



C.M.A(MD)No.36 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.36 of 2024

and

C.M.P(MD)No.549 of 2024

M/s.Tamil Nadu State Transport
Corporation Ltd.,
Periyamilaguparai
Trichy-1.

: Appellant/Respondent

Vs.

1.Pushbavalli

2.Iyyappan

: Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and Decreetal order, dated 30.06.2023 made in M.C.O.P.No.209 of 2019, on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli.

For Appellant : Mr.K.Ramaiah

For R1 & R2 : Mr.N.Sudhagar Nagaraj



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JUDGMENT

[Judgment of the Court was made by **K.K. RAMAKRISHNAN .J.**]

The appellant Transport Corporation, aggrieved by the award passed by the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli in M.C.O.P.No.209 of 2019, dated 30.06.2023, has preferred this appeal, questioning the negligence and quantum of compensation awarded by the tribunal.

2. The appellant Transport Corporation is the respondent in M.C.O.P.No.209 of 2019, on the file of the Motor Accident Claims Tribunal/Special District Judge, Tiruchirappalli. The respondents 1 & 2 herein are the claimants. The claimants filed the claim petition in M.C.O.P.No.209 of 2019, claiming a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) as compensation for the death of the deceased Ponnusamy, who is the husband of the first claimant and father of the second claimant in the accident that occurred on 03.10.2018. By the award, dated 30.06.2023 the Tribunal awarded a sum of Rs.28,49,589/- as compensation.



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WEB COPY **3.Facts of the Case:-**

According to the claimants, on 03.10.2018 at about 08.30 hours the deceased Ponnusamy was driving his motorcycle bearing registration No.TN-45-BU-7053 and coming from Venkidusamy lane to the Manapparai – Kovipatti main road in Manapparai. Along with him, his wife Pushbavalli also travelled as a pillion rider in the same motorcycle. The deceased was riding the motorcycle with all care and caution and following the traffic rules and coming from north to south. When the deceased reached the east-west Manapparai-Kovilpatti main road, after watching the road traffic on both sides he turned his vehicle towards left side, ie., to the east side and was proceeding on the east side keeping his left. At that time, the respondent's water tanker lorry bearing registration No.TMN-4331 which is self insured was driven by its driver in a rash and negligent manner at a very high speed came from west to east ie., from behind the deceased's motorcycle and dashed against the deceased's motorcycle. Due to the impact, the deceased and his wife who was a pillion rider were thrown off and sustained multiple injuries. The deceased sustained fatal injuries on head and chest. Immediately after the



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accident, he was taken to Kumaran Hospital, Manapparai where first-aid was given and then the deceased was taken to Government Hospital, Trichy and the duty doctor checked and found him dead on the way. First Information Report was registered in Cr.No.367 of 2018 under Sections 279 and 304(A) of IPC by the Manapparai police station and after investigating the matter, the police filed the final report against the driver of the appellant/respondent's vehicle.

4.The appellant/respondent filed a counter denying all the averments made in the claim petition and contended that the deceased without observing the road traffic rules drove the vehicle in an uncontrollable manner and hit the rear tyre of the Water Tank Lorry and fell down. Therefore, the accident had happened only due to the negligence on the part of the deceased. Hence, the appellant is not liable to pay the compensation to the claimants and the compensation claimed by the claimants are highly excessive and exorbitant and without any basis.



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5.Before the Tribunal, on the side of the claimants P.Ws.1 & 2 were examined and Ex.P1 to Ex.P9 were marked. On the side of the appellant/respondent R.W.1 was examined and Ex.R1 to Ex.R3 were marked and also Ex.X1 was marked.

6.The Tribunal relying upon the evidence of P.W.1, P.W.2, R.W.1, Ex.P1-FIR, Ex.R1 to Ex.R3 came to the conclusion that the accident happened only due to the rash and negligent driving of the driver of the appellant/respondent Tanker Lorry and awarded compensation of Rs. 28,49,589/- along with interest @ 7.5% per annum. Challenging the negligence and quantum of compensation awarded by the Tribunal, the present appeal has been filed.

7.Submission of the learned counsel for the appellant:

(i) The learned counsel for the appellant/Transport Corporation would submit that at the time of accident, the deceased was not wearing the helmet and hence, on this aspect, 10% negligence has to be fixed upon the deceased.

(ii) In the evidence of P.W.1, she states that when she along with



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deceased while crossing from Venkidusamy street to Manapparai-Kovilpatti road met with the accident caused by the appellant water tank lorry on the left rear side wheel. Hence, the accident had happened due to the rash and negligence act of the deceased. Hence, interference is required.

8.Submission of the learned counsel for the respondent:

The learned counsel for the respondents 1 & 2/ claimants submitted the Tribunal had correctly fixed the negligence on the driver of the respondent. He would further submit that the income of the deceased was properly assessed by the tribunal and the compensation awarded is just and reasonable. The FIR and final report also were filed against the driver of respondent. He has not disputed the above finding of the final report and the involvement of the vehicle in question. Hence, he seeks for confirmation of the finding of the Tribunal on negligence and quantum.

9. Aggrieved against the said award, dated 30.06.2023, the appellant-Transport Corporation has filed the present appeal.

10. We have heard the learned Counsel appearing for the appellant



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and the learned counsel appearing for the fourth respondent and also perused all the materials available on record.

11. The following points arise for consideration of this appeal:

11.1. Whether the negligence is correctly fixed on the driver of the respondent?

11.2. Whether the compensation granted is in accordance with law?

12. Discussion on the negligence:

It is the case of the claimants that on 03.10.2018 at about 08.30 hours the deceased Ponnusamy drove his motorcycle bearing registration No.TN-45-BU-7053 and was coming from Venkidusamy lane to the Manapparai – Kovipatti main road in Manapparai. Along with him, his wife Pushbavalli also travelled as a pillion rider. The deceased drove the motorcycle with all care and caution and followed the traffic rules and was coming from north to south. When the deceased reached the east-west Manapparai-Kovilpatti main road, after watching the road traffic on both sides he turned his vehicle towards left side, ie., in the east side and proceeding on the east side keeping his left. At that time, the respondent's water tanker lorry bearing registration No.TMN-4331 which was driven



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by its driver in a rash and negligent manner at a very high speed came from west to east ie., from behind the deceased's motorcycle and dashed against the deceased's motorcycle. Due to the impact, the deceased and his wife who was seated as pillion rider were thrown off and sustained multiple injuries. The deceased sustained fatal injuries on head and chest. Immediately after the accident, he was taken to Kumaran Hospital, Manapparai where first-aid was given and then the deceased was taken to Government Hospital, Trichy and the duty doctor checked and found him dead on the way. First Information Report was registered in Cr.No.367 of 2018 under Sections 279 and 304(A) of IPC by the Manapparai police station and after investigating the matter, the police filed the final report against the driver of the respondent's vehicle. P.W.1 an eye witness has clearly stated that the respondent driver only drove his vehicle at high speed in a rash and negligent manner and dashed against the deceased's two-wheeler, when they were proceeding towards east. The evidence of the eye witness P.W.1 and the materials collected by the investigation officer clearly proved that the driver of the lorry drove the vehicle in a rash and negligent manner.



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13. The appellant's driver was about to pass the four road junction and at that time, the deceased without wearing a helmet came along with his wife as pillion rider in the motorcycle from the left side north road was about to enter the main road. Due to this, the deceased hit the rear left side tyre of the respondent's water tank lorry and fell down. In the said circumstances, this Court fixes the contributory negligence on the rider of the two-wheeler/deceased as well as the insured vehicle in the ratio of 10% on the deceased and 90% on the driver of the respondent vehicle, respectively. In the said circumstances, the findings of the Tribunal fixing the entire negligence on the insured vehicle is not sustainable.

14. Discussion on quantum:

The learned trial Judge granted compensation of Rs.28,49,589/- The learned counsel for the appellant submitted that the learned Tribunal, granted exorbitant amount as compensation. This Court perused the salary certificate of the deceased and other relevant documents and observes as follows:

14.1. The deceased was working as Sweeper in Manapparai



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Municipality and he was aged about 57 years and the Pay certificate was marked as Ex.P6. As per Ex.P6 his salary was Rs.37,343/- and no contrary evidence was let in to disbelieve the above monthly income. Therefore, this Court fixes the monthly income of the deceased as Rs. 37,343/-. 10% for future prospects also is fixed as per the judgment in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**. On the point of quantum, deduction of income, multiplier and award of consortium, we find that no excessive amount was granted. The compensation awarded by the Tribunal is just and fair. Therefore, the award of the tribunal is confirmed.

15. In respect of the negligence, this Court fixes 10% on the deceased, who was the driver of the two-wheeler and 90% on the driver of the lorry. Hence 10 % of total award amount of Rs.2,84,959/- is deducted from the total award amount of Rs.28,49,589/-. Hence, the award amount comes around Rs.25,64,630/-.

15.1. Considering the ratio of the dependancy, this Court issues the following direction to apportion the above amount. The first claimant



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wife of the deceased is entitled to receive Rs.17,49,589/- and the second claimant son of the deceased is entitled to Rs.8,15,041/- with proportionate interest.

16. Accordingly, the Civil Miscellaneous Appeal is partly allowed in the following terms:-

(i) the appellant transport corporation liable to pay 90% of the total compensation of Rs.28,49,589/- and the same comes around Rs. 25,64,630/- with interest from the date of the filing the petition;

(ii) the appellant transport corporation is hereby directed to deposit the said amount after deducting any amount, if already deposited, within the period of twelve weeks from the date of receipt of copy of this Order;

(iii) the first claimant wife of the deceased is entitled to receive the amount of Rs.17,49,589/- and the second claimant son of the deceased is entitled to receive the amount of Rs.8,15,041/- with proportionate interest and costs.

17. Accordingly, this Civil Miscellaneous Appeal is partly allowed regarding the negligence alone and all other aspects are confirmed. The



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appellant Transport Corporation is directed to deposit the award amount after deduction 10% of the amount regarding the negligence on the part of the deceased with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw their share as per the apportionment made by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

**(V.B.S.J.) (K.K.R.K.J.)
14.03.2024**

Index: Yes/No
Internet: Yes/No
am/sbn

To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN.J.,
and
K.K. RAMAKRISHNAN.J.,

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