



CMA.No.1755 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :11.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.1755 of 2022

1. Valli
2. Minor Srihari
(2nd appellant impleaded vide court order
dated 04.03.2025 made in CMP.No.20940/2024
in CMA.No.1755 of 2022)

... Appellant

Vs.

The Managing Director
Tamil Nadu State Transport Corporation Ltd,
Divisional Office -1,
No.12, Ramakrishna Road,
Salem District - 636 007.

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to allow the above CMA and enhance the award amount in the judgment and decree dated 08.10.2020 made in MACTOP No.422/2015, on the file of the Motor Vehicle Accident Claims Tribunal/Subordinate Judge Court, Sankari.

For Appellants : Mr.T.S.Arthanareeswaran

For Respondent : Mr.D.Nitin



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JUDGMENT

Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the claimants have come before the Court by way of this appeal.

2. Originally, before the Tribunal, the wife of the deceased alone filed the claim petition. After filing of the appeal, the minor son of the deceased was impleaded as 2nd claimant by order dated 04.03.2025 in CMP.No.20940 of 2024.

3. It is the case of the claimants that the husband of the first appellant and father of the 2nd appellant died in a road accident that had occurred on 01.07.2014. According to the claimants, the deceased travelled in a bus belonging to the respondent corporation. The bus was driven by its driver in a rash and negligent manner and applied a sudden brake. As a result of the same, the deceased, who was sitting in the rear side seating of the bus thrown out of the bus and received head injury. Subsequently, he died. Therefore, the claim petition was filed seeking compensation of Rs.25,00,000/-



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4.The respondent transport corporation filed a counter and opposed the claim petition on the ground that at the time of accident, the claimant came down to the footboard of the bus and hence, the accident had occurred due to his negligence.

5. Based on the evidence available on record, the Tribunal came to the conclusion that primarily the accident had occurred only due to the negligence on the part of the driver of the respondent corporation. However, the Tribunal also found that the victim also contributed to the accident and fastened the contributory negligence at the rate of 10% on the victim. The amount payable to the claimant was quantified at Rs. 6,30,000/-. Aggrieved by the quantum of compensation, the claimants have come before the court by way of this appeal.

6. The learned counsel for the Appellants submitted that an eyewitness, PW2, clearly deposed about the negligence on the part of the driver of the respondent corporation. Overlooking his evidence, the



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Tribunal fixed 10% contributory negligence on the part of the victim and the same is liable to be set aside. The learned counsel also submitted that having regard to the date of accident, the amount of Rs.7,500/- fixed by the Tribunal towards the notional income requires enhancement.

7. The learned counsel for the respondent corporation submitted that in order to prove the contributory negligence on the part of the victim, the driver of the bus was examined as RW1. He clearly deposed that at the time of accident, the victim came down to the footboard of the vehicle and hence, the accident had occurred. According to him, the tribunal rightly appreciated the evidence available on record and fixed 10% contributory negligence on the part of the victim. The learned counsel further submitted that the claimants have not produced any documentary evidence to prove the avocation or income of the deceased. Hence, the tribunal was justified in fixing Rs.7,500/- as notional income,



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8. It was the case of the claimants before the tribunal that the victim was sitting in the rear portion of the bus and due to the application of the sudden brake by the driver, he was thrown out of the bus and got injured. To prove the said fact, one of the co-passengers namely PW2 was examined. He deposed that the accident had occurred due to the negligence on the part of the driver of the bus. On the side of the respondent corporation, the bus driver was examined as RW1. He deposed that at the time of accident, the victim came near the footboard, lost balance and fell down from the bus. However, the respondent corporation has not examined any co-passenger to prove their version. The evidence of driver of the bus is an interested one. However, on the side of the claimants, they examined one co-passenger and he deposed that the accident had occurred only due to the application of a sudden brake by the driver of the bus. For the reasons best known to the corporation, they have not examined any other co-passenger to support their version of case. Further, RW1 in his evidence also admits that departmental action was taken against him



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9. As far as the income of the deceased is concerned, as per the averment found in the claim petition, the victim was employed in Lathe workshop and earning a sum of Rs.25,000/- per month. However, the claimants have not produced any documentary evidence to prove the avocation or income. Even though no documentary evidence is available on record, this Court can fix the notional income by taking into consideration the facts and circumstances of the case. In the case on hand, the accident had occurred on 01.07.2014. If the guidelines issued by the Division Bench of this Court in *Andal case* is followed, the income for the year 2014-2015 can be fixed at Rs.12,000/- per month. The age of the victim as per Exhibit P4, Post Mortem Report and Exhibit P5, Death Certificate, is mentioned as 30 years. Hence, the claimants are entitled to 40% enhancement towards future prospects.



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The applicable multiplier is 17. Since there are two dependents including the minor child, one-third of the amount shall be deducted towards personal expenses. Therefore, the loss of dependency is fixed at Rs. 22,84,800/-.

$$\text{Rs. } 12,000 \times 1.4 \times 12 \times 17 \times 2 / 3 = \text{Rs. } 22,84,800/-$$

10. The Tribunal granted 10% enhancement towards conventional heads like loss of consortium, funeral expenses and loss of estate. The accident had occurred in the year 2014 well prior to the judgment passed in *Pranay Sethi* Case. Therefore, 10% enhancement is not applicable. In such case, the first claimant is entitled to Rs. 40,000/- towards loss of consortium, 2nd claimant is entitled to Rs. 40,000/- towards loss of love and affection. In addition to the above said amount, the claimants are entitled to Rs.15,000/- each towards the funeral expenses and the loss of estate. In all, the claimants are entitled to Rs.23,94,800/- The award passed by the tribunal is modified as follows:-

11. The award passed by the Tribunal is modified as follows:-



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Sl • No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	14,28,000/-	22,84,800/ -	Enhanced
2.	Loss of estate	16,500/-	15,000/-	Reduced
3.	Funeral expenses	16,500/-	15,000/-	Reduced
4.	Loss of Consortium to 1 st claimant	44,000/-	40,000/-	Reduced
5	Loss of love and affection to 2 nd claimant	Nil	40,000/-	Granted
	Total	15,05,000/-	23,94,800/ -	Enhanced by Rs.8,89,80 0/-
	Less:10%contributory negligence	1,50,500/-	Set aside	
	Net compensation (1st claimant alone was arrayed as sole claimant before Tribunal)	13,54,500/- rounded off to 13,60,000/- (1st claimant share is only Rs.6,30,000)	23,94,800/ -	Enhanced by Rs.17,64,80 0/-



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12. With the above modifications, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.6,30,000 /- is hereby enhanced to Rs.23,94,800/-. The appellants are entitled to interest at the rate of 7.5% per annum(excluding the delay period, if any) from the date of filing of the claim petition till the date of realization. The respondent corporation is directed to deposit the enhanced award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this Judgment.

13. As far as apportionment is concerned, the share of the 1st appellant/wife of the deceased is fixed at Rs.13,94,800/- and share of the minor 2nd appellant is fixed at Rs.10,00,000/-

14. The 2nd appellant, being minor, his share of award amount is directed to be deposited in anyone of the Nationalized Banks under a Fixed Deposit Scheme **for a period of three years** which shall be renewed periodically until he attains majority and the 1st appellant, being the Natural Guardian of the minor 2nd appellant, is permitted to



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withdraw the interest accrued thereon **once in three months** and the same shall be used for the welfare of the minor 2nd appellant. The 1st appellant is entitled to withdraw her share of compensation amount, along with interest and costs, less the amount if any, already withdrawn, by making proper application before the Tribunal. The appellants are directed to pay the applicable additional court fee. No costs.

11.03.2025

Index:Yes/No
Internet:Yes/No
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To

1. Motor Accidents Claims Tribunal,
The Subordinate Judge Court, Sankari.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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