



C.M.A(MD)No.41 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.03.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.41 of 2024

and

C.M.P(MD)No.653 of 2024

Tamil Nadu State Express Transport
Corporation Limited,
through its Managing Director,
Chennai.

.... Appellant

Vs.

1. Latha
2. Kannan Raja
3. Minor Maha Krishnan
4. Manikandan
5. Tamil Nadu State Express Transport Corporation
Limited through its Branch Manager,
Tirunelveli.

.... Respondents

[The 3rd claimant is represented through his mother/1st respondent]

*[The 5th respondent is the part and under the control of Appellant and
that given up]*

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the
Motor Vehicles Act, to allow this appeal, set aside the award and decree



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made in M.C.O.P.No.781 of 2022 dated 05.07.2023 on the file of the Motor Accident Claims Tribunal/Principal District Court, Tirunelveli.

For Appellant : Mr.P.Prabhakaran

For Respondents : Mr.R.Pon Karthikeyan

JUDGEMENT

This Civil Miscellaneous Appeal is filed by the Transport Corporation against the award and decree made in M.C.O.P.No.781 of 2022 dated 05.07.2023 on the file of the Motor Accident Claims Tribunal/Principal District Court, Tirunelveli.

2. It is a case of fatal. The contention of the Transport Corporation is that the accident occurred due to negligent driving of Trucker driver. The driver of the Trucker was coming from opposite direction at over speed, carrying 16 passengers crossing the Centre median line and hence, violating the traffic rules and regulations and dashed against the stopped appellant's bus. Therefore, the Transport Corporation contended that negligence should be fixed on the driver of the Trucker also. The Trucker had seating capacity of 9 persons



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excluding the driver, but 16 passengers were travelling in the vehicle which is evident from the FIR.

3. The Learned Counsel appearing for the appellant submitted that the deceased is the driver of the Trucker but the said contention was vehemently opposed by the claimants and submitted that the deceased was the passenger in the Trucker. It is seen that the FIR is filed wherein it is stated that the deceased in one of the passengers in the Trucker. Even in the counter of the appellant is has not been stated that the deceased in the driver of the vehicle. The appellant had relied on the copy of the petition filed by the claimants, wherein it is stated that “immediately the ride Muthuraja was taken to Government Hospital”. It is seen only in petition is stated so but in all other places the deceased Muthuraja was shown as passenger.

4. As far as the fixing of contributory negligence is considered. It is seen that the accident had occurred as head on collision. In such circumstances, contributory negligence ought to be fixed on the Trucker also. Moreover, as per contention of the Appellant, the Trucker



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was on the wrong side. It is stated in the claim petition that the Trucker was plying towards western side of the road from North to South direction. If the vehicle is coming from northern to southern direction, the vehicle ought to be on the eastern side only, which would be the left side of the vehicle. In the present case when the Trucker is on the western side, it means the Trucker was on the wrong side. Therefore, this Court is fixing 10% contributory negligence on the Trucker.

5. As far as the salary is concerned the accident had occurred in the year 2006. As per *Syed Sadiq case* the notional income ought to be fixed as Rs.6,500/- for the accident happened in the year 2008. In the present case, the accident was occurred in the year 2006. Since the deceased was working as agriculturist, then the appropriate fixation of notional salary ought to be Rs.9,000/- and not Rs.12,000/-. The Tribunal had erred in fixing Rs.12,000/- as notional salary.

6. As far as the future prospectus this Court is fixing the same at 40% of Rs.9,000/-, i.e., Rs.3,600/-. Total monthly salary of the deceased is $\text{Rs.9,000} + \text{Rs.3,600} = \text{Rs.12,600/-}$. As per *Pranay Sethi*



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case, 1/3 to be deducted for personal expenses i.e., Rs.4,200.

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$$\text{Rs.}12,600 - \text{Rs.}4,200 = \text{Rs.}8,400/-$$

Since the deceased was aged about 33 years at the time of accident the multiplier 16 is to be applied.

$$\text{Rs.}8,400 \times 12 \times 16 = \text{Rs.}16,12,800/-.$$

7. Accordingly, the claimants are entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	Transportation	Rs. 5,000/-	Rs 5,000/-	confirmed
2.	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	confirmed
3.	Loss of Consortium to the 1 st petitioner	Rs. 40,000/-	Rs. 40,000/-	confirmed
4.	Loss of love and affection to the claimants 2 & 3 each Rs.40,000/-	Rs. 80,000/-	Rs. 80,000/-	confirmed
5.	Loss of dependency	Rs.21,50,400/-	Rs.16,12,800/-	Reduced
Total		Rs. 23,05,400/-	Rs. 17,52,800/-	

After deducting 10% of contributory negligence on the part of the Trucker to the tune of Rs.1,75,280/-, the amount of compensation comes to Rs.15,77,520/-. The amount shall be paid with interest at 7.5% p.a., as



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awarded by the Tribunal, from the date of claim petition till the date of realization.

5. In view of the said modification, this Civil Miscellaneous Appeal is partly allowed, and the award amount of **Rs.23,05,400/-** granted by the Tribunal is reduced to **Rs.15,77,520/-** with 7.5% interest. The appellant is directed to deposit the awarded amount along with accrued interest and costs, within a period of Twelve weeks, from the date of receipt of copy of the order, if not deposited. The claimants 1 & 2 are permitted to withdraw their share as apportioned by the Tribunal and the share of minor claimant shall be deposited in anyone of the Nationalized bank till he attains majority. The 1st claimant is permitted to withdraw the accrued interest from the deposited amount of the minor. No costs. Consequently, connected miscellaneous petition is closed.

20.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
KSA



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To

1. The Motor Accident Claims Tribunal/
Principal District Court,
Tirunelveli.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

**Order made in
C.M.A(MD)No.41 of 2024**

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