



CMA(MD).No.117 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 22.04.2024

PRONOUNCED ON : 24.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.117 of 2017

1.A.Deisy Flora

A.Paul Chrishtianraja (died)

2.A.Paul Dineshraj

3.K.Gnanaprakasam

4.G.Pushpam

.....Appellants/Petitioners

Vs.

1.The Divisional Manager
Tamil Nadu State Transport Corporation
Dindigul

2.S.Ramalakshmi

3.The Divisional Manager
National Insurance Company Limited
40, Fraira Street
Tuticorin Town
Tuticorin District

4.R.Puvaneshvari



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5.Minor Kamali Christi
D/o.R.Puvaneshvari

....Respondents/Respondents

(Minor 5th respondent is represented
through her mother and guardian 4th respondent)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award dated 31.03.2016 made in MCOP.No. 373 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dindigul and prayed to set aside the same.

For Appellants	: Mr.D.Shanmugaraja Sethupathi
For R1	: Mr.K.Sudalaiyandi
For R2 & R4	: No appearance
For R3	:Mr.V.J.Kumaravel
For R5	: Mr.R.Senthilkumar

J U D G M E N T

The instant appeal has been filed by the claimants in MCOP.No.373 of 2009 on the file of the Motor Accident Claims Tribunal /Additional District Judge, Dindigul challenging the exoneration of the first respondent from the liability and to enhance the award amount.

2.According to the claimants, the deceased was travelling as a pillion rider in a two-wheeler which was moving from East to West direction and a bus belonging to the first respondent Transport Corporation was moving from West to East direction came in a rash and negligent manner and hit against



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the two-wheeler. In the said accident, the rider and the pillion rider of the two-wheeler had fallen down and the lorry that was coming behind the two-wheeler had run over the pillion rider. Thus, the owner of the lorry as well as the Transport Corporation are equally responsible for the said accident. The claimants have prayed for compensation of a sum of Rs.20.00 lakhs.

3.The Transport Corporation had filed a counter contending that the two-wheeler was coming behind the lorry and the rider of the two-wheeler made an attempt to overtake the lorry and on seeing the Transport Corporation Bus coming from the opposite direction, he lost control and dashed against the right front portion of the Transport Corporation Bus. Therefore, the entire accident has taken place only due to the negligence on the part of the rider of the two-wheeler.

4.The insurer of the lorry had filed a counter contending that the accident has taken place only due to inefficient driving on the part of the two-wheeler and rash and negligent driving on the part of the Transport Corporation Bus. There was no negligence on the part of the lorry driver. He had further contended that the owner of the two-wheeler and the concerned insurance company should have been impleaded as party to the proceedings. Since they have not been impleaded, the claim petition should be dismissed for non-joinder of necessary parties. The Insurance Company had further questioned the quantum of award also.



5. On the side of the claim petitioners, an eye witness was examined as PW2. The claimants had contended that only due to the rash and negligent driving on the part of the Transport Corporation Bus driver, the said accident has taken place. While he was cross examined by the Transport Corporation, he has admitted that the rider of the two-wheeler was also responsible for the said accident. The lorry driver has been examined as RW1. He had deposed that the rider of the two-wheeler had attempted to overtake the lorry and due to the rash and negligent driving on the part of the bus driver, the accident has taken place. The bus driver has been examined as RW4. In his evidence, he had contended that the two-wheeler attempted to overtake the lorry and thereafter, hit the lorry and there was no impact upon the bus at all.

6. The Tribunal after considering the evidence let in by all the parties and had arrived at a finding that the accident has taken place due to the composite negligence on the part of the two-wheeler rider and the lorry driver. It further observed that there was no negligence on the part of the driver of the Transport Corporation. The present appeal has been filed challenging the exoneration of the driver of the Transport Corporation.

7. According to the learned counsel for the appellants, in the counter it is contended that due to overtaking, the two-wheeler had dashed against the bus. However, at the time of cross examination, the bus driver has completely taken a 'U' turn and contended that there was no impact at all upon the bus,



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but the two-wheeler had dashed only against the lorry and therefore, his deposition cannot be believed. The eye witness namely PW2 has specifically stated that both the lorry driver as well as the bus driver were equally responsible for the said accident. The said fact has not been taken note of by the Tribunal. Hence, he prayed for shifting of 50% negligence on the part of the driver of the Transport Corporation. He had further contended that the quantum of award under the head of loss consortium and the funeral expenses are on the lesser side and they should be enhanced.

8.Per contra, the learned counsel appearing for the Transport Corporation had specifically contended that the rider of the two wheeler has not been examined. It is the specific case of the lorry driver as well as the bus driver that the two-wheeler rider had attempted to overtake the lorry and in the said process the accident has taken place. Hence, he prayed for dismissal of the claim petition and he had further contended that there is no scope for enhancement of the award.

9.The learned counsel appearing for the Insurance Company had also contended that there is no scope for enhancement of the award and prayed for sustaining the award passed by the Tribunal.

10.I have carefully considered the submissions made on either side and perused the material records.



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11. In the claim petition, the claimants have specifically contended that only due to the rash and negligent driving on the part of the Transport Corporation Bus which was coming from the opposite direction, the said accident has taken place. It could be seen from the records, the deceased is the pillion rider. The rider of the two-wheeler had escaped and it is not known why he was not examined as witness by the claimants. The owner of the lorry as well as the Transport Corporation have taken a consistent stand that the rider of the two-wheeler attempted to overtake the lorry and in the said process, the rider of the two-wheeler suddenly lost control and hit against the lorry. The Motor Vehicle Inspector's report of the lorry, bus and the two-wheeler have not been marked in order to identify the damages caused to the said vehicles. Only then this Court can come to a conclusion how the accident has taken place. Therefore, this Court is of the opinion that the trial Court has rightly arrived at a finding that both the rider of the two-wheeler as well as the lorry driver were negligent in causing the accident.

12. The Tribunal has awarded a sum of Rs.25,000/- towards loss of consortium to the wife and Rs.10,000/- to each one of the other claimants. Considering the fact that there are five claimants and the second wife's daughter, the loss of consortium could be enhanced to Rs.40,000/- each and totally, the consortium could be awarded as Rs.2,40,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses and the same is



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enhanced to Rs.15,000/-. The Tribunal has awarded Rs.10,000/- towards transportation and the same is enhanced to Rs.15,000/-. The Court further orders a sum of Rs.5,000/- towards loss of estate.

13.In view of the above said deliberations, the award of the Tribunal is reassessed as follows:

Sl.No.	Heads	Amount
1.	Loss of income	Rs.15,91,720.00
2.	Loss of consortium (6X40,000)	Rs. 2,40,000.00
3.	Funeral expenses	Rs. 15,000.00
4.	Transportation	Rs. 15,000.00
5.	Loss of estate	Rs. 5,000.00
	Total	Rs. 18,66,720.00

14.The award of the Tribunal is modified as follows:

(a)The exoneration of the first respondent in the claim petition (Tamil Nadu State Transport Corporation, Dindigul) is hereby confirmed.

(b)The total award amount is enhanced from Rs.16,76,720/- to 18,66,720/-.

(c) The third respondent Insurance Company is mulcted with the liability of 50% of the award amount together with interest at the rate of 7.5% p.a., from the date of filing of the petition. The third respondent shall deposit the said 50% of the award amount along with interest, deducting any amount



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that was already deposited, within a period of eight weeks from the receipt of a copy of this judgment.

(d) Since the fifth respondent had attained majority and she is married, she is entitled to withdraw her share.

(e) The claimants shall share the award amount with interest as apportioned by the Tribunal.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

24.04.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Motor Accident Claims Tribunal
/Additional District Judge, Dindigul

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
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