited the entire compensation awarded by the Tribunal. The appellant State Transport Corporation is entitled to withdraw the excess amount deposited, together with accrued interest, by filing a suitable application before the Tribunal.

19. This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

12.08.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order
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Copy To:

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- 1.The Special District Judge
Motor Accidents Claims Tribunal,
Madurai.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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