



CMA.No.404 & 842 of 2025

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :19.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.404 and 842 of 2025 and
C.M.P.No.6733 of 2025

CMA No.404 of 2025

- 1.Nirmala
- 2.Rajkumar
3. Vasanthakumar
4. Chennamalli

.... Appellants

Vs.

1. Suresh
2. 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 appeal and enhance the award dated 02.01.2024 in MCOP No. 51 of 2023 on the file of the Special District Judge, MCOP Tribunal, Salem.

For Appellants : Mr.R.NavaneethaKrishnan
For Respondent :Mr.D.Nitin for R2
R1-Notice dispensed with



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WEB COPY **CMA No.842 of 2025**

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

Vs.

1.Nirmala
2.Rajkumar
3. Vasanthakumar
4. Chennamalli
5. Suresh ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to set-aside the judgment and decree passed in MCOP No.51/2023 passed by the Motor Accidents Claims Tribunal, Special District Court, Salem on 02.01.2024.

For Appellant : Mr.D. Nitin
For Respondents :Mr..R.NavaneethaKrishnan

COMMON JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal (Special District Judge, Salem) in MCOP.No.51 of 2023, both the claimants and transport corporation have come by way of these appeals. The CMA.No.842 of 2025 has been filed by the Transport Corporation challenging the fixation of negligence on the part of the driver of the Transport Corporation and also the quantum. The



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WEB COPY CMA.No.404 of 2025 has been filed by the claimants seeking enhancement of the compensation.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. According to the claimants, the husband of the first claimant, father of the claimants 2 and 3 and son of the 4th claimant namely Ammasi died in a road accident that had taken place on 04.10.2021 involving the bus belonged to the 2nd respondent corporation driven by the first respondent. According to the claimants, the deceased was waiting on the extreme left side of the Salem-Sankari main road with his two-wheeler. The bus belonged to the second respondent corporation came in a rash and negligent manner and hit the deceased. Due to the said impact, he sustained grievous injuries and later died in the hospital. Hence, the claim petition was filed by the claimants seeking compensation of Rs.50,00,000/-.

4. The first respondent, driver of the 2nd respondent corporation, remained *exparte* and the second respondent alone filed the counter and contested the claim on the ground that the accident had occurred



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only due to the negligence on the part of the deceased. It was the case of the 2nd respondent corporation that the deceased attempted to cross the road with his two-wheeler without noticing the bus and the accident had occurred only due to his fault.

5. Before the Tribunal, the first claimant was examined as PW1 and 12 documents were marked on the side of the claimants as Ex.P1 to Ex.P12. On the side of the respondents, no oral and documentary evidence were let in.

6. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the corporation bus. The amount payable to the claimants was quantified at Rs. 13,15,000/-. Aggrieved by the said award, these two appeals have been filed by the transport corporation as well as the claimants.

7. The learned counsel for the Transport Corporation submitted that except the evidence of claimant, who was not an eyewitness, there is no other evidence available on record to fasten the negligence on the part of the driver of the bus. Therefore, the Tribunal committed an error



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8. The learned counsel for the claimants submitted that FIR was lodged against the driver of the corporation bus and the same was marked as Exhibit P1. The 2nd respondent, for the reasons best known to him, failed to examine the driver of the corporation bus and hence, the Tribunal had taken adverse inference and fixed negligence on the part of the driver of the bus. The learned counsel further submitted that the accident had occurred in the year 2021 and the Tribunal fixed notional income including future prospects only at Rs.10,000/- and the same is on the lower side. Therefore, he seeks enhancement of the notional income and compensation.

9. On behalf of the claimants, the first claimant entered the box and deposed regarding the negligence on the part of the driver. However, she was not an eyewitness to the accident. Therefore, her evidence is not useful to prove the negligence. It is seen from Exhibit P1, FIR, a criminal case has been registered against the driver of the transport corporation bus. The first respondent, driver of the



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corporation bus is the best witness to speak about negligence aspect.

However, the 2nd respondent corporation, for the reasons best known to it, failed to examine the driver of the bus. When the 2nd respondent failed to lead best evidence, the Tribunal had rightly drawn adverse inference against it and based on the contents of FIR, fixed negligence on the part of the driver of the respondent corporation. I do not find any error in the said findings and hence, the same is confirmed.

10. In the claim petition, it was stated by the claimants that the deceased was employed in a power loom company and was earning a sum of Rs.30,000/- per month. However, the claimants have not produced any documentary evidence to prove the avocation and income of the deceased. If there is no evidence to prove the income, this Court, by taking into consideration the facts and circumstances of the case, can fix the notional income. In the case on hand, the accident had taken place on 04.10.2021. Taking into consideration the date of accident and the cost of living, this Court is inclined to fix Rs.18,000/- as notional income for the deceased. Based on Exhibit P5, Aadhar Card, the age of the deceased was fixed at 48 years by the Tribunal.



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Therefore, the claimants are entitled to 25% enhancement towards future prospects. The applicable multiplier is 13. Since there are four dependents, one-fourth of the amount shall be deducted towards the personal expenses of the deceased. In that case, the loss of dependency would be Rs. 26,32,500/-/

$$18,000 \times 1.25 \times 12 \times 13 \times 3/4 = \text{Rs. } 26,32,500/-$$

11. Since the accident had occurred 3 years after the pronouncement of the judgment in *Pranay Sethi* case, the claimants are entitled to 10% enhancement towards conventional damages. Accordingly, the first claimant is entitled to Rs. 44,000/- under the head loss of consortium to wife. The claimants 2 and 3 are entitled to Rs.44,000/- each towards loss of love and affection. The 4th claimant is entitled to Rs.44,000/- under the head loss of parental consortium. In addition to the above said amount, the claimants are entitled to Rs.33,000/- under the heads funeral expenses and loss of estate. Therefore, the total compensation payable to the claimants would be Rs.28,41,500/-



12.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	11,70,000/-	26,32,500/- -	Enhanced
2.	Funeral expenses and loss of estate	25,000/-	33,000/-	Enhanced
3.	Loss of consortium(1 st claimant)	40,000/-	44,000/-	Enhanced
4.	Loss of love and affection(claimants 2 and 3)	80,000/-	88,000/-	Enhanced
5	Loss of Parental consortium	Nil	44,000	Granted
	Total	13,15,000/-	28,41,500/-	Enhanced by Rs.15,26,500/-

13. In view of the discussions made earlier, the civil miscellaneous appeal filed by the Transport corporation in CMA.No.842 of 2025 is dismissed. The CMA.No.404 of 2025 filed by



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the claimants is allowed and the compensation awarded by the Tribunal at Rs.13,15,000/- is hereby enhanced to Rs.28,41,500/-. The claimants are entitled to interest at the rate of 7.5% per annum excluding the delay period of 249 days as per order in CMP.No.30030 of 2024 from the date of filing of the claim petition till the date of realization. The 2nd respondent transport corporation is directed to deposit the enhanced award amount, to the credit of MCOP.No. 51 of 2023 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem, 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.

14. As far as apportionment is concerned, the share of the 1st claimant/wife of the deceased is fixed at Rs.16,41,500/- and the share of the claimants 2 to 4 is fixed at Rs.4,00,000/- each. The appellants/claimants in CMA.No.404 of 2025 are entitled to withdraw their share of compensation amount, along with interest and costs, less the amount if any, already withdrawn, by making proper application



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before the Tribunal. The appellants are directed to pay the applicable additional court fee. No costs. Consequently, the connected miscellaneous petition is closed.

19.03.2025

Index:Yes/No
Internet:Yes/No
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- To**
1. Motor Accident Claims Tribunal,
Special District Judge, Salem.
 2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTAR, J.

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