IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A. Nos. 2620 of 2022 & 2425 of 2023
and
C.M.P. No. 22777 of 2023

C.M.A. No. 2620 of 2022

1.B. Usha
2.Minor B. Sachin
3.S. Kathirvel ... Petitioners

Vs.

The Managing Director,
Tamilnadu State Transport Corporation (Villupuram Division-I) Ltd.,
No.3/137, Salamedu, Vazhuthareddy Post,
Villupuram – 605 401. ... Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree in M.C.O.P. No. 816 of 2017 dated 31.10.2019 on the file of the Motor Accident Claims Tribunal/ (Special Sub Judge (FAC), Cuddalore).

For Petitioners : Mrs. Ramya V. Rao
For Respondent : Mr. K.J. Siva Kumar

C.M.A. No. 2425 of 2023

The Managing Director,
Tamilnadu State Transport Corporation (VPM Division-I) Ltd.,
No.3/137, Salamedu, Vazhuthareddy Post,
Villupuram – 605 401. ... Petitioner

Vs.

1.B. Usha
2.Minor B. Sachin
3.S. Kathirvel ... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment dated 31.10.2019 made in M.C.O.P. No. 816 of 2017 on the file of the Motor Accident Claims Tribunal, The Special Sub Judge, Cuddalore (FAC).

For Petitioner : Mr. K.J. Siva Kumar
For Respondents : Mrs. Ramya V. Rao

COMMON JUDGMENT

C.M.A. No. 2620 of 2022 is filed by the claimants seeking enhancement of compensation awarded by the Tribunal.

2. C.M.A. No. 2425 of 2023 is filed by the Transport Corporation-owner of the offending vehicle questioning the quantum of compensation determined by the Tribunal.

3. The issue involved in these appeals are inextricably mixed up with each other and hence, both the appeals are heard together.

4. The appellants in C.M.A. No. 2620 of 2022 and respondents in C.M.A. No. 2425 of 2023 are referred to as claimants in this judgment. The respondent in C.M.A. No. 2620 of 2022 and the appellant in C.M.A. No. 2425 of 2023 is referred to as respondent in this judgment.

5. It is the case of the claimants that, husband of the first claimant, father of the second claimant and the son of the claimants 3 and 4 namely Bakkiyaraj died in a road accident that had taken place on 15.10.2016. It is stated by the claimants that deceased was riding his TVS motorcycle from East to West by following traffic rules, on the extreme left of Cuddalore to Virdhachalam main road. The bus belongs to the respondent-Corporation bearing Registration No. TN 32 N 3335 came in the opposite direction in a rash and negligent manner and dashed against the vehicle of the deceased. As a result of the accident, the deceased was thrown out of vehicle and died. The claimants filed claim petition before the Motor Accident Claims Tribunal,

Cuddalore seeking compensation of Rs.30,00,000/-. The claim petition was opposed by the respondent-Corporation by denying manner of accident as described in the claim petition.

6. The case of the respondent-Corporation before the Tribunal was that, the accident had occurred only due to the negligence of the deceased. It was also stated that, at the time of accident, the deceased did not wear helmet and therefore, he contributed for his death.

7. The Tribunal, on appreciation of evidence available on record, came to the conclusion that the accident had occurred only due to the negligent driving by the driver of the respondent-Corporation. The Tribunal quantified the compensation payable to the claimants at Rs.19,18,527/-. Not satisfied with the quantum of compensation, the claimants have filed C.M.A. No. 2620 of 2022. The respondent-Corporation has filed C.M.A. No. 2425 of 2023 questioning the quantum of compensation awarded by the Tribunal.

8. The learned counsel appearing for the appellant / claimants in C.M.A. No. 2620 of 2022 would submit that, as per Ex.P7 pay slips, the

monthly salary of the claimant was mentioned as Rs.13,469/-. However, the Tribunal fixed the monthly income of the deceased only at Rs.11,505/- and the same requires enhancement. The learned counsel for the claimants further submits that the Tribunal committed an error in not awarding the amount towards loss of love and affection to the minor second claimant and parental consortium towards claimants 3 and 4.

9. The learned counsel for the claimants further submits that there are four dependants and hence, the Tribunal ought not have deducted 1/3rd of the amount towards personal expenses.

10. The learned counsel appearing for the respondent-Corporation would submit that there is no satisfactory evidence available on record to fix negligence on the part of the driver of the respondent-Corporation and hence, the award passed by the Tribunal based on the said finding is liable to be set aside. The learned counsel further submitted that the deceased was not a regular employee and therefore, without taking into consideration the uncertainty, the Tribunal committed an error in fixing Rs.11,505/- as income.

11. In order to prove the negligence aspect, the first claimant was examined as P.W.1. One eye witness was examined as P.W.2. The FIR filed against the driver of the respondent-Corporation was marked as Ex.P1. The Tribunal, based on the evidence of eye witness P.W.2 and the contents of the FIR which corroborates the evidence of P.W.2 came to the conclusion that the accident had occurred only due to the negligence of the driver of the respondent-Corporation. Though, the driver of the respondent-Corporation was examined as R.W.1, his evidence was rejected by the Tribunal on the ground that his evidence was not inspiring confidence. It is not in dispute that, R.W.1 in his evidence clearly admitted that he was facing criminal trial before the Magistrate Court regarding the accident. Therefore, the finding given by the Tribunal that the accident had occurred due to the negligence of the driver of the respondent-Corporation is based on proper appreciation of evidence available on record and hence, the same need not be interfered with.

12. In order to prove the income, the claimants produced the register of wages for the month of August, September and October. A perusal of the same would indicate that the deceased was engaged as Daily Worker and

during the month of August 2016, he worked for 20 ½ days and received a salary of Rs.11,505/-. In the month of September 2016, he worked only for 12 days and received a salary of Rs.6,734/-. During the month of October up to the accident on 15.10.2016, he worked for 4 days and received a salary of Rs.2,245/-. Ex.P7 is the Wage Slip issued to the deceased by M/S. P.D.R. Constructions for the month of May, June and August. Though, for the month of June, he received a salary of Rs.13,469/-, a perusal of the wage register marked as Ex.P10 to Ex.P12 would indicate that the salary of the deceased would fluctuate depending upon the days of work. It is also clear that he would not get work for all the 30 days and the days of work will also fluctuate.

13. Taking into consideration the uncertainty in days of work, this Court feels that the Tribunal was justified in fixing Rs.11,505/- as the income of the deceased. The said finding need not be interfered with.

14. As rightly contended by the learned counsel appearing for the claimants, the deceased has got 4 dependants at the time of accident. Infact,

the claim petition was filed by 4 claimants. However, the Tribunal committed an error in deducting 1/3rd amount towards personal expenses. In view of the law laid down by the Apex Court in ***Sarla Verma and Others Vs. Delhi Transport Corporation and another passed in Civil Appeal No. 3483 of 2008 Dated 15.04.2009***, the Tribunal should have deducted only 1/4th of the amount. In that case, the claimants are entitled to Rs.23,19,408/- under the head loss of dependency (Rs.11,505/- + 40% x 12 x 16 x 3/4) = 23,19,408/-.

15. The Tribunal awarded Rs.40,000/- towards loss of consortium to the 1st claimant and the same is confirmed. In addition to the said amount, the second claimant / minor son is entitled to Rs.40,000/- under the head Loss of Love and Affection. The claimants 3 and 4 / parents of the deceased are entitled to Rs.80,000/- under the head parental consortium. The amount of Rs.15,000/- each awarded under the head funeral expenses and loss of estate is confirmed. Therefore, all the claimants are entitled to Rs.25,09,408/-. From the total amount payable, the Tribunal deducted 10% towards contributory negligence on the part of the deceased for not wearing helmet. It is seen from the Ex.P2 post-mortem certificate, the deceased died due to the head injury.

Therefore, 10% contributory negligence fixed by the Tribunal for failure of the deceased to wear helmet is confirmed. If 10% of the amount is deducted from the amount payable to the claimants, the claimants are entitled to Rs.22,58,467/- as enhanced compensation.

16. Thus, the compensation awarded by the Tribunal is enhanced from Rs.19,18,527/- to Rs.22,58,467/-, break-up as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	20,61,696/-	23,19,408/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of Love and Affection	-	40,000/-	Granted
4.	Parental consortium	-	80,000/-	Granted
5.	Funeral Expenses	15,000/-	15,000/-	Confirmed
6.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	**21,31,696/-**	**25,09,408/-**	**Enhanced by Rs.3,77,712/-**
	Less 10% Contributory negligence	**2,13,169/-**	**2,50,941/-**	
	Net Compensation	**19,18,527/-**	**22,58,467/-**	**Enhanced by Rs. 3,39,940/-**

17. Out of the total award amount, the 1st claimant is entitled to

Rs.11,58,467/-. The minor 2nd claimant is entitled to Rs.8,50,000/-. The claimants 3 and 4 are entitled to Rs.1,25,000/- each.

18. Accordingly, the C.M.A. No. 2620 of 2022 stands partly allowed and the respondent-Corporation is directed to deposit the enhanced award amount together with interest to the credit of M.C.O.P. No. 816 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Cuddalore within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the claimants 1, 3 & 4 are permitted to withdraw their share of award amount by filing proper application before the Tribunal. The second claimant being minor, his share 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 / 1st claimant, being the natural guardian of the minor second claimant, is permitted to withdraw the interest accrued thereon once in three months and the same shall be used for the welfare of the minor second claimant. It is made clear the claimants are not entitled to claim interest for the delay period of 887 days as per order in C.M.P. No. 12961 of 2022.

C.M.A. No. 2425 of 2023 is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

28.02.2025

Index : Yes / No
Neutral Citation : Yes / No
AT

To
1.The Motor Accident Claims Tribunal/
Special Sub Judge (FAC), Cuddalore.

2.The Managing Director,
Tamilnadu State Transport Corporation (Villupuram Division-I) Ltd.,
No.3/137, Salamedu, Vazhuthareddy Post,
Villupuram – 605 401.

S.SOUNTHAR , J.

AT

C.M.A. Nos. 2620 of 2022 & 2425 of 2023 and
C.M.P. No. 22777 of 2023

28.02.2025