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CMA.No.272 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :24.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.272 of 2025

The Managing Director,
TNSTC,
No.12, Ramakrishna Road, Salem – 2.

... Appellant

Vs.

1.Suseela
2.Minor Samundeswari
3.Minor Akash
4.Minor Kanagavalli
5.Chinnammal
(The minors 2 to 4 are represented by their
natural guardian mother i.e., 1st respondent)
6.A.S.Palanisamy

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, pleaded to set aside the judgment and decree dated 27.06.2024 passed in MCOP.No.91 of 2020 on the file of Motor Accidents Claims Tribunal, Subordinate Court, Attur.

For appellant : Mr.D.Nitin

For Respondents

1 to 5 : Mr.P.Tamilavel



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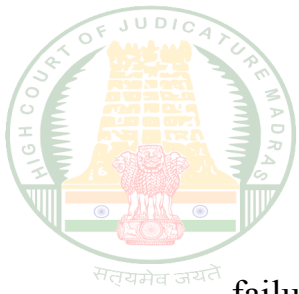
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Not ready notice in R6

JUDGMENT

Aggrieved by the award passed by the Motor Accident Claims Tribunal awarding compensation of Rs.50,00,000/- to the injured claimants, the Transport Corporation has come before this court by way of this appeal.

2. It is the case of the respondents/claimants that on 17.07.2018, when the husband of the first claimant, the father of the claimants 2 to 4 and son of the 5th claimant was riding his two wheeler, the bus belonging to the State Transport Corporation came in a rash and negligent manner and dashed against the two wheeler. As a result of the accident the victim sustained fatal injury and died on the spot. The claimants have claimed compensation of Rs.50,00,000/-. The Tribunal based on the evidence available on record came to the conclusion that primarily the accident had taken place due to the negligence of the driver of the Corporation bus. The Tribunal fixed 10% of the Contributory negligence on the part of the victim for his



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failure to wear helmet. Based on the evidence available on record, the Tribunal passed award granting compensation of Rs.19,28,700/-. Aggrieved by the same, the appellant Corporation has come before this court by way of this appeal.

3. The learned counsel appearing for the appellant would submit that the deceased, at the time of accident, crossed the middle of the zebra line, as a result of which, the accident had occurred, therefore, the Tribunal ought to have fixed 50% of the contributory negligence on the part of the victim. The learned counsel further submitted that criminal case filed against the driver of the appellant/Corporation ended in acquittal and the said document was marked as Ex.R1. The Tribunal without taking into consideration the acquittal of the driver of the appellant Corporation wrongly held that the accident had occurred due to the rash and negligent driving on the part of the driver of the appellant corporation and hence the award passed by the Tribunal is liable to be set aside.

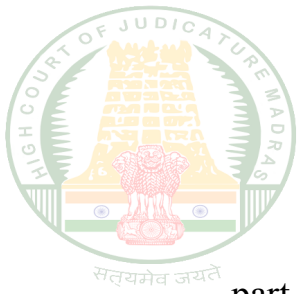


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4. The learned counsel appearing for the respondents/claimants would submit that the Tribunal based on evidence of PW.1 and eye witness of PW.2 and the contents of FIR, came to the conclusion that the negligence is on the part of the driver of the appellant corporation and the same requires no interference by this Court.

5. In order to prove the negligence, the first claimant was examined as PW.1, she was not an eye witness. Therefore, her evidence is not been useful to decide the quantum of negligence. However, eye witness was examined as PW.2 and his evidence is in accordance with the averments contained in the FIR. It is not in dispute that Ex.P1-FIR was filed against the driver of the appellant vehicle. Subsequently, charge sheet was filed and the criminal trial ended in acquittal. It is settled law that acquittal in criminal case is not a ground to come to the conclusion that there was no negligence on his



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part. In the case on hand, the Tribunal rightly placed reliance on FIR and evidence of PW.2 and came to the conclusion that the accident had occurred due to the negligence on the part of the driver of the appellant/corporation. The said finding requires no interference.

6. The Tribunal fixed 10% contributory negligence on the part of the deceased mainly on the ground that he failed to wear helmet. In case of non-wearing of helmet, the contributory negligence can be fixed at 15%. However, the Tribunal fixed only 10%. The accident had occurred in the year 2018, however, the Tribunal fixed notional income only at Rs.12,000/- and proceeded to calculate loss of dependency. The amount of Rs.12,000/- fixed by the Tribunal as notional income is very much on the lower side. Taking into consideration the Tribunal fixed very low notional income, this Court is not inclined to enhance percentage of contributory negligence fixed by the Tribunal. The amount awarded by the Tribunal under other heads like, loss of estate, loss of consortium and funeral expenses are in accordance with law laid down in ***Pranay Sethi*** case and hence the



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award passed by the Tribunal is confirmed and the Civil Miscellaneous Appeal is dismissed.

7. It is stated that the entire amount together with interest was deposited by the appellant before the Tribunal. The first and fifth claimants are permitted to withdraw their share of the award amount by making proper application before the Tribunal. As far as the share of the minor claimants 2 to 4 are concerned, the same shall be deposited in a fixed deposit initially for a period of three years and it shall be renewed till the attainment of their majority. The first claimant/guardian is permitted to withdraw the accrued interest once in six months by making proper application.

8. I do not find any reason to interfere with the award passed by the Tribunal and accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

24.02.2025

Index: Yes/No
Internet: Yes/No



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To

1. The Motor Accident Claims Tribunal,
Subordinate Court, Attur.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.
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