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CMA NO.2872 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 18 / 12 / 2024

JUDGMENT DELIVERED ON: 28 / 01 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

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1. Gowri
2. Segar
3. Rajesh
4. Minor Sathish
(Minor Petitioner represented by
his mother Gowri as natural guardian
and next friend)

... Appellants /
Petitioners

Vs.

The Managing Director,
Tamilnadu State Transport Corporation
(Villupuram) Limited,
Kancheepuram Region – 631 502.
Having Branch Office at Pallavan Salai,
Chennai – 600 002.

... Respondent /
Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated July 18, 2023 made in M.C.O.P. No.7574 of 2018 on the file of the Motor Accidents Claims Tribunal [IV Court of Small Causes], Chennai.



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For Appellants : Mr.F.Terry Chella Raja

For Respondent : Mr.A.Vinothraj

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated July 18, 2023 passed in M.C.O.P. No.7574 of 2018 on the file of the 'Motor Accidents Claims Tribunal [IV Court of Small Causes], Chennai' ['Tribunal' for short], the appellants / petitioners have preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties herein will be referred to as per their rank in the Motor Claim Original Petition.

The Petitioners' Case

3. The 1st claimant is the mother of the deceased - Subash. The second claimant is his father and the claimant 3 & 4 are his brothers. The case of the claimants is that on November 04, 2018 at about 9.00 p.m., while the deceased was riding as a pillion rider in a motorcycle bearing Registration No.TN-19-F-3907 in GST Road, near SP Koil Bus Stop, a Bus bearing registration No.TN-21-N-1530, driven in a rash and negligent manner, in the same direction as the deceased, dashed behind



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the motorcycle, in which, the deceased – Subash was riding as a pillion rider. In the impact, the deceased – Subash was thrown off the motorcycle and sustained multiple grievous injuries all over his body. Immediately he was taken to Chengalpattu Government hospital where despite receiving treatment he succumbed to the injuries on November 05, 2018. The death of the deceased is attributable to the rash and negligent driving of the driver of the respondent's bus. Therefore, the claimants filed the claim petition before the Tribunal seeking compensation of Rs.1,00,00,000/- (Rupees One Crore Only) from the respondent.

The Respondent's Case

4. The respondent – Transport Corporation filed counter denying the manner of accident alleged by the petitioners. According to the respondent, the respondent's driver was not responsible for the accident. The deceased was proceeding in a two wheeler as a pillion rider. The rider of the two wheeler came from a branch road and suddenly turned onto the National Highway, where upon the sight of a police vehicle, the rider of the two wheeler suddenly attempted to slid across the lanes and invited the accident. The rider of two wheeler is solely responsible for the accident. The claimants are put to strict proof of their



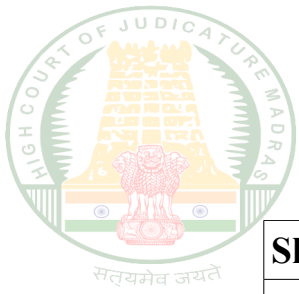
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petition averments. Accordingly, the respondent prayed to dismiss the claim petition.

Tribunal

5. At trial, the 2nd petitioner was examined as P.W.1, the third petitioner was examined as P.W.2, the rider of the motorcycle in which the deceased – Subash was riding as a pillion rider was examined as P.W.3 and Ex-P.1 to Ex-P.11 were marked on the side of the claimants. On the side of the respondent - Elanchezhiyan, driver of the bus was examined as R.W.1 and no document was marked.

6. The Tribunal after considering the evidence available on record, held that the respondent's driver is responsible for the accident. Accordingly, the Tribunal held that the respondent / Transport Corporation is liable to pay the compensation to the dependents of the deceased – Subash. With regard to quantum of compensation, though the claimants stated that the deceased - Subash was working in Ganapathi Builders, Singaperumal Kovil, his salary certificate was not produced. Hence the Tribunal had taken notionally took Rs.11,000/- as his monthly salary and deducted 50% amount towards personal expenses and computed compensation as stated below:-



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Sl.No.	Head	Amount
1.	Loss of dependency	Rs.16,63,200/-
2.	Loss of estate	Rs.16,500/-
3.	Funeral Expenses	Rs.16,500/-
4.	Loss of consortium	Rs.88,000/-
5.	Transportation Expenses	Rs.5,500/-
Total		Rs.17,89,700/-

7. Feeling aggrieved by the compensation awarded, which is meagre according to the petitioners / appellants, they have filed the Civil Miscellaneous appeal praying for enhancement of compensation amount.

Arguments:

8. The learned counsel for the appellants/petitioners, would submit that the deceased – Subash was a Civil Engineering Graduate. He had completed certificate course in Advanced Diploma in Fire and Industrial Safety Management. Further, he was academically very strong. Hence, the notional income fixed by the Tribunal is on the lower side. Considering the date of accident, cost of living and opportunities for employment, the learned counsel would pray to enhance the compensation amount.



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9. Per contra, the learned counsel appearing for the respondent / Transport Corporation would argue that though the petitioners averred that the deceased – Subash was working as a Civil Engineer in a private company, no document was produced to substantiate the claim. In such a view, the Tribunal was right in fixing the monthly income at Rs.11,000/- notionally. There are no merits in the Civil Miscellaneous Appeal and accordingly, the learned counsel prayed to dismiss the Civil Miscellaneous appeal.

Discussion

10. This Court has considered the submissions made on either side and perused the materials available on record.

11. There is no dispute with regard to factum of accident and involvement of the respondent's bus and the motorcycle bearing registration No.TN19-F-3907 in it. The deceased – Subash was admittedly riding as a pillion rider when the accident occurred. The main contention of the respondent is that it is the the rider of the motorcycle responsible for the accident. Respondent contends that the rider suddenly joined the National Highways from a branch road and upon the sight of police



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officials, the rider of the motorcycle, in a rash and negligent manner attempted to overtake the bus which was proceeding in the same direction. Due to the said attempt, the handle bar of the motorcycle hit the bus and led to the accident.

12. It is seen that Ex-P.1, First Information Report (FIR) was registered against the respondent's driver. The rider of the motorcycle has been examined as P.W.3 and his deposition has corroborated the case of the petitioners. The petitioners have discharged their initial burden that the accident occurred due to the rash and negligent driving of the respondent's driver. The respondent has not established that the accident did not happen due to the negligent driving of the first respondent's driver. Though the respondent's side examined the driver of the bus as R.W.1, no independent witness was examined to disprove the allegations in Ex-P.1-FIR and discharge its onus. Further, the respondent did not examine the Investigation Officer who investigated the case or the one who registered Ex-P.1 - FIR. The respondent also did not disclose the stage of the criminal case against R.W.1. In view of Ex-P.1 and the deposition of P.W.3, this Court is of the view that the first respondent's driver is responsible for the accident. The Tribunal rightly arrived at a decision that



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the accident happened due to the rash and negligent driving of the respondent's driver. It is also to be noted that the respondent did not prefer any appeal against the findings of the Tribunal, hence, the findings of the Tribunal in respect of negligence have attained finality.

13. As regards the quantum, though the petitioners averred that the deceased – Subash was working as Civil Engineer in Ganapathi Builders, Singaperumal Kovil, no document was produced to prove the same. No salary certificate was marked. Ex-P.4 – Provisional Degree Certificate proves that the deceased has completed Bachelor of Engineering in Civil Engineering. Ex-P.5 – Certificate shows that he has completed Advanced Diploma in Fire and Industrial Safety management and Ex.P6 - Certificates show that he has attended various workshop and training programmes. Though the petitioners did not produce any document to show that deceased was working in a private construction company and earning a sum of Rs.50,000/- per month, in view of his academic qualifications and developed skills as evident from the aforementioned certificates, also bearing in mind the costs of living prevailing in the year 2018, this Court is of the view that the deceased would have earned around not less than Rs.15,000/- per month. At the



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time of accident the deceased was a 21 years old bachelor. Applying 40% increase for future prospects, deducting 1/2 towards his personal expenses and applying multiplier of 18 as per the Judgments of Hon'ble Supreme Court in *National Insurance Company Limited -vs- Pranay Sethi* reported in (2017) 16 SCC 680, and *Sarla Verma -vs- Delhi Transport Corporation* reported in (2009) 6 SCC 121, this Court arrives at a sum of Rs.22,68,000/- as compensation under the head 'loss of dependency'.

14. As far as loss of consortium is concerned, though the brothers are not financially dependent of the deceased – Subash, they lost his love, affection, companionship, moral support *etc.*, and it is to be taken note of. Hence, the brothers are also entitled to some amount as consortium.

15. That apart, the Tribunal awarded a sum of Rs. 16,500/- towards Loss of estate, Rs.16,500/- towards Funeral expenses and another sum of Rs.5,500/- towards Transportation expenses. They are all reasonable and therefore confirmed.

16. Accordingly, the claimants are entitled to get enhanced compensation of Rs.24,82,500/- (Rupees Twenty four lakhs eighty two



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thousand and five hundred only) from the respondent / Transport

Corporation. The revised compensation is as detailed below:-

Sl.No.	Head	Amount
1.	Loss of dependency (15,000+6000 = 21,000 x 12x 18 x1/2)	Rs.22,68,000/-
2.	Loss of Estate	Rs.16,500/-
3.	Funeral expenses	Rs.16,500/-
4.	Loss of Consortium (44,000 x 4)	Rs.1,76,000/-
5.	Transportation expenses	Rs.5,500/-
Total		Rs.24,82,500/-

17. Therefore, the respondent / Transport Corporation is directed to deposit the enhanced award amount of **Rs.24,82,500/- (Rupees Twenty Four Lakhs Eighty Two Thousand Five Hundred Only)** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P. No.7574 of 2018 on the file of Motor Accidents Claims Tribunal / IV Court of Small Causes, Chennai, less the amount if any already deposited, within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit being made, the appellants / petitioners are entitled to withdraw the same by filing proper application. The enhanced compensation amount shall be apportioned in a manner proportionate to the



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apportionment made by the Tribunal. Further, the appellants / petitioners are entitled for proportionate costs and Advocate fees as per Rules. The appellants are directed to pay necessary Court fee for the enhanced compensation, if any.

Conclusion:

18. Resultantly, the Civil Miscellaneous Appeal filed by the appellants/ claimants is allowed in part with proportionate costs as detailed above.

[J.N.B., J.]

[R.S.V., J.]

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
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To

The Motor Accidents Claims Tribunal, Chennai,
IV Court of Small Causes, Chennai.



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J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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