



C.M.A(MD)No.165 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

C.M.A(MD)No.165 of 2024
and
C.M.P(MD)No.1949 of 2024

Tamil Nadu State Transport Corporation Ltd.,
Thoothukudi through its Branch Manager,
Royal Sundaram Insurance Co Ltd.,
Tirunelveli.

... Appellant

Vs.

- 1.Kamatchi
- 2.Minor Prajith Kasiram
- 3.Minor Haris Aathitya

*(Minor Respondents 2 & 3 represented through their
mother 1st respondent as Natural Guardian)*

- 4.Royal Sundaram Insurance Co.Ltd.,
Tirunelveli.

... Respondents



C.M.A(MD)No.165 of 2024

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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the Decree and Judgment dated 27.07.2023 made in MCOP No.31 of 2015 on the file of the Motor Accident Claims Tribunal-cum-Sub Court, Kovilpatti.

For Appellant : Mr.S.Micheal Heldon Kumar

JUDGMENT

[Judgment of the Court was delivered by V.BHAVANI SUBBAROYAN, J.]

The Transport Corporation has come up with this appeal assailing the award of the Motor Accident Claims Tribunal-cum-Sub Court, Kovilpatti, made in MCOP No.31 of 2015, dated 27.07.2023.

2. Facts of the case:

This is a case of fatal accident. The case of the claimants is that on 23.10.2012 at about 09.10 pm., the deceased namely, Samiappa was driving his TATA ACE vehicle bearing Reg.No.TN-69-AV-3984 in the Kovilpatti New Road.



C.M.A(MD)No.165 of 2024

WEB COPY

When the vehicle he drove, came in front of Kasi X-ray center from South to North direction, a bus belonging to the appellant Corporation bearing Reg.No.TN-72-N-1174 driven by its driver in the opposite direction in a rash and negligent manner, dashed against the TATA ACE. In the impact, the deceased Samiappa sustained severe injuries in the right Fibula and a blunt hit on the abdomen. Immediately, he was taken to the Government Hospital, Kovilpatti, where he died on 28.10.2012. But the Kovilpatti East Police Station had wrongly registered a criminal case in crime No.588/2012 as against said Samiappa under Section 279 and 337 IPC. The first claimant is the wife and the claimants 2 and 3 are the children of the deceased. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the appellant Transport Corporation bus, the claimants filed a petition, claiming compensation of Rs.50,00,000/- in M.C.O.P.No.31 of 2015 on the file of the Motor Accident Claims Tribunal-cum-Sub Court, Kovilpatti.

3. Resisting the claim, the appellant Transport Corporation filed their counter, wherein, they have stated that the accident had happened because of the careless act of the deceased person and the driver of the appellant Transport



C.M.A(MD)No.165 of 2024

WEB COPY

Corporation drove the bus carefully. The deceased was in a “*drunken condition*” and “*under the influence of alcohol*” at the time of accident. The police has rightly registered the case against the deceased person. Hence, the respondents/claimants cannot claim any compensation as against the appellant Transport Corporation even under the No fault liability. It was also contended that the claim is excessive and exorbitant.

4. To substantiate the case, on the side of the claimants, P.Ws.1 to 4 were examined and Exs.P1 to Ex.P.17 were marked. On the side of the appellant/Transport Corporation, R.W.1, one Abraham was examined and Ex.R1 and Ex.R2 were marked.

5. Finding of the Tribunal:

The Tribunal, after considering the oral and documentary evidence, held that the driver of the appellant bus was responsible for the accident. Therefore, the conclusion of the investigating officer that, the deceased was responsible for the accident due to consumption of alcohol goes without any proof. Further, as per the evidence of PW2 and the rough sketch filed under Ex.P.2, it is the



C.M.A(MD)No.165 of 2024

WEB COPY

appellant bus that came in a wrong direction and dashed against the Tata Ace vehicle driven by the deceased. Therefore, this Tribunal is of the view, the driver of the appellant Transport Corporation is responsible for the accident. The Tata Ace vehicle owned by the deceased is insured with the fourth respondent insurance company at the time of accident. Therefore, the deceased was not a third party to the insurance policy issued by the fourth respondent. Since the appellant Transport Corporation driver found as tort feaser, the appellant transport corporation is liable to be pay compensation to the claimants. The fourth respondent insurance company is no way liable to pay compensation to the claimants. Hence, the Tribunal, awarded the compensation of Rs.19,54,453/- to the claimants under the following heads:-

<i>SL. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of dependency	Rs.16,92,900/-
2	Loss of Estate	Rs. 15,000/-
3	Loss of Consortium (40,000X3)	Rs. 1,20,000/-
4	Funeral Expenses	Rs. 15,000/-
5	Medical Bills (Ex.A8 to Ex.A.10)	Rs. 1,11,553/-
Total		Rs.19,54,453/-



C.M.A(MD)No.165 of 2024

WEB COPY

Assailing the award, the appellant Transport Corporation has filed the present appeal.

6. Heard Mr.S.Micheal Heldon Kumar learned counsel appearing for the appellant Transport Corporation and perused the materials available on record.

7. This appeal has been filed challenging the “ liability and quantum of compensation ”.

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

8.1.Whether plea of the appellant transport corporation that deceased was responsible for accident is sustained?

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

9. Discussion on the negligence:

When the deceased was driving his TATA ACE vehicle on 23.10.2012, at about 09.10 p.m., in the Kovilpatti new Road from south to north direction, the appellant corporation bus came in the opposite direction from the north to south



C.M.A(MD)No.165 of 2024

WEB COPY

and dashed with the vehicle. The FIR was registered against the driver of the bus on complaint by P.W.2, who travelled in the said TATA ACE vehicle and deposed before the court below that the appellant bus came in the opposite direction and dashed against the TATA ACE by coming in the extreme western side of the road. From the sketch, it is clear that the appellant bus instead of going in the eastern side, strayed into the western side, in which, the TATA ACE vehicle was coming. From that sequence of events and the evidence of P.W.2, the learned Tribunal Judge correctly assessed the evidence and gave a finding that the accident happened due to the negligence of the appellant corporation bus. It is further case of the appellant that the deceased had consumed alcohol and he caused the accident. If the deceased was found of smell of alcohol in his breath, then it would have been mentioned in the Accident Register. In this regard, the Tribunal examined one Muthusamy (P.W.3), Record Clerk of Government Hospital. He has categorically deposed that as per the Accident Register (Ex.P.17), there is no remark to the effect that the deceased was found in a drunken condition and under the influence of alcohol. Hence, the contention of the appellant that the deceased was in a drunken condition, is not acceptable. This Court finds no reason to interfere with the said findings. Therefore, this Court concurs with the finding of



C.M.A(MD)No.165 of 2024

WEB COPY

the learned trial Judge that the driver of the appellant Transport Corporation is responsible for the accident. The appellant Transport Corporation is liable to pay the compensation.

10.Discussion on quantum:

The Tribunal awarded compensation Rs.19,54,453/- to the claimants. Insofar as the quantum is concerned, the learned counsel appearing for the appellant/Transport Corporation has contended that the award is on the higher side and it requires reduction.

10.1.The deceased was aged about 38 years at the time of accident and the deceased was running business in the name of Jhansi Traders by obtaining licence from the authorities and earning a monthly income of Rs.50,000/-. The claimants also produced the certificate issued by the Central Excise Department under Ex.P.14, in respect of the business carried on by the deceased. There are no materials available to show the monthly income of the deceased at the time of accident. Hence, the Tribunal, took monthly notional income of the deceased as Rs.10,077/-. On perusal of the records, we find that the Tribunal, by following the



C.M.A(MD)No.165 of 2024

WEB COPY

Judgment of the Honourable Supreme Court in the case of *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in 2009(2) *TNMAC 1 (SC)* and the Judgement of this Court in the case of *Aandal and two others vs. Avinav Kannan and another* reported in 2019(1) *TNMAC 54 (DB)*, has fixed the monthly notional income Rs.10,077/- and 40% of the monthly income of the deceased, to be added towards future prospects. There are three dependants to the deceased. Deducts 1/3 of the monthly income of the deceased towards his personal expenses and applied multiplier 15 and calculated the loss of income as follows:-

10.2.Calculation of the amount:

$$10077 + 4030(40\%) = \text{Rs. } 14,107/-$$

$$14107 - 4702(1/3) = \text{Rs. } 9,405/-$$

$$9405 \times 12 \times 15 = \text{Rs. } 16,92,900/-$$

$$\text{Loss of Income} = \text{Rs. } 16,92,900/-$$

10.3. The non pecuniary damages as per the *Pranay Sethi case* is calculated as follows:-



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C.M.A(MD)No.165 of 2024

Loss of Estate	Rs. 15,000/-
Loss of Consortium (40,000X3)	Rs. 1,20,000/-
Funeral Expenses	Rs. 15,000/-
Medical Bills (Ex.A8 to Ex.A.10)	Rs. 1,11,553/-

10.4. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference.

11.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal under the heads enumerated hereunder:-

<i>SL. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
1	Loss of dependency	Rs.16,92,900/-
2	Loss of Estate	Rs. 15,000/-
3	Loss of Consortium (40,000X3)	Rs. 1,20,000/-
4	Funeral Expenses	Rs. 15,000/-
5	Medical Bills (Ex.A8 to Ex.A.10)	Rs. 1,11,553/-
Total		Rs.19,54,453/-

We find no reason to interfere with the conclusion reached by the Tribunal. This appeal has no merit. Hence, this appeal is liable to be dismissed.



C.M.A(MD)No.165 of 2024

WEB COPY

12. Accordingly, this Civil Miscellaneous Appeal is **dismissed** as devoid of merits. The compensation awarded in M.C.O.P.No.31 of 2015 on the file of the Motor Accident Claims Tribunal-cum-Sub Judge, Kovilpatti, dated 27.07.2023, is hereby confirmed. The appellant Transport Corporation is directed to deposit the award amount with proportionate accrued interest and costs, less any amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. Further, the Tribunal is directed to deposit the share of the minor claimants in any one of the nationalised banks, as fixed deposit under the cumulative deposit scheme, till the minors attain majority and the first claimant being mother and natural guardian is permitted to withdraw the interest once in six months directly from the Bank. The minor claimants on attaining majority is permitted to withdraw his share. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed. The first respondent is hereby permitted to withdraw her respective share.

[V.B.S.,J.] [K.K.R.K.,J.]
19.02.2024

NCC : Yes/No
Index : Yes / No



C.M.A(MD)No.165 of 2024

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To

- 1.The Motor Accident Claims Tribunal-cum-Sub Judge,
Kovilpatti.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.165 of 2024

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

skn/sbn

JUDGMENT MADE IN
C.M.A(MD)No.165 of 2024
and
C.M.P(MD)No.1949 of 2024

Dated:19.02.2024