



C.M.A(MD)No.476 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	08.11.2023
Pronounced on	05.01.2024

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**C.M.A(MD)No.476 of 2023
and
C.M.P.(MD)Nos.12555 and 5949 of 2023**

New India Assurance Co. Ltd.,
Mettupalayam, Annapurna Buildings,
5/1/338, Ooty Main Road,
Mettupalayam – 641 301,
Coimbatore District.

... Appellant / 2nd Respondent

-VS-

1.Karuppiyah
2.Palaniammal

... Respondents 1 & 2/ Petitioners 1 & 2

3.Sri Venkateswara Bus Service,
No.2, Kalai Nagar,
Burma Colony Road,
Thanakkankulam,
Madurai-1,
Madurai District.

... 3rd Respondent / 1st Respondent



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PRAYER : Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act, 1988, against the impugned Fair and Decreetal Order passed by the learned Motor Accidents Claims Tribunal/Subordinates Judge, Aruppukottai, dated 20.07.2022 in M.C.O.P.No.30 of 2017.

For Appellant : Mr.N.Dilipkumar

For Respondents : Mr.M.Jothi Basu for R1 & R2

Dispensed with for R3

JUDGMENT

(Judgment of the Court was made by RMT.TEEKAA RAMAN, J.)

The Insurance Company is the appellant herein. Challenging the award passed in M.C.O.P.No.30 of 2019 by the Motor Accidents Claims Tribunal/Subordinates Judge, Aruppukottai, dated 20.07.2022, the Insurance Company/appellant filed this appeal on the ground of negligence and quantum.

2.The respondents 1 and 2 are the parents of the deceased Alagukumar, (aged about 20 years and he was studying 3rd year B.E. Mechanical Engineering in Kamaraj Engineering College, Virudhunagar) have filed claim petition seeking compensation for the death of their son in the road accident on 13.04.2017.

3.The owner of the bus in which the deceased was travelling remained *ex*



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parte before the Tribunal and the appellant, who is the second respondent before the Tribunal, filed a counter statement disputing the manner of the accident and specifically took the plea that the accident had occurred only due to the carelessness and negligence on the part of the deceased by travelling on the footboard in violation of the traffic rules and thereby, the entire accident had happened because of the contributory negligence of the deceased.

4.During the Tribunal, the father of the deceased Karuppiah was examined as P.W.1 and the occurrence witness was examined as P.W.2 and the staff from the college where the deceased was studying was examined as P.W.3 and Ex.P.1 to Ex.P.37 were marked. On behalf of the respondents, on Court summons, R.W.1 and R.W.2-officer of the insurance company were examined and Ex.R.1-observation mahazar, Ex.R.2-rough sketch and Ex.R.3-insurance policy were marked.

5.Heard both sides and perused the materials available on record.

6.On a combined reading of the oral evidence of P.W.2 coupled with Ex.P.1-FIR, Ex.P.2-final report and Ex.P.4-M.V.I. Report of the bus, in which, the deceased was travelling and Ex.P.5 and Ex.P.6, the Tribunal has rightly come to the conclusion that the driver of the bus is at negligence. On reappraisal of the



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evidence of P.W.2 along with documentary evidence, we find that on 13.04.2017 at about 04.30 p.m., the deceased was travelling to Virudhunagar in the backside of the TN-58-AB-4260, SVBS bus. When the bus was going south near Chathirareddiyapatti Junction checkpoint, the driver of the bus drove the bus in a rash and negligent manner, turned the bus with high speed and dashed in the barricade, in which, the said Alagukumar was thrown away from the bus and rolled in the road. Due to the impact, the said Alagukumar sustained blood injuries in his face, forehead, hand, leg, and blood came in his nose, and he became unconscious. He was immediately taken to Virudhunagar Government Hospital for treatment, and thereafter, he died there. Hence, we find that the driver of the vehicle has not taken sufficient care in driving the vehicle near barricade and has not exercised control over the vehicle near the barricade, the accident had taken place. However, we also noticed that the deceased was travelling in the last step of the footboard of the vehicle. As a result, the deceased Alagukumar was thrown away in the road due to the said impact. The deceased was injured on the face and, subsequently, succumbed to the injuries.

7(a).In ***C.M.A.No.1211 of 2012 [M.Palaniappan Vs. The Managing Director, dated 29.04.2019]***, wherein, one of us [***The Hon'ble Justice***



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Mr.RMT.TEEKAA RAMAN], had an occasion to consider the contributory negligence of the passenger sitting at the front top footboard in the bus, which met with an accident, it was held that since the deceased was travelling only on the top most footboard, in other words, he was sitting on the floor of the bus. On evidence, the driver of the bus of the transport corporation,s was not properly negotiating pit, which has resulted in a jerk and on such jerk, the deceased person who has sitting on the floor of the bus slipped through the entrance and fell down and sustained grievous injury. On the above factual matrix, the plea of contributory negligence raised by the transport corporation was negatived.

7(b).In ***C.M.A(MD)No.414 of 2019 [The Tamil Nadu State Transport Corporation Limited Vs. C.Thavamani and others, dated 21.04.2022]***, it is case where the deceased was trying to get down from the bus, the driver of the bus without receiving any whistle signal from the conductor, suddenly moved the bus and due to the sudden impact of the accident, the deceased was fell down from the footboard, as a result, he sustained multiple grievous injuries all over the body. In those circumstances, the plea of contributory negligence stands negatived, since on evidence therein, it was demonstrated that the driver of the bus without receiving any whistle signal from the conductor suddenly moved the bus and resulted in the deceased lost the balance and fell down.



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WEB COPY 7(c).In ***C.M.A.No.2064 of 2012 [S.Ganesh (minor) Vs. The Managing***

Director, dated 01.08.2019], it is a case where the claim petitioner hurriedly got down from the bus, to reach the school in time in the morning by gaining the advantage of speed breaker, wherein, the vehicle was slowing down. In such circumstances, on evidence, I have held that the passengers and the students were getting down from the bus from both the entrance and therefore, the driver should have taken caution before driving the bus. In those circumstances, the plea of contributory negligence raised by the Insurance company was negated.

7(d).In ***C.M.A.No.575 of 2011 [The Manager Vs. Shanmugasundaram and other, dated 30.04.2019]***, it a case where the injured was about to board, a bus had one feet in the footboard, at that time, without noticing that there are some more passengers to board the bus, the driver has taken the vehicle from the bus stop and based upon such evidence, the plea of contributory negligence raised by the Insurance company was negated.

7(e).In ***C.M.A.(MD)No.589 of 2018 [The Branch Manager Vs. Valli and another dated 29.04.2022]***, it is yet another case, where the bus was stopped in the bus stop, the deceased was getting down from the bus and the conductor without noticing movement of the deceased person, had blown the whistle and so, the driver rashly and negligently and high speed, had driven the bus, the deceased



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who was in the process of getting down from the bus, sustained injury, in those circumstances, I have held that the plea of contributory negligence raised by the Insurance company, based upon the evidence available on record as rejected the same.

7(f).So also in ***C.M.A.598 of 2011 [United India Insurance Company Limited vs. S.Sathiyarayanan and another dated 31.07.2019]***, the plea of contributory negligence by the injured was negated since there is no positive evidence before the Court to show the injured was travelling in the footboard.

8.However, in the instant case, on perusal of Ex.P.1-FIR and also the pleadings of the counter statement by way of counter statement by the Insurance Company, a specific plea was raised that the deceased was travelling on the last step of the footboard and he fell down. Travelling in the last step of the footboard is a clear violation of the traffic rules.

9.In such circumstances, the Judgment of this Court in ***Tamil Nadu State Transport Corporation (Kumbakonam) Limited Vs. P.Saravanan reported in 2023 (2) TN MAC 373***, this Court has observed that the contributory negligence has to be fixed upon the person while the student was travelling in the footboard. It remains to be stated that 10% towards contributory negligence has been fixed.



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10(a).At this juncture, we are constrained to observe that though a duty is cast upon the driver and conductor of the bus to warn the passengers to get inside the bus to avoid footboard travelling, this Court has taken the judicial notice that even the college students are travelling in a footboard continuously, despite the warning given by the conductor. Hence, this kind of footboard travelling are remains unabettted by the college students cannot be ignored nor be brushed aside lightly.

10(b).In this view of the matter, the deceased, who was travelling in the footboard got injured with the bus was slow down in the barricade and therefore, 10% of contributory negligence has to be fixed on the part of the deceased and accordingly, we also find in agreement with the judgments in the above citing cases, the contributory negligence on the part of the deceased is fixed at 10% and the negligence on the part of the driver of the offending bus owned by the third respondent, insured with the appellant/Insurance Company is fixed at 90%.

11.According to the petitioners, the deceased Alagukumar was studying in 3rd yeard B.E. Mechanical Engineering at Kamaraj Engineering College, Virudhunagar and the petitioners lost permanent income from the deceased. In this regard, the decision of this Court in *Mohammed Azharudin (Decd) Vs.*



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M.Rafee in C.M.A.No.3265 of 2019 dated 30.04.2021, this Court fixed notional

income for the first year B.E. Civil Engineering student at Rs.18,000/-.

11(a).As per the oral and documentary evidence marked through P.W.3, Ex.P.9-transfer certificate, Ex.P.10-Bonafide certificate, Ex.P.11-10th mark sheet, Ex.P.12- +2 mark sheet, Ex.P.13 to Ex.P.15-Grade Sheet issued by Anna University, Ex.P.16 and Ex.P.17-Eligibility certificates, Ex.P.18-certificate issued by Swami Vivekanandar 150th Jeyanthi Vizha Kizhu, Ex.P.19-certificate issued by Education for All Movement Tamil Nadu, Sports and Disability Competitions 2005, Ex.P.20-certificate issued by Tamil Nadu Computer Park, Ex.P.21, Ex.P.22-certificate issued by Vivekananda Kendra, Kanyakumari, Ex.P.23-Certificate of participation issued by Kamaraj College of Engineering and Technology, Ex.P. 24-certificate of participation issued by National Engineering College, Kovilpatti, Ex.P.25-Hall Ticket issued by Anna University, Chennai and Ex.P.26-certificate issued by the Bharat Scouts and Guides, Aruppukottai Educational District Association, we find that the Tribunal has fixed the notional monthly income of the deceased Alagukumar as Rs.25,000/- per month.

12.In the instant case, the date of the accident is 13.04.2017 and accordingly, we find that a notional income of Rs.20,000/- per month will meet



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the ends of justice. Further, as per *Pranay Sethi case*, this Court is fixed 40% towards future prospects. Hence, the monthly income of the deceased is at Rs.28,000/- (Rs.20,000/- x 40 / 100). Since the deceased is a bachelor, 50% deduction has to be made at Rs.14,000/- (Rs.28,000/- x 1/2) towards personal expenses and considering the age of the deceased, multiplier 18 is adopted as per *Sarala Verma case* and this Court awarded a sum of Rs.30,24,000/- (Rs.14,000/- x 12 x 18) for loss of income, the claimants are entitled to Rs.40,000/- each for loss of consortium and Rs.15,000/- towards funeral expenses and Rs.15,000/- for loss of estate and Rs.15,000/- and Rs.15,000/- for transport charges.

13.In view of the above discussion, the compensation is reworked in the manner hereunder:

Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of income	Rs. 37,80,000 /-	Rs.30,24,000/-	Reduced
2.Loss of Consortium for each petitioners	Rs. 80,000/- Each Rs. 40,000/-	Rs.80,000/- Each Rs. 40,000/-	Confirmed
3.Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
4.Loss of estate	Rs. 15,000/--	Rs. 15,000/-	Confirmed
5.Transport expenses		Rs. 15,000/-	Awarded
Total Compensation	Rs. 38,90,000 /-	Rs. 31,49,000/-	Reduced



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After deduction of contributory negligence at 10%	Rs.35,01,000/- (Rs.38,90,000/- (-) Rs.3,89,000/-)	Rs.28,34,100/- (Rs.31,49,000/- (-) Rs.3,14,900/-)	Reduced
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Since the Tribunal has fixed the contributory negligence at 10% on the deceased, this Court also accepts the same.

14. In fine, the Civil Miscellaneous Appeal stands partly allowed and the award, dated 20.07.2022 made in M.C.O.P.No.30 of 2017 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Aruppukottai, is hereby modified and the compensation is reduced from **Rs.35,01,000/-** to **Rs.28,34,100/-**.

15.The appellant / Insurance Company is directed to deposit the modified award amount of **Rs.28,34,100/-** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. Excess amount, already paid if any, shall be refunded to the appellant / Insurance Company.



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16. On such deposit being made, the respondents herein/ claimants are permitted to withdraw their respective share amounts, along with interest and costs as per the apportionment of the Tribunal, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petitions are closed.

[T.K.R., J.] [P.B.B., J.]
05.01.2024

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

1. The Motor Accident Claims Tribunal
Subordinates Judge, Aruppukottai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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and
P.B.BALAJI, J.

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