IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :10.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.622 and 687 of 2025 and
C.M.P.No.4930 of 2025

CMA No.622 of 2025

The Managing Director
Tamil Nadu State Transport Corporation Limited,
No.12, Ramakrishna Road,
Salem District. .... Appellant

Vs.

1.M.Thangamani
2.M.Mookayee
3.N.Mookan ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to set aside the judgement and decree passed in MCOP No.112 of 2019 passed by the Motor Accidents Claims Tribunal Subordinate Court, Attur on 11.01.2024.

For Appellant : Mr.D.Nitin

For Respondents1 to 3 : M/s.D.Jeevitha
for M/s.R.Nalliyappan

CMA No.687 of 2025

1.M.Thangamani
2.M.Mookayee
3.N.Mookan .... Appellants

Vs.

The Managing Director
Tamil Nadu State Transport Corporation Limited,
No.12, Ramakrishna Road,
Salem District. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to allow the present appeal award enhanced compensation in the judgement and decree dated 11.01.2024 in MCOP No.112 of 2019 on the file of Motor Accidents Claims Tribunal,Subordinate Judge, Attur.

For Appellant : M/s.D.Jeevitha
for M/s.R.Nalliyappan

For Respondents1 to 3 : M/s.D.Nitin

COMMON JUDGMENT

The Transport Corporation is the appellant in CMA.No.622 of 2025. The claimants are the appellants in CMA.No.687 of 2025.

2. For the sake of convenience, the parties are referred to as per their ranking in CMA.No.622 of 2025.

3. It is the case of the respondents/ claimants that on 30.09.2019 the husband of the first claimant and son of the claimants 2 and 3 was driving his Hero Honda motorcycle from Attur to Thulukanur proceeding in West to East direction. At that point of time, the driver of the appellant transport corporation came in the opposite direction in a rash and negligent manner and hit against the two-wheeler of the husband of the first claimant. As a result of the impact, he fell down from the vehicle and died on the spot. Therefore, the claimants laid the claim petition in MACOP.No.112 of 2019 seeking compensation of Rs. 27,00,000/-.

4. The appellant corporation filed its counter denying the manner of accident as alleged in the claim petition. The appellant corporation contended that the accident had occurred only due to the negligence of the deceased. It was also stated that at the relevant point of time, the deceased was not wearing helmet and he did not produce valid driving license and hence, he also contributed to the accident.

5. The Tribunal, based on the evidence of eyewitness, PW2 and the contents of the FIR marked as Exhibit P1, came to the conclusion that the negligence was on the part of the driver of the transport corporation. The compensation payable to the claimants was quantified at Rs.17,81,460/- after deducting 10% contributory negligence for the failure of the claimants to produce valid driving license for the deceased. Aggrieved by the said award, the transport corporation has filed CMA.No.622 of 2025. Not satisfied with the quantum of compensation, the claimants preferred CMA.No.687 of 2025.

6. The learned counsel for the Transport Corporation submitted that the deceased did not possess a valid driving license at the time of accident and therefore, the Tribunal should have fixed at least 15% contributory negligence on the part of the deceased. The learned counsel further submitted that subsequent to the filing of the claim petition, the first claimant, wife of the deceased got remarried and therefore, she cannot be treated as a dependent of the deceased.

Therefore, according to him, the Tribunal should not have passed award granting 30% share to the first claimant in the total award amount,

7. The learned counsel for the claimants submitted that based on the evidence available on record, the Tribunal came to the correct conclusion that the entire negligence was on the part of the driver of the transport corporation and the same needs no interference. The learner counsel further submitted that failure to possess a valid driving license cannot be treated as negligence on the part of the deceased. Hence, according to him, the Tribunal ought not have fixed 10% contributory negligence on the part of the deceased. The learner counsel also submitted that the notional income of Rs.9,000/- fixed by the Tribunal is very much on the lower side and hence, the same requires enhancement.

8. To prove the negligence on the part of the driver of the transport corporation, the second claimant was examined as PW1 and

an eyewitness was examined as PW2. PW1 is a mother and hence, her evidence cannot be relied. However, the Tribunal, based on the evidence of PW2 which is very well corroborated by the contents of the FIR registered against the driver of the Transport Corporation, which was marked as Exhibit P1, came to the conclusion that accident had occurred due to the rash and negligent driving of the driver of the Transport Corporation and the said finding is on proper appreciation of evidence available on record. The Tribunal, after coming to the conclusion that the entire negligence was on the part of the driver of the transport Corporation, fixed 10% contributory negligence only on the ground that the claimants failed to produce valid driving license for the deceased.

9. The Hon'ble Apex Court in the case of ***Sudhir Kumar Rana Vs Surinder Singh and Others*** reported in ***(2008) 12 SCC 436*** held that failure to produce a valid driving license is not a ground to fix contributory negligence on the part of the victim unless there is a positive evidence to show that he also contributed to the accident. In

the case on hand, there is no positive evidence to suggest that victim by his rash and negligence contributed to the accident. Though the transport corporation raised a plea that the victim did not wear helmet at the time of accident, PW2, in his evidence, clearly deposed about wearing of the helmet by the deceased and he also talked about the damage caused to the headgear at the time of accident. Therefore, the Tribunal committed an error in fixing 10% contributory negligence on the part of the deceased and the said finding is set aside.

10. In the claim petition, it was averred by the claimants that the deceased was a coolie and earning a sum of Rs.18,000/- per month. However, the claimants have not produced any documentary evidence to prove the income of the deceased. Taking into consideration the facts and circumstances of the case, this Court is inclined to fix notional income. In the case on hand, the accident had occurred on 30.09.2019. Therefore, taking into consideration the date of accident and the cost of living, this Court is inclined to fix Rs.16,500/- as notional income for the deceased. The Tribunal fixed the age of the

deceased at 23 years based on Exhibit P2, Post-Mortem Certificate. Therefore, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier is 18. In that case, the amount payable to the claimants under the head loss of dependency would be Rs. 33,26,400/-

16,500 x 1.4 x 12 x 18 x 2/ 3= Rs.33,26,400

11. It was vehemently argued by the learned counsel for the Transport Corporation that the first claimant, wife of the deceased got remarried subsequent to the filing of the original petition and hence, she cannot be treated as a dependent. Even assuming the first claimant was not considered as a dependent, still there are two dependent claimants, namely parents. In such circumstances, the Tribunal was justified in deducting one-third of the amount towards personal expenses. The first claimant has lost her husband. At the time of accident and also at the time of filing of original petition, she was dependent of the deceased. Merely because she got remarried subsequently, one cannot under estimate the suffering undergone by her

due to the death of her husband. In such circumstances, the Tribunal was justified in awarding 30% of the compensation amount to her.

12. The Tribunal granted 10% enhancement under the conventional heads like loss of consortium, funeral expenses. The judgment in ***Pranay Sethi*** case was delivered on 31.10.2017. The accident had occurred well within 3 years. Therefore, the claimants are not entitled to 10% enhancement. The amount payable under the head loss of consortium shall be Rs.40,000/- and the amount payable under the heads funeral expenses and loss of estate should be restricted to Rs.15,000/- each. Since the first claimant got remarried, this Court is not inclined to grant any amount under the loss of consortium(Wife). The claimants 2 and 3 are entitled to Rs.40,000/- each under the head loss of Parental Consortium. Therefore, Rs. 1,32,000/- awarded by the Tribunal under the head Loss of Consortium is reduced to Rs.80,000/-. The amount of Rs.16,500/- under the head funeral expenses is reduced to Rs.15,000/-. In addition to the above amount, the claimants are entitled to Rs.15,000/- under the head loss of estate. Therefore, in all,

the claimants are entitled to Rs.34,36,400/- .

13. The award passed by the Tribunal is modified 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	18,14,400/-	33,26,400	Enhanced
2.	Loss of estate	16,500/-	15,000/-	Reduced
3.	Funeral expenses	16,500/-	15,000/-	Reduced
4.	Loss of Parental Consortium	1,32,000/-	80,000/-	Reduced
	Total	**17,81,460/-**	**34,36,400/-**	**Enhanced by Rs.16,54,940/-**

14. In view of the discussions made earlier, the Civil Miscellaneous Appeal in CMA.No.622 of 2025 is dismissed. Consequently, the connected miscellaneous petition is closed. The CMA.No.687 of 2025 is allowed and the compensation awarded by the Tribunal at Rs.17,81,460/- is hereby enhanced to Rs.34,36,400/-. The appellants in CMA.No. 687 of 2025 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 in CMA.No.687 of 2025, transport 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. The appellants/claimants in CMA.No. 687 of 2025 are permitted to withdraw the same along with interests and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. No costs. The appellants are directed to pay applicable additional court fee. No costs.

10.03.2025

Index:Yes/No
Internet:Yes/No
nr

To
1. Motor Accident Claims Tribunal,
SmSubordinate Court, Attur

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

S.SOUNTHAR, J.

nr

CMA No.622 and 687 of 2025 and
C.M.P.No.4930 of 2025

10.03.2025