



C.M.A.(MD)No.1065 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
15.02.2024	29.02.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**C.M.A.(MD)No.1065 of 2018
and
C.M.P.(MD)Nos.11034 of 2018 and 5617 of 2019**

The Tamil Nadu State Transport Corporation Ltd.,
Rep. by its General Manager,
Ranithottam,
Nagercoil,
Agasteeswaram Taluk,
Kanyakumari District.

... Appellant

vs.

1.Martin Jose

2.Ayyathurai

... Respondents

[R2 is the driver of the appellant and hence, given up]

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 25.09.2017, in



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M.C.O.P.No.26 of 2016, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Kanyakumari District.

For Appellant : Mr.P.Prabhakaran

For R1 : Mr.Prithiviraj

JUDGMENT

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

This Appeal is preferred by the Transport Corporation being aggrieved by the quantum of compensation fixed by the Tribunal.

2. The facts of the case leading to the appeal are as under:-

On 09.02.2011, at about 13.00 hours, the claimant – Martin Jose [first respondent] was riding his motorcycle bearing Registration No.TN-74-K-1527 from Viswanathapuram – Kuttapuli on the West - East direction. At that time, a Transport Corporation bus bearing Registration No.TN-74-N-1122 going ahead him, suddenly halted in the middle of the road, without any signal, 30 meters away from the designated bus stop. Due to that, the claimant hit the bus



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on its backside and fell down. The vehicle got fully damaged and the claimant sustained severe injury. He was taken to the hospital and admitted. His left leg below the knee was amputated. At the time of accident, he was earning Rs.3,300/- per month and due to the accident, he has sustained 84% permanent disability. Therefore, he had sought for compensation of Rs.60,00,000/- alleging that the accident occurred due to the rash and negligent driving of the driver of the Transport Corporation bus.

3. The Transport Corporation filed a counter affidavit stating that there is no proof to show that the claimant was earning Rs.3,300/- per month as a Fisherman. It was the claimant, who rashly and negligently drove his vehicle without any care and caution and hit behind the Transport Corporation bus. Therefore, the Transport Corporation is not liable to pay any compensation.

4. The Tribunal considering the evidence let in by the claimant both ocular and documentary as well as the evidence of the bus driver, had concluded that the accident occurred due to the negligence of the bus driver. Hence, the Transport Corporation is vicariously liable to pay the compensation. After holding the



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Transportation Corporation liable, the Tribunal took notional income and applied multiplier to arrive at the compensation.

5. Though the claimant has declared his monthly income as Rs.3,300/-, the Tribunal fixed Rs.8,000/- per month as notional income, then, adding 50% to the notional income towards future prospects and taking into consideration 84% permanent disability has caused 100% functional disability to the claimant, who is a Fisherman by profession applied multiplier, and taking into consideration the medical expenses, has totally awarded a sum of Rs.41,34,735/- towards compensation.

6. Being aggrieved, the appeal is filed by the Transport Corporation on the ground that while the claimant has claimed his monthly income as Rs.3,300/-, even without any proof for income, the Tribunal has grossly erred in fixing the monthly income of the claimant notionally as Rs.8,000/- and also erred by adding 50% towards future prospects, which is contrary to law and evidence. Further, the multiplier ought not to have been applied in this case. Whereas, the Tribunal has applied multiplier '17', when the disability certificate Ex.P25 shows only 60% disability.



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7. The learned counsel appearing for the first respondent/claimant submitted that initially, the application was filed under Section 163-A of the Motor Vehicles Act, 1988 and therefore, the claim was restricted to the annual income of Rs.40,000/-. Whereas, the Tribunal has rightly found that the claim falls under Section 166(1)(a) of the Motor Vehicles Act, 1988 and therefore, has rightly applied the notional income of Rs.8,000/- per month and added 50% to it towards future prospects.

8. Heard the learned counsels and perused the records.

9. In support of their submissions, the learned counsels relied upon the following judgments of the Hon'ble Apex Court as well as this Court. The dictum laid in the following judgments been taken into consideration for deciding this appeal.

(a) **Mansoorabegum and others vs. N.Malik Maddani and another** [C.M.A.No.3328 of 2017, dated 17.02.2022] [Relied by the learned counsel for the appellant / Transport Corporation]

(b) Judgments relied on by the learned counsel for the first respondent /



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claimant:-

(i) Ningamma and another vs. United India Insurance Co. Ltd. reported in 2009 (2) TN MAC 169 (SC)

(ii) Meena Devi vs. Nunu Chand Mahto @ Nemchand Matho and others reported in 2022 LiveLaw (SC) 841

10. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, which mandates on the part of the claimant to prove that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. In this case, admittedly, the claimant has dashed behind the Transport Corporation bus and sustained injury. It is contended by the claimant that due to sudden brake applied by the Transport Corporation bus driver at a non-schedule stop and in the middle of the road, the accident took place. There is no contra evidence to disbelieve the said contention. Therefore, the finding of the Tribunal that the accident occurred due to the negligence of the Transport Corporation bus driver has to sustain.

11. Regarding the income, the Tribunal contrary to the claimant's admission that he earned Rs.3,300/- per month, had independently arrived at a conclusion



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that the notional income of the claimant to be fixed at Rs.8,000/- per month. In this regard, the claimant's counsel relied upon the judgment of the Hon'ble Supreme Court rendered in **Meena Devi vs. Nunu Chand Mahto @ Nemchand Mahto and others** (cited supra), wherein the Hon'ble Supreme Court has held as below:-

*"14. At this stage, it is necessary to clarify that as per the decision of a Three-Judge Bench of this Court in **Nagappa vs. Gurdayal Singh and others (2003) 2 SCC 274**, it was observed that under the MV Act, there is no restriction that the Tribunal/Court cannot award compensation exceeding the amount so claimed. The Tribunal/Court ought to award 'just' compensation which is reasonable in the facts relying upon the evidence produced on record. Therefore, less valuation, if any, made in the Claim Petition would not be impediment to award just compensation exceeding the claimed amount."*

12. No doubt, Courts should award just compensation, but to arrive at just compensation, there must be evidence on record. In this case, this Court finds that except the claim of Rs.3,300/- as monthly income of the claimant, there is no evidence to show that the deceased had any business to earn more income. In the said circumstances, the principle of notional income will not apply when the claimant himself has declared his monthly income as Rs.3,300/-. In this regard, the Tribunal has erred in fixing Rs.8,000/- as notional income in the absence of



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evidence on record. That apart, the claimant being a self-employed person and was 33 years old, towards future prospects, the Tribunal ought to have added only 40% to the income and also ought to have applied multiplier '16'. Therefore, the award of the Tribunal in respect of loss of income due to permanent disability is modified as below:-

Loss of Income:-

Rs.3,300/- p.m. + 40 % [Rs.1,320/-] = Rs.4,620 x 12 x 16 = Rs.8,87,040/-

13. Based on the medical bills, which are marked as Exs.P.10 to P.18 and P.24, the Tribunal has awarded a sum of Rs.8,66,735/- towards medical expenses and also awarded Rs.2,80,000/- towards fixation of artificial leg. Further, the Tribunal has awarded a sum of Rs.2,00,000/- towards pain and sufferings; Rs.1,00,000/- towards loss of expectancy in life; Rs.25,000/- towards nutrition expenses; and Rs.15,000/- towards Transportation charges. In the considered view of this Court, the compensation under these heads are reasonable and therefore, the same are hereby confirmed. The Tribunal has awarded a consolidated sum of Rs.2,00,000/- towards loss of amenities, loss of happiness in life, loss consortium and attendant charges. However, the first respondent/claimant is not entitled to any amount towards loss of consortium, as



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he himself is a bachelor. Therefore, the consolidated sum of Rs.2,00,000/- awarded by the Tribunal towards loss of amenities, loss of happiness in life, loss consortium and attendant charges is reduced to Rs.75,000/-, deducting a sum of Rs.1,25,000/- towards loss consortium. Thus, the award of the Tribunal is modified as under:-

Sl. No.	Heads	Amount awarded by the Tribunal	Amount Awarded by this Court	Award confirmed/ reduced
1	Loss of Income	24,48,000	8,87,040	Reduced by Rs.15,60,960/-
2	Pain and sufferings	2,00,000	2,00,000	Confirmed
3	Loss of amenities, loss of happiness in life, loss consortium and attendant charges	2,00,000	75,000	Reduced by Rs.1,25,000/- [As the first respondent is a bachelor, he is not entitled to loss of consortium]
4	Loss of Expectancy in life	1,00,000	1,00,000	Confirmed
5	Nutrition expenses	25,000	25,000	Confirmed
6	Transport expenses	15,000	15,000	Confirmed
7	Medical expenses	8,66,735	8,66,735	Confirmed
8	Artificial Leg expenses	2,80,000	2,80,000	Confirmed
	Total	41,34,735	24,48,775	Reduced by Rs.16,85,960/-



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14. In the result, this Civil Miscellaneous Appeal is partly allowed and the award and decree insofar as compensation is reduced to Rs.24,48,775/- with interest at 7.5% p.a. from the date of claim petition till the date of realisation. The appellant Transportation Corporation is granted eight weeks time to deposit the compensation amount, less the amount already deposited, if any, and on such deposit, the first respondent/claimant is entitled to withdraw the compensation amount, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes
NCC : Yes / No
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[G.J., J.] & [C.K., J.]
29.02.2024

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal
Kanyakumari District.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court.
Madurai.

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DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

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PRE-DELIVERY JUDGMENT MADE IN
C.M.A.(MD)No.1065 of 2018

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