



C.M.A.No.1242 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 18.03.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.1242 of 2022

1.Selambayi

2.Kulanthaivel

3.Cinnammal

... Appellants

VS.

1.R.Kalaiarasan

*(Notice for R1 may be dispensed with for the time being
and separate petition filed for the same)*

2.The Managing Director, Tamil Nadu State Transport
Corporation Limited, Coimbatore Ltd.,
37, Mettupalayam Road, Coimbatore-641 043.

3.The Managing Director, Tamil Nadu State Transport
Corporation Limited, Erode Limited,
Chennimalai Road, Erode.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order made in M.C.O.P.No.415 of 2018 on the file of the Motor Accident Claims Tribunal Cum Special District Judge, Erode dated 01.09.2021.

For Appellants : Mr.C.Kulanthaivel



WEB COPY



C.M.A.No.1242 of 2022

For R2 and R3 : Mr.S.Murali Vinoth

For R1 : No Appearance

J U D G M E N T

Aggrieved by the award passed by the Motor Accident Claims Tribunal Cum Special District Judge, Erode in M.C.O.P.No.415 of 2018, the claimants have come by way of this appeal seeking enhancement of compensation.

2. It is the case of the claimants that husband of 1st claimant and son of the 3rd claimant namely Velusamy died in a road accident that had taken place on 27.02.2017. It was the case of the claimants before the Tribunal that Velusamy has travelled as a pillion rider in a TVS 50 Motorcycle on that day proceeding from south to north on the left hand side of the Bhavani-Mettur Road. The bus bearing Registration No.TN 33 N 2427 belonged to the 2nd respondent/Corporation driven by the 1st respondent came in the opposite direction in a rash and negligent manner and dashed against the two wheeler. As a result of which, he sustained grievous injuries and died in hospital. Therefore, a claim petition was filed seeking compensation of Rs.20,00,000/-.

3. The 2nd respondent filed counter and same was adopted by the

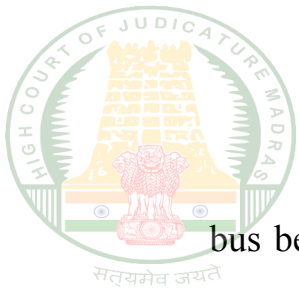


C.M.A.No.1242 of 2022

respondents 1 and 3. According to the respondents, the driver of the Transport Corporation-bus was driving its vehicle slowly and carefully by following the traffic rules. The two wheeler was driven in a rash and negligent manner by its driver and he crossed the median of the road and came to the right hand side and dashed against the bus. Therefore, it was the case of the respondents that negligence was on the part of the driver of the two wheeler and hence, the claim petition was not maintainable against the 1st respondent.

4. Before the Tribunal, the 1st appellant/1st claimant was examined as PW.1 and an eye-witness namely Senthilkumar was examined as PW.2. On behalf of the appellants/claimants, 11 documents were marked as Exs.P1 to P11. On behalf of the respondents, 1st respondent-R.Kalaiarasan was examined as RW.1 and no document was marked.

5. The Tribunal based on the evidence available on record, came to the conclusion that the driver of the two wheeler contributed to the accident to the extent 70% and hence, fixed 70% contributory negligence on the part of the driver of the two wheeler and fixed 30% negligence on the part of the

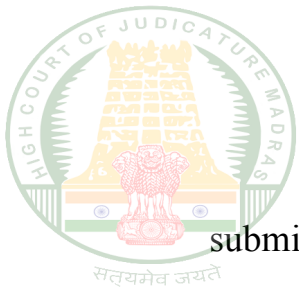


C.M.A.No.1242 of 2022

bus belonged to the respondents. The amount payable to the claimants was quantified at Rs.4,22,984/- after deducting 70% towards contributory negligence. Aggrieved by the fixation of the contributory negligence to the extent of 70% and also quantum of compensation, the claimants have come before this Court.

6. The learned counsel appearing for the appellants would submit that the eye-witness to the incident, who was examined as PW.2 clearly deposed that entire negligence was on the part of the driver of the bus and the same was not properly appreciated by the Tribunal. The learned counsel further submits that deceased was employed as a Security and was earning a sum of Rs.15,000/- per month and the Tribunal fixed very low notional income of Rs.10,000/-. Hence, the same requires enhancement.

7. The learned counsel appearing for the respondents 2 and 3/Transport Corporation would submit that the driver of the Corporation-bus was examined and he clearly deposed about the negligence on the part of the driver of the two wheeler and therefore, the Tribunal was justified in fixing 70% negligence on the part of the driver of the two wheeler. He further



C.M.A.No.1242 of 2022

submits that the claimants have not produced any documentary evidence to prove the avocation as well as income of the deceased and hence, the notional income of Rs.10,000/- fixed by the Tribunal is justifiable in law.

8. In order to prove the negligence aspect, the 1st claimant was examined as PW.1 and an eye-witness was examined as PW.2. The FIR filed against the driver of the Corporation-bus was marked as Ex.P1. The final report filed against the driver of the Corporation-bus has been marked as Ex.P4. Therefore, it is clear that FIR was filed only against the driver of the Corporation-bus and after investigation, police found that rash and negligence was on the part of the driver of the Corporation-bus and filed final report against him. PW.2-an eye-witness, who was examined by the claimants deposed that the negligence was on the part of the driver of the Corporation-bus. On behalf of the respondents 2 and 3/corporation, the 1st respondent-driver of the bus was examined as RW.1. In his evidence, he clearly stated that the rider of the two wheeler crossed median and came in the right hand side portion of the bus and dashed against the bus. However, the RW.1 has not given any explanation for his failure to lodge a police complaint against the driver of the two wheeler.



C.M.A.No.1242 of 2022

WEB COPY 9. Taking into consideration, the evidence of PW.2, RW.1 and also the contents of FIR and final report, this Court feels that there is negligence on the part of both the driver of the Respondents 2 and 3/Transport Corporation and the driver of the two wheeler. In the facts and circumstances of the case, this Court feels it would be appropriate to fix 50% negligence on the part of the driver of the two wheeler and remaining 50% negligence on the part of the Corporation-bus. Therefore, the 70% negligence fixed by the Tribunal on the part of the driver of the two wheeler is reduced to 50%.

10. In the claim petition, it was averred by the claimants that the deceased was employed as a Security and was earning a sum of Rs.15,000/- per month. However, to prove the avocation and income of the deceased, the claimants have not produced any documentary evidence. Therefore, taking into consideration the date of accident and prevailing cost of living, this Court proceeds to fix the notional income of the deceased at Rs.15,000/-. As per Ex.P7-post mortem report, the Tribunal fixed the age of the deceased at 50. In that case, the claimants are entitled to 25% enhancement towards future prospects. The applicable multiplier is 13. The Tribunal found that



C.M.A.No.1242 of 2022

there was no evidence to establish that the 2nd claimant was son of the deceased and hence, dismissed the claim petition as against 2nd claimant.

11. Since there are two dependents namely appellants 1 and 3/claimants 1 and 3, wife and mother of the deceased, 1/3rd amount has to be deducted towards personal expenses for the deceased. In that case, the loss of dependency would be Rs.19,50,000/- (Rs.15,000 x 1.25 x 12 x 13 x 2/3).

12. The amount of Rs.15,000/- each awarded by the Tribunal under the heads funeral expenses and loss of estate are confirmed. The amount of Rs.40,000/- each awarded under the heads filial consortium and loss of consortium to wife are affirmed. Therefore, the total compensation payable to the claimants would be 20,60,000/-.

13. Since 50% negligence is fixed on the driver of the two wheeler, the amount of Rs.10,30,000/- has to be deducted from the total compensation payable by the respondents 2 and 3/Transport Corporation. Therefore, the total amount payable to the claimants by the respondents 2 and 3/Transport Corporation is fixed at Rs.10,30,000/-. Accordingly, the

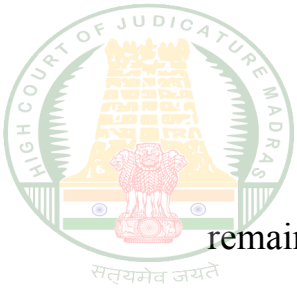


award passed by the Tribunal is modified as follows:-

WEB COPY

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Loss of Income	Rs.12,99,948/-	Rs.19,50,000/-	Enhanced
2.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of Filial Consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
5.	Loss of consortium to wife	Rs.40,000/-	Rs.40,000/-	Confirmed
Total Compensation		Rs.14,09,948/-	Rs.20,60,000/-	Enhanced
Less 70% contributory negligence on the part of driver of the motorcycle		Rs.9,86,964/-	-	-
Total		Rs.4,22,984/-	Rs.20,60,000/-	Enhanced
This Court fixed 50% contributory negligence on the part of the driver of the motorcycle (deduct)		-	Rs.10,30,000/-	-
Total compensation payable to the claimants 1 and 3		Rs.4,22,984/-	Rs.10,30,000/-	Enhanced by Rs.6,07,016/-

14. In view of the discussions made earlier, the total compensation payable to the claimants is fixed at Rs.10,30,000/-. The respondents 2 and 3/Transport Corporations have already deposited Rs.5,86,498/-. Therefore, the respondents 2 and 3/Transport Corporations are directed to deposit



C.M.A.No.1242 of 2022

remaining award amount together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, to the credit of M.C.O.P.No.415 of 2018 on the file of the Motor Accident Claims Tribunal cum Special District Judge, Erode, within a period of six weeks from the date of receipt of copy of this judgment.

15. Out of the above said compensation amount of Rs.10,30,000/-, the 1st claimant is entitled to Rs.7,00,000/- and 3rd claimant is entitled to Rs.3,30,000/-. On such deposit, the claimants 1 and 3 are entitled to withdraw their proportionate share by making formal application before the Tribunal.

16. It is open to the claimants to proceed against the owner and insurer of the two wheeler, if so advised.

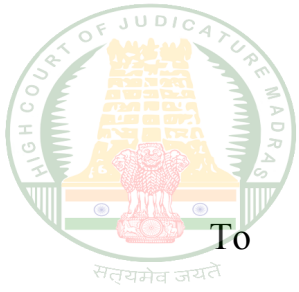
17. With the above directions, the Civil Miscellaneous Appeal is allowed. The appellants are directed to pay applicable additional court fee for the enhanced award amount. No costs.



C.M.A.No.1242 of 2022

18.03.2025

WEB COM
Index :Yes/No
Speaking order :Yes/No
Neutral Citation :Yes/No
dm



C.M.A.No.1242 of 2022

To

WEB COPY

- 1.The Motor Accident Claims Tribunal
Cum Special District Judge, Erode.
- 2.The Managing Director, Tamil Nadu State Transport
Corporation Limited, Coimbatore Ltd.,
37, Mettupalayam Road, Coimbatore-641 043.
- 3.The Managing Director, Tamil Nadu State Transport
Corporation Limited, Erode Limited,
Chennimalai Road, Erode.
- 4.The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.1242 of 2022

S.SOUNTHAR, J.

dm

C.M.A.No.1242 of 2022

18.03.2025