



C.M.A.(MD)No.74 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.74 of 2023

Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Rep. By its Managing Director,
Kumbakonam,
Karaikudi Division.

... Appellant

Vs.

1.Rajesh
2.Minor R.Muthu Esakki
3.Minor R.Sankari
4.L.Savithri
(Respondents 2 & 3 are rep. through
their next friend and natural guardian
1st petitioner Rajesh)

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the impugned award passed in M.C.O.P.No.218 of 2017 dated 20.09.2019 on the file of the MACT (1st Additional District Court), Thoothukudi.

For Appellant : Mr.P.M.Vishnuvarthanan

For R1 to R4 : Ms.P.Selva Kamatchi



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant, challenging the award passed by the learned Motor Accident Claims Tribunal (1st Additional District Judge), at Thoothukudi in M.C.O.P.No.218 of 2017 dated 20.09.2019, on the ground of negligence.

2.The factual matrix of the present case, briefly stated, are as under:-

The accident on the fateful day happened in the National Highway on Thoothukudi – Tiruchendur road on 01.10.2016. The deceased is a pillion rider who was travelling in motorcycle bearing registration No.TN-63-AM-0709, along husband and two children. While the first respondent along with deceased and two children were travelling along Thoothukudi – Tiruchendur road, near Vakakku Authoor wherein the Canara Bank is situated, while they are travelling from south to north the first respondent overtaking the appellant Corporation bus bearing registration No.TN-63-N-1722 along the right side inadvertently and negligently without noticing another four wheeler, which came from north to south, the first respondent applied sudden break, as a result of which, the deceased who is the pillion rider, fell down as the result of which, the back wheel of the appellant Corporation bus ran across her, causing her



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death. The deceased was aged about 36 years and she was as labourer in

Thoothukudi Port Trust and was earning a sum of Rs.12,000/- per month.

Seeking compensation for the death of the deceased, the respondents have filed the claim petition.

3.Two witnesses were examined and 12 documents were marked on the side of the claimants/respondents. One witness was examined and no document was marked on the side of the appellant Corporation. The learned Tribunal allowed the claim petition, directing the appellant Corporation to pay a sum of Rs.12,98,500/- as compensation to the respondents. Challenging the same, this Civil Miscellaneous Appeal is filed.

4.The learned counsel appearing for the appellant vehemently contended that the deceased died exclusively due to the negligence of the first respondent, who had driven the motorcycle in a two way road in a rash and negligent manner, only while he was attempting to overtake the appellant Corporation bus. Had he been diligent enough while driving the two Wheeler carefully by noticing the four Wheeler, which came from north-south direction, the accident could have very well been prevented. That apart, the first respondent did not wear helmet and he was traveling with his entire family along with 2 minor



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children and deceased wife, which is not permissible under law. The learned Tribunal had fixed the negligence on the part of the Driver of the appellant Corporation and had proceeded to award a total compensation of Rs. 12,98,500/-. On the ground of negligence, this Appeal is filed and the same is liable to be allowed because a compensation cannot be awarded by fixing negligence wrongly on the appellant bus driver, when the negligence was exclusively on the part of the rider of the two Wheeler.

5.He relying upon the the claimant's application submitted that the first respondent himself has admitted in claim petition that it was only while overtaking the bus bearing registration No.TN-63-N-1722 and on noticing the vehicle, which came in the opposite direction, he had applied sudden break, as a result of which, his wife fell down. Following which, the accident had happened. In view of the said admission, the learned Tribunal ought not to have fixed the negligence on the appellant Corporation Driver and on that basis, he pressed for allowing the Appeal.

6.Per contra the learned counsel for the first respondent submitted that the arguments put forth by the learned counsel for the appellant is completely baseless, for which he relied upon the evidence of P.W.2, who is eye witness of



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the accident and R.W.1, who is the driver of the appellant Corporation who actually drove the transport Corporation bus bearing registration No.TN-63-N-1722. He further submitted that the eyewitness, who was examined as P.W.2, had categorically deposed before the learned Tribunal that, the accident had happened only because of the negligence and rash driving of the driver of the appellant Corporation. The said witness had also substantiated that had the driver of the appellant Corporation driven the vehicle slowly, the accident could have been prevented. Further relying upon the cross examination of the driver of the appellant Corporation, who was cross examined as R.W.1, he was suspended on the basis of the disciplinary proceeding initiated as against him in view of the said accident and that there was no speed breaker in the accident spot. He had admitted that the driver of the bus, which came in the opposite direction, indicated by hand signal to stop the bus. However, for the suggestion put forth by the counsel for the first respondent, he had denied that he had been the cause of the accident. Relying upon the document marked as Ex.B2, which is the post mortem report, the learned counsel further submitted that the postmortem report would reveal that the death had happened only because of the running of the back wheel of the appellant Corporation and pressed for dismissal of the Appeal.



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7. Heard the learned counsel for the appellant, the learned counsel for the respondents and carefully perused the materials available on record.

8. Though the learned counsel for the appellant categorically submitted that negligence cannot be fixed on the driver of the appellant Corporation, he was not able to produce before me any documents, which were duly marked before the learned Tribunal to substantiate his claim.

9. That apart, the learned counsel for the first respondent submitted that the appellants have not taken any diligent steps to disprove that the contention put forth before this Court before the learned Tribunal by letting in proper evidence and proper documents to prove his innocence.

10. However, I am of the considered view that the first respondent had duly brought in appropriate evidence, more particularly and eye witness, who had deposed his evidence as P.W.2 categorically submitted before the learned Tribunal that the accident had happened only because of the negligence of the bus driver. The admission of the bus driver who was examined as R.W.1, the driver of the bus, which came in the opposite direction, had indicated by a hand signal to stop the bus should also be taken into consideration.



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11. In view of the same, I am of the considered view that there is no fault on the part of the learned Tribunal in fixing negligence on the part of the Driver of the appellant Corporation and accordingly, the Civil Miscellaneous Appeal stands dismissed.

12. The respondents/claimants are entitled to the award amount with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The appellant Transport Corporation is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the major major claimants/respondents 1 and 4 are permitted to withdraw their respective share as per apportionment made by the learned Tribunal, after deducting any amount received by them earlier. Insofar as the share of the minor claimants/respondents 2 and 3 are concerned, the Tribunal is directed to deposit the same in a Fixed Deposit under a periodically renewable scheme till they attain majority and the first respondent, the Guardian of the minor, is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minor. The respondents/claimants are not entitled



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for interest for the default period, if there is any. There shall be no order as to costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

Note : Issue order copy on **14.02.2025**.

To

- 1.The Motor Accidents Claims Tribunal,
(1st Additional District Judge), Thoothukudi.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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