

C.M.A.(MD)No.635 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.635 of 2022

Tamil Nadu State Transport Corporation
Ltd., Karaikudi,
through its Branch Manager

... Appellant / Respondent

Vs.

1.Santhi

2.Minor. Dharshini

... Respondents / Claimants

(Minor 2nd respondent is rep. by her mother 1st respondent)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the impugned award passed in M.C.O.P.No.170 of 2019 dated 09.03.2021 on the file of the MACT (IVth Additional District Court), Madurai.

For Appellant : Mr.P.M.Vishnu Varthanan

Respondents : Mr.Pethu Rajesh,

Legal aid counsel



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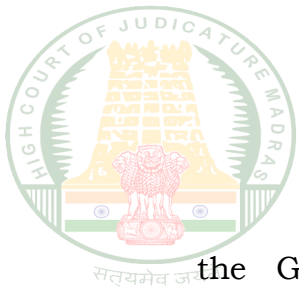
JUDGMENT

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Challenging the order passed by the Motor Accident Claims Tribunal (IVth Additional District Court), Madurai in M.C.O.P.No.170 of 2019, dated 09.03.2021, the transport corporation filed this Civil Miscellaneous Appeal.

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

3.The Transport Corporation / respondent is the appellant herein and the claimants / petitioners are the respondents herein. On 18.10.2016 at about 12:45 hours, the husband of the first petitioner namely, Koodaundi @ Koodalingam was travelling as a pillion rider in the vehicle bearing registration No. TN-59-AW-2556. The same was driven by one Joseph and while the vehicle was travelling from Pandikovil to Madurai District Court from south to north direction, the bus belonging to the respondent corporation bearing registration No. TN-63-N-1742 which came in the opposite direction had hit on the two wheeler, as a result of which, the said Koodaundi, who travelled as a pillion rider fell down and sustained grievous injuries and was taken to



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the Government Rajaji Hospital, Madurai, in an ambulance for treatment. However, he passed away on the same day at about 1:45 hours.

4.A First Information Report in crime No.318 of 2016 was registered under Sections 279, 337, 304(A) of IPC by the Traffic Investigation Wing No.II Station against the driver of the Transport Corporation. The deceased was 57 years old at the time of accident and he was working as a storekeeper in Balmer Lawrie (UAE) Limited at Dubai. Seeking to compensate for the death of the deceased Koodaundi @ Koodalingam, his legal heirs have preferred the M.C.O.P before the learned Tribunal.

5.The learned Tribunal had examined two witnesses and had marked Exhibit P1 to P14 on the side of the petitioner and one witness on the side of the respondent without marking any documents. On the basis of the arguments made, evidence deposed and the documents marked, the learned Tribunal had passed an award of Rs.12,65,000/- (Rupees Twelve Lakhs and Sixty Five Thousand only) in favour of the claimants. Challenging the same on the grounds of liability and

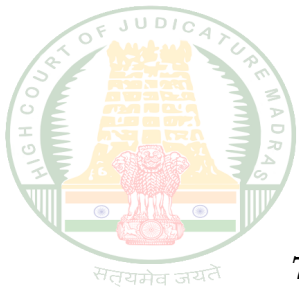


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quantum, the transport corporation has filed this Civil Miscellaneous Appeal.

6.The learned counsel for the appellant Mr.P.M.Vishnu Varthanan submitted that the accident had happened only due to the negligence of the driver of the two wheeler. Had the driver of the two wheeler as well as the pillion rider worn a helmet, the death of the pillion rider, that is, Koodaundi would have been avoided. The learned Tribunal failed to fix appropriate liability for non wearing of helmets. That apart, the driver of the two wheeler did not possess valid driving license at the time of the accident. However, 95% of liability had been fastened on the driver of the Transport Corporation mechanically. Had the learned Tribunal appropriately fastened liability on the driver of the two wheeler as well as the pillion rider for not wearing helmet and for non possession of valid driving license, the quantum of compensation would have been less. Instead the learned Tribunal had proceeded to fix 5% liability on the part of the pillion rider for not wearing the helmet. In view of the same, he pressed for allowing the appeal.



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7.Per contra, the learned counsel appearing for the respondent Mr.Pethu Rajesh submitted that the deceased was a pillion rider at the time of the accident. In view of the same, he can be considered only as a third party. The First Information Report in this regard was also registered as against the driver of the bus belonging to the Transport Corporation and the final report has also confirmed the same.

8.Heard the learned counsels on either sides and carefully perused the materials available on record.

9.As far as the point of fastening the liability on the deceased person for non wearing of helmet is concerned, the learned Tribunal had relied upon the judgment passed by this Court in ***C.M.A.(MD)No. 596 of 2017 dated 30.08.2017 in the case of the Branch manager, the Oriental Insurance Company Limited, Madurai vs. Jeyarani and others***, in which only 5% negligence had been fixed on the part of the deceased pillion rider for non wearing of helmet at the time of the accident. Only following the dictum of the judgment passed by this Court, the learned Tribunal had fixed 5% negligence on the deceased pillion rider and fastened 95% of the negligence on the



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respondent corporation. On that basis, the learned Tribunal had proceeded to pass an award of Rs.12,65,000/- (Rupees Twelve Lakhs and Sixty Five Thousand only) in which the transport corporation is liable to pay only 95% of the award amount, that is, Rs,12,01,750/- (Rupees Twelve Lakhs One Thousand Seven Hundred and Fifty only). Hence, I am not inclined to interfere with the award passed by the learned Tribunal. Accordingly, the Civil Miscellaneous fails and the same is dismissed.

11. The appellant Transport Corporation is directed to deposit the compensation amount as awarded by the learned Tribunal with accrued interest and costs to the credit of M.C.O.P.No.170 of 2019 on the file of the MACT (IVth Additional District Court), Madurai, within a period of eight weeks (8) from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the claimants / respondents are entitled to get their shares as per the apportionment fixed by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. The 1st claimant / 1st respondent is permitted to withdraw her share together with interest and the share of the minor 2nd respondent shall be deposited in any one of the Nationalised Banks till she attains



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majority. The 1st claimant / 1st respondent who is the mother of the minor claimant is permitted to withdraw the interest of minor once in three months directly from the Bank, if necessary. No costs.

27.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To
The Motor Accident Claims Tribunal,
(IVth Additional District Court),
Madurai.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

Sml

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