



CMA.No.2697 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 27.02.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.2697 of 2022

The Branch Manager,
Tamil Nadu State Transport Corporation,
No.11, Ramakrishna Salai, Salem - 636 007.

... Appellant

Vs.

1.Muthusamy

2.Muniammal

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.93 of 2020 on the file of Motor Accident Claims Tribunal, Special District Judge, Dharmapuri on 01.06.2022.

For Appellant : Mr.D.Nitin

For Respondents : Mr.D.Ramesh Kumar



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J U D G M E N T

WEB COPY The appeal is filed by the appellant Corporation challenging the award passed by the Motor Accident Claims Tribunal fixing the compensation of Rs.11,29,500/- for the death of respondents'/ claimants' son Rajadurai.

2. It is the case of the claimants that on 07.11.2019, when the deceased Rajadurai attempted to cross Dharmapuri to Salem Highways, from East to West, the respondent's bus bearing Reg.No.TN-30-N-1919 came in a rash and negligent manner and dashed against the vehicle of the deceased. As a result of which, the deceased sustained grievous injuries and died in the hospital. Therefore, the claimants preferred Motor Accident Claims Original Petition seeking compensation of Rs.30,00,000/-.

3. Before the Tribunal, the 1st claimant was examined as P.W.1, eye witness was examined as P.W.2. The Proprietor of NVN Steels and Hardware, Nallampalli, Dharmapuri was examined as P.W.3. Fourteen documents were marked on the side of the claimants viz., Exs.P1 to P14.



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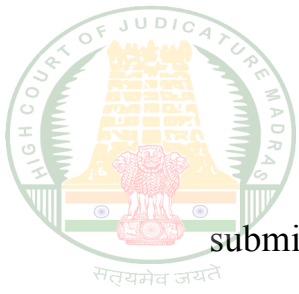
4. On the side of the respondents the driver of the respondent

Corporation was examined as R.W.1 and the jurisdictional Sub-Inspector of Police was examined as R.W.2. On behalf of the respondent, the rough sketch was marked as Ex.R1.

5. The Tribunal based on the evidence available on record came to the conclusion that the deceased also contributed to an extent and fixed 10% contributory negligence on the deceased. The compensation payable to the claimants was quantified at Rs.11,29,500/-. Aggrieved by the same, the appellant Corporation is on appeal.

6. The learned counsel for the appellant would submit that the deceased attempted to cross the main road and during the process, he dashed against the median and fell down from the vehicle. Therefore, the accident had occurred only due to the gross negligence on the part of the deceased and hence the Tribunal committed serious error in fixing the contributory negligence only to the extent of 10% on the part of the deceased.

7. The learned counsel appearing for the respondents/ claimants would



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submit that in order to prove the negligence, the eye witness was examined as P.W.2 and she clearly deposed about the rash and negligent driving of the bus belonging to the appellant Corporation. The Tribunal over looked the evidence of P.W.2 and fixed 10% contributory negligence on the part of the deceased. The learned counsel further submitted that the accident occurred in the year 2019 and an amount of Rs.7,500/- fixed by the Tribunal towards notional income is very much on the lower side.

8. The eye witness examined as P.W.2 deposed that the deceased was standing on the left hand side of the road and at that point of time, the bus belonging to the appellant Corporation came in a rash and negligent manner and dashed against the deceased vehicle. However, the case of the appellant Corporation is that deceased attempted to cross the road and in the process, he dashed against the median and accident had occurred near the median.

9. A perusal of Ex.R1 rough sketch would indicate that the accident had occurred near the median and not in the left hand side of the road as deposed by P.W.2. It is also stated by the appellant that at the time of the accident the deceased failed to wear head gear. However, P.W.2 in her



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evidence asserted that the deceased was wearing head gear at that point of time.

10. The appreciation of the entire evidence available on record along with Ex.R1 Rough sketch would indicate that the deceased made an attempt to cross the North - South main road from East - West side road coming from Nallampalli. It is also seen that there is a median in the main road which will prevent the crossing of the road at the junction where mud road from Nallampalli meets Salem and Dharmapuri main road. Therefore, it is clear that the deceased made an attempt to cross the road and he also contributed to accident. In such situation, the Tribunal was justified in fixing 10% negligence on the part of the deceased by taking into consideration he was the rider of the two wheeler and the appellant's vehicle is a heavy vehicle, namely bus. I do not find anything to interfere with the said finding reached by the Tribunal and the same is confirmed.

11. Though the learned counsel for the appellant has not advanced arguments on the question of quantum, the learned counsel appearing for the respondents submits that the notional income fixed by the Tribunal is very



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much on the lower side. As per the averments in the claim petition, the deceased was a first year student. It was also avered in the claim petition that the deceased used to work in the evenings in a hardware shop as an accountant. It was also claimed that the deceased was earning Rs.15,000/- per month. In order to substantiate the same, P.W.3, owner of the hardware shop was examined and through him Ex.P11 salary certificate was marked. A perusal of the salary certificate would indicate that the deceased worked as supervisor from 24.04.2019 to 07.04.2019 in the shop belonging to P.W.3 and he was earning an amount of Rs.600/- per day as wages. In the claim petition it was stated by the claimants that deceased was employed as accountant in the hardware shop. However, in Ex.P11 it is mentioned as he worked as supervisor. It is an un-disputed fact that the deceased was first year B.Sc. student at the time of the accident. Therefore, taking into consideration the contradiction mentioned above, the Tribunal rejected Ex.P11 and proceeded to fix notional income at Rs.7,500/-. Since the deceased was only a student at the relevant point of time, this Court is not inclined to interfere with the said finding.



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12. Therefore, the award passed by the Tribunal is confirmed. This

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Civil Miscellaneous Appeal stands **dismissed**. No costs.

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Index : Yes/No

Speaking order : Yes/No

Neutral Citation : Yes/No

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To

1.The Motor Accident Claims Tribunal,
Special District Judge, Dharmapuri.

2.The Section Officer
VR Section, High Court, Madras.



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S.SOUNTHAR, J.

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