



C.M.A.(MD)No.1266 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **29.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.1266 of 2022
and C.M.P(MD)No.9744 of 2022
and Cross Objection (MD)No.13 of 2023

In CMA(MD)No.1266 of 2022:

The Managing Director,
Tamil Nadu State Transport Corporation,
Nagercoil Region,
Ranithottam, Nagercoil

...Appellant/3rd Respondent

Vs.

1.Mary Shakila
2.C.Angel Kibisha
3.Neelavarnan
4.The Branch Manager,
Tamil Nadu State Transport Corporation,
Thingal Nagar,
Kanyakumari District.

..Respondents 1 & 2/Petitioners

5.N.Joseph Rajan

...Respondents 3 to 5/Respondents 1,2 &4

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and award dated 18.02.2022 passed in M.C.O.P.No.10 of 2020 on the file of the Motor Accident Claims Tribunal cum Sub Court, Eraniel.

For Appellant	: Mr.S.Micheal Heldon Kumar
For R1,R2 & R4	: Mr.M.R.Srinivasan
For R5	: Mr.T.Wins
For R3	: No appearance



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In Cros.OBJ(MD)No.13 of 2023:

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1.Mary Shakila

2.C.Angel Kibisha .

..Cross Objectors/Respondents 1 & 2

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Nagercoil Region,
Ranithottam, Nagercoil

..1st Respondent/Appellant

2.Neelavarnan

3.The Branch Manager,
Tamil Nadu State Transport Corporation,
Thingal Nagar,
Kanyakumari District.

4.N.Joseph Rajan

..Respondents 2 to 4/Respondents 3 to 5

COMMON JUDGMENT

The instant appeal has been filed challenging the finding on negligence and the quantum of compensation awarded by the Tribunal. The claimants have also preferred cross-objection seeking enhancement of compensation.

2. According to the claimants, while the deceased was travelling in his bike from south to north on the Thingal Nagar to Mondaikadu Road,



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a bus belonging to the appellant came in a rash and negligent manner in the opposite direction and dashed against the bike, as a result of which the deceased sustained fatal injuries.

3. The owner of the two-wheeler, the bus driver, the Managing Director, and the Branch Manager of the Transport Corporation were impleaded as the respondents.

4. The appellant Transport Corporation filed a counter stating that the accident took place only due to the negligence of the deceased; that the deceased was under the influence of alcohol at the time of the accident; that he did not possess a valid licence; that the first information report was registered against the deceased; that the appellant is not liable to pay compensation, and that in any case, the compensation claimed was excessive.

5. Before the Tribunal, the claimants had examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.15. The appellant examined R.W.1 and marked Ex.R.1.



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6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the driver of the bus was guilty of rash and negligent driving and directed the appellant to pay a total compensation of Rs.12,50,000/-.

7. The learned counsel for the appellant submitted that the deceased was in an inebriated condition at the time of the accident and the said fact was established from the postmortem report; that the accident took place in the centre of the road, thereby suggesting that the deceased rode the bike in a rash and negligent manner and invited the accident; that the evidence of R.W.1 and other evidence on record would show that the bus driver cannot be held to be guilty of rash and negligent driving; and hence prayed for setting aside the award.

8. The learned counsel for the respondents 1 and 2/claimants, per contra, submitted that the appellant had originally taken a stand that on seeing the two-wheeler, the bus driver parked the bus on the extreme left side of the road; that it was only the deceased who had dashed against the bus; that the said stand has been disbelieved by the Tribunal rightly; and



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that therefore, the award of the Tribunal as regards negligence has to be confirmed.

9. As regards the quantum of compensation, the learned counsel for the respondents 1 and 2/claimants submitted that the notional income fixed by the Tribunal was meagre; that the Tribunal had not awarded compensation to all the cross objectors/claimants towards loss of consortium; and prayed for enhancement of compensation.

10. This Court gave its anxious consideration to the submissions made on either side and carefully perused the materials available on record.

11. The points for consideration in the instant appeal are as follows:

- a) Whether the finding on negligence by the Tribunal is justified; and
- b) Whether the quantum of compensation awarded by the Tribunal is just and reasonable.

12. As regards the 1st point, it is seen that though R.W.1, the driver



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of the bus deposed that he had parked the bus on the extreme left side of the road on seeing the vehicle of the deceased coming in a rash and negligent manner, Ex.P.8, the rough sketch would show that the accident took place almost in the middle of the road. Therefore, it cannot be stated that the entire negligence is on the deceased. At the same time, in view of the rough sketch and the location of the accident, the contributory negligence on the rider of the two-wheeler cannot be ruled out. There was no reason for the deceased to proceed in the centre of the road. That apart, though the appellant had not established that the deceased was under the influence of alcohol by examining the doctor, the postmortem report would suggest that there was a fluid smell and there were traces of ethyl alcohol. The doctor opined that the deceased had consumed ethyl alcohol prior to his death. Considering the above facts, this Court is of the view that contributory negligence of 25% can be fixed on the deceased. The first point is answered accordingly.

13. As regards the second point, according to the claimants, the deceased, who was aged 49 years, was a mason. The accident took place in the year 2017. Though no documentary evidence has been produced either to prove the income or avocation of the deceased, considering the



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year of the accident, the age of the deceased and the number of dependents, this Court is of the view that it would be reasonable to fix Rs.12,000/- as notional income of the deceased. 25% has to be added for future prospects and multiplier applicable is '13'. Since there were 2 dependants, $1/3^{\text{rd}}$ has to be deducted for personal expenses. Thus, the compensation under the head loss of income has to be (Rs.12,000 + Rs. 3,000 X 12 X 13 X $2/3$) Rs.15,60,000/- The claimants are entitled to Rs.40,000/- each towards loss of consortium. Hence, Rs.80,000/- is granted towards loss of consortium. The compensation under the other heads is confirmed. Thus, the award of compensation is enhanced in the following manner:

<i>Sl . N o.</i>	<i>Heads of Compensation</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	11,70,000.00	15,60,000.00	Enhanced
2.	Loss of consortium	40,000.00	80,000.00	Enhanced
3.	Loss of estate	15,000.00	15,000.00	Confirmed
3.	Funeral expenses	15,000.00	15,000.00	Confirmed
4.	Transport Charges	10,000.00	10,000.00	Confirmed
Total :		13,32,000.00	16,80,000.00	Enhanced

The contributory negligence on the deceased is fixed at 25%. Hence, the



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claimants are entitled to 75% of the compensation amount (Rs.16,80,000 X 75/100) Rs. **12,60,000/-**.

14. The appellant shall deposit the compensation amount with interest at the rate of 7.5% from the date of petition till the date of deposit, after deducting the amount already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant is permitted to withdraw 70% (Rs.12,60,000 X 70/100) **Rs.8,82,000/-** and the second claimant is permitted to withdraw 30% (Rs.12,60,000 X 30/100) **3,78,000/-**.

15. In fine, the appeal and the cross objection are partly allowed.
No costs. Consequently, the connected miscellaneous petition is closed.

29.10.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. Motor Accident Claims Tribunal cum Sub Court, Eraniel.

2. The Section Officer,
V.R.Section,

Madurai Bench of Madras High Court, Madurai.



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SUNDER MOHAN, J.

CM

Judgment made in
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