

C.M.A.(MD) Nos.454 & 554 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 31.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)Nos.454 & 554 of 2014

In C.M.A.(MD)No.454 of 2014:

- 1.Dennis Jeya Raj
- 2.Jones
- 3.Robi
- 4.Shaju Kumar.

... Appellants/Petitioners

vs.

1.Tamil Nadu State Express Transport Corporation Ltd.,
Represented by its Managing Director,
Chennai – 600 002.

2.Nagarajan
3.United India Insurance Company Ltd.,
No.171/E, R.K.S.Complex
Nehruji Road
Villupuram – 605 602.

- 4.Kanakam alias Kanak Nadar
- 5.Packianathan
- 6.Pathrose.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1983, against judgment and decree dated



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20.11.2013 passed in M.C.O.P.No.62 of 2007 on the file of the
Motor Accidents Claims Tribunal, Sub Court, Kuzhithurai.

For appellants : Mr.K.N.Thampi
For Respondents
For R1 : Mr.P.Prabhakaran
For R3 : Mr.S.Senthil for
Mr.A.Shajahan
For R2, 4, 5 & 6 : No appearance

In C.M.A.(MD)No.554 of 2014:

The Managing Director
Tamil Nadu State Express Transport Corporation Ltd.,
Chennai – 600 002. ... Appellant/1st respondent

vs.

Kanakabai @ Kanakam (died)
1.Dennis Jeya Raj
2.Jones
3.Robi
4.Shaju Kumar.

5.Nagarajan
6.United India Insurance Company Ltd.,
No.171/E, R.K.S.Complex
Nehruji Road
Villupuram – 605 602.

7.Kanakam alias Kanak Nadar
8.Packianathan ... Respondents/Petitioners 2 to 5 &
respondents 2 to 5



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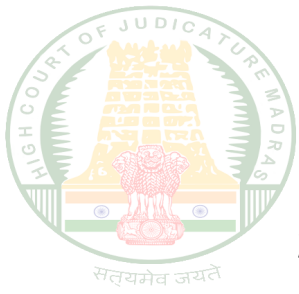
PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1983, against judgment and decree dated 20.11.2013 passed in M.C.O.P.No.62 of 2007 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kuzhithurai.

For appellants : Mr.P.Prabhakaran
For Respondents
For R1 to R4 : Mr.K.N.Thampi
For R6 : Mr.S.Senthil for
Mr.A.Shajahan
For R5, 7 & 8 : No appearance

COMMON JUDGMENT

C.M.A.(MD)No.454 of 2014 has been filed by the claimants herein against the award dated 20.11.2013 passed in M.C.O.P.No. 62 of 2007 passed by the Motor Accidents Claims Tribunal/Sub Court, Kuzhithurai for enhancement of compensation and on the issue of contributory negligence fixed on the driver (deceased) of the Maruti Omni Van.

2. Despite the receipt of notice, the respondents 2, 4, 5 and 6 in C.M.A.(MD)No.454 of 2014 neither appeared nor represented through their counsel.



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3. C.M.A.(MD)No.554 of 2014 has been preferred by the Transport Corporation against the same award as regards the issue of negligence.

4. Despite the receipt of notice, the respondents 5, 7 and 8 in C.M.A.(MD)No.554 of 2014 neither appeared nor represented through their counsel.

5. Heard the arguments of the learned counsels on either side.

6. Case details as set out in the claim petition is given hereunder:

Claimants are the mother and siblings of the deceased Angel Leela Selvi. The husband of Angel Leela Selvi is Luccas. They had two children namely, minor Angel Vinnarasi and minor Angel Azhilarasi. On 29.05.2005, at about 13.00 hours, while the deceased Luccas was driving a Maruti Omni Van bearing registration No.TN-22-J-5349 from Kanyakumari towards Villupuram along Chettupattu main road, Trichy District at



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Palakattai, a bus, belongs to the Tamil Nadu State Express Transport Corporation, bearing registration No.TN-07-N-9340 came from the opposite side in a rash and negligent manner at a high speed and hit upon the Maruti Omni Van and all the four persons travelled in the said van died on the spot. Due to the rash and negligent driving of the driver of the bus, the accident occurred and the first respondent/Transport Corporation is liable to pay compensation to the dependents of the deceased Angel Leela Selvi.

7. Claim petition was filed by the abovesaid persons claiming compensation of Rs.30,00,000/- for the death of the Angel Leela Selvi, who died on account of the road traffic accident that occurred on 29.05.2005.

8. Per contra, it was contended on behalf of the first respondent/Transport Corporation that the manner, in which the accident occurred as stated in the claim petition is not correct. In fact, the driver of the Transport Corporation drove the vehicle slowly and having seen the van proceeding from opposite side, he



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stopped the bus on the left side of the road. Thuvaramkurichi Police has registered the case in Crime No.136 of 2005 against the driver of the Maruti van. The accident occurred due to the rash and negligent driving of the driver of the Maruti van.

9. On behalf of the respondents 4 to 6, who are the brother-in-laws of the deceased Angel Leela Selvi and Luccas, it has been stated that as they are the persons who brought the dead bodies to the native place; they are the dependents of the minor Angel Vinnarasi and minor Angel Ezhilarasi and they are also entitled for compensation.

10. At trial, on the claimants side, three witnesses were examined and eleven documents were marked. On the respondents side, two witnesses were examined and one document was marked.

11. Upon consideration, the Tribunal concluded that the driver of the Maruti van (Luccas-deceased) and the driver of the bus (TN-07-N-9340) have equally contributed to the accident and

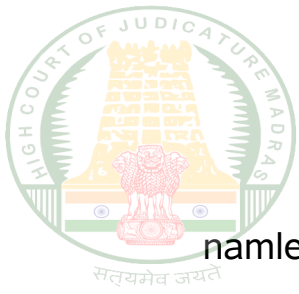


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compensation for a sum of Rs.5,40,000/- (50%) was passed under the heads mentioned below. Against the said finding, the claimants side as well as the Transport Corporation side have preferred these appeals.

S.No	Description	Amount
	<u>For the death of Angel Leela Selvi</u>	
1	For loss of income	Rs.4,68,000/-
2	For funeral expenses	Rs. 12,000/-
3	For loss of love and affection	Rs. 40,000/-
	<u>For the death of Angel Vinnarasi and Angel Ezhilarasi</u>	
1	For loss of income	Rs.4,50,000/-
2	For funeral expenses	Rs. 20,000/-
3	For loss of love and affection	Rs. 70,000/-
	Total	Rs.10,80,000/-
	50% of the contributory negligence	(-) Rs.5,40,000/-
	Total	Rs.5,40,000/-

12. The learned counsel for the appellant in C.M.A.(MD)No. 554 of 2014/Transport Corporation would vehemently argue that it is because of the rash and negligent driving of the driver of the Maruti van, the accident occurred. He would further contend that the driver of the Maruti van alone drove the vehicle in a rash and negligent manner and the driver of the bus did not drive his vehicle in a negligent manner. More so, the evidence of the ocular witness,



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namley, P.W.3 and R.W.1 were not appreciated by the Tribunal in a proper perspective. Therefore, fastening liability on the second respondent/Transport Corporation at 50% by the Tribunal is totally incorrect.

13. Based on the complaint of P.W.2/Karuppaiah, the case in Cr.No.136 of 2005 was registered by Thuvarankurichi Police Station. But, the complainant/P.W.2, in his evidence, would state that he did not lodge the complaint and he only affixed his signature in a plain paper. From his entire evidence, it is inferable that when he reached the accident spot, the van and the bus collided.

14. It is the evidence of ocular witness/Palanisamy (P.W.3) that at about 1.00 p.m., when he was proceeding from north to south, a Maruti van was proceedings from south to north side and the bus was coming from north to south. The Maruti van crossed the pothole slowly and at that point of time, the bus came in a high speed and hit upon the Maruti van.

15. It is the evidence of P.W.3, during his cross-examination

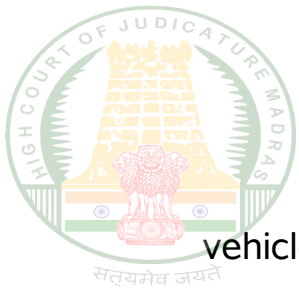


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that the pothole is found on the center part of the road. No doubt, when the vehicle passes the pothole, the driver has to slow down the vehicle. The evidence of P.W.3 to the effect that when the Omni Van rode by the deceased crossed the pothole and when his vehicle came to the elevated place, the bus, without sounding horn or applying break, hit on the Maruti van and then only stopped, would go to show that the bus was proceeding in a high speed.

16. It is the evidence of R.W.1/driver of the bus that on 29.05.2005, at about 1.00 p.m., near Chettupattu, he saw a Maruti van (TN-22-J-5340) came in opposite direction in a rash and negligent manner and turned towards eastern side and after seeing the same, he stopped the bus on the left side. However, the Maruti van hit on the right side of the bus and thereby, the accident occurred.

17. It is the common understanding that any vehicle meets a pothole that too in a brighter day light, the driver would slow down the vehicle and very slowly they will cross the pothole and after reaching the elevated place, they would raise the speed of the



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vehicle. These details have been spoken by P.W.3/Palanisamy. On

the other hand, R.W.1, the driver of the bus would state that the Maruti van was proceeding in a rash and negligent manner and came at a high speed. The evidence of R.W.1 to the effect that when he was crossing the pothole, he slowed down the bus, is false one. Of course, the driver of the Maruti van has come to the center portion, he could not have driven his vehicle at a high speed.

18. P.W.3 would state that the driver of the bus did not slow down his vehicle and he hit upon the Maruti van. As per his evidence, had he stopped his bus, the accident could have been averted, rather the driver and the inmates of the Maruti van, namely, four persons, due to the accident, succumbed to the injuries on the spot. It appears that it was head-on collision on the center of the road. The only point disadvantageous to the driver of the Maruti van is that the pothole was in the center of the road. In the given circumstances, by relying upon the testimony of P.W.3 and R.W.1, the Tribunal has come to a conclusion that both have contributed to the accident equally and the Tribunal has rightly fastened the liability of 50% on the driver of the bus. The driver of



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the Maruti van died on the spot, due to the accident. Therefore, this Court does not find any valid reason to reverse the finding of the Tribunal.

19. As regards the income of the deceased Angel Leela Selvi, it is the evidence of P.W.1 that she was working as a Teacher in Thirupachanur Middle School and earning a sum of Rs.10,000/- p.m. Though no documents as to the education qualification and salary of the deceased Angel Leela Selvi were filed, her monthly income is safely fixed at Rs.8,000/- p.m.

20. As per the postmortem certificate of the Angel Leela Selvi, her age is fixed as 47 years. As per the law laid down by the Hon'ble Supreme Court in ***National Insurance Corporation Limited vs. Pranay Sethi and others*** reported in **2017 (2) TNMAC 609 (SC)**, the Apex Court has standardised the future prospects details. For the persons between 40-50 years, who are self employed or on fixed salary, 25% has to be added while computing the monthly income. As held in ***Sarala Varma and others vs. Delhi Transport Corporation and another*** reported in



2009 (2) TNMAC 1 (SC), if the dependents are 4 to 6 in number, $\frac{1}{4}$

has to be deducted and the relevant multiplier to be adopted is 13'M'. For computing the loss of dependency, the following formula emerges:

$$\text{Rs.8,000/-} + \text{Rs.2,000/- (25\%)} - \frac{1}{4} \times 12 \times 13\text{m} = \text{Rs.11,70,000/-}$$

21. As held in the **Pranay Sethi's** case (cited supra), the claimants are entitled to Rs.40,000/- each for loss of consortium. As already Rs.40,000/- was granted by the Tribunal, an amount of Rs.1,20,000/- is granted in addition to the amount already awarded by the Tribunal. As regards other heads, the amounts awarded by the Tribunal appears to be reasonable and acceptable and it needs no interference. The compensation awarded by the Tribunal is re-worked and tabulated hereunder:

S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
	<u>For the death of Angel Leela Selvi</u>			
1	For loss of income	Rs.4,68,000/-	Rs.11,70,000/-	Enhanced



S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
2	For funeral expenses	Rs. 12,000/-	Rs. 12,000/-	Confirmed
3	For loss of love and affection/for loss of consortium	Rs. 40,000/-	Rs. 1,60,000/-	Enhanced
	<u>For the death of Angel Vinnarasi and Angel Ezhilarasi</u>			
1	For loss of income	Rs.4,50,000/-	Rs.4,50,000/-	Confirmed
2	For funeral expenses	Rs. 20,000/-	Rs. 20,000/-	Confirmed
3	For loss of love and affection	Rs. 70,000/-	Rs. 70,000/-	Confirmed
	Total	Rs.10,80,000/-	Rs.18,82,000/-	
	50% of the contributory negligence	(-)Rs.5,40,000/-	(-)Rs.9,41,000/-	
	Total	Rs.5,40,000/-	Rs.9,41,000/-	Enhanced by Rs.4,01,000/-

22. In the result,

(i) The C.M.A.(MD)No.454 of 2014 stands partly allowed and C.M.A.(MD)No.554 of 2014 stands dismissed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.5,40,000/- to Rs.9,41,000/-.



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(iii) The appellant in C.M.A.(MD)No.554 of 2024/first respondent in C.M.A.(MD)No.454 of 2014/Transport Corporation is directed to deposit the enhanced compensation amount i.e., Rs.9,41,000/- (less the amount already deposited if any) along with interest at 7.5% p.a. from the date of accident till the date of realisation to the credit of M.C.O.P.No.62 of 2007 on the file of Motor Accidents Claims Tribunal /Sub Court, Kuzhithurai within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimants/appellants 1 to 4 and respondents 4 to 6 are permitted to withdraw their share of the award amount with interest, as per the apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.

(v) The claimants/appellants 1 to 4 and respondents 4 to 6 are directed to pay the Court fee for the enhanced compensation amount, if required.



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(vi) The Tribunal below shall disburse the amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

31.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1.The Sub Judge,
The Motor Accidents Claims Tribunal,
Sub Court,
Kuzhithurai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J

apd

Pre-delivery order made in
C.M.A.(MD) Nos.454 & 554 of 2014

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