BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.06.2025

Pronounced on : 02.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)Nos. 1194 of 2018 & 144 of 2022
and
C.M.P.(MD)No.12275 of 2018

CMA(MD).No.1194 of 2018

The Managing Director

Tamil Nadu State Transport Corporation,

Karaikudi Depot ... Appellant/ Respondent

Vs.

1. Sethulaxmi

2. Muneeswaran (minor)

3. Hariharasuthan (minor)

4. Litish Kumar (minor)

(minor respondents 2 to 4 represented through their mother

Sethulaxmi)

5. Bhagavathi ...Respondents / Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 29.11.2017 made in M.C.O.P. No.65 of 2017 on the file of Motor Accident Claims Tribunal / Additional District Court, Ramnathapuram and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.P. Prabhakaran

For Respondents : Mr.H.Velavadhas

CMA(MD).No.144 of 2022

1. Sethulaxmi
2. Muneeswaran (minor)
3. Hariharasuthan (minor)
4. Litish Kumar (minor)
5. Bhagavathi

(minor petitioners 2 to 4 represented
through their mother Sethulaxmi) ... Appellants/ Petitioners

Vs.

The Managing Director
Tamil Nadu State Transport Corporation,
Karaikudi Depot ...Respondent / Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 29.11.2017 made in M.C.O.P. No.65 of 2017 on the file of Motor Accident Claims Tribunal / Additional District Court, Ramnathapuram and allow this Civil Miscellaneous Appeal.

For Appellants : Mr.H.Velavadhas

For Respondent : Mr.P. Prabhakaran

COMMON JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

The appellant / respondent / Transport Corporation has filed the Civil Miscellaneous Appeal in CMA(MD)No.1194 of 2018 against the fair order and decreetal order dated 29.11.2017 made in M.C.O.P. No. 65 of 2017 on the file of Motor Accident Claims Tribunal / Additional District Court, Ramanathapuram with regard to quantum and liability.

2. The appellants / petitioners have filed the Civil Miscellaneous Appeal in CMA(MD)No. 144 of 2022 against the fair order and decreetal order dated 29.11.2017 made in M.C.O.P. No.65 of 2017 on the file of Motor Accident Claims Tribunal / Additional District

Court, Ramnathapuram, for enhancement of compensation.

3. Brief facts of the petition filed by the claimants before the Tribunal are as follows:

(a) The 1st petitioner is the wife of the deceased, petitioners 2 to 4 are minor sons of the deceased, 5th Petitioner is the aged mother of the deceased. The deceased was working as a van driver in Al-Gurg Stationery, an Enterprises of Easa Saleh, At Gurg Group of Dubai and earned monthly income of 3300 Dinars which is equivalent to Indian Rs. 60,060/- (1 Dinar =18.20 Rupee) at present.

(b) The deceased arrived India on leave. On 19.01.2017 at about 3.30 PM, he was riding his Motor cycle (Hero Hondo Splendor Pro) bearing Registration No.TN-65-AB-2521 towards east on the left side of NH Road between Ramnad and Rameswaram at Transport Nagar of Ramnad, at that time, the bus bearing Registration No.TN-63-N-1472 came from the opposite direction at a very high speed. The driver of the bus did not observe the traffic rules and he drove the bus in a rash and negligent manner on the wrong side. He suddenly swerved the bus towards northern side without any indication. As a result, the front portion of the bus hit the deceased throwing him off forcibly caused him to fall and lie in a pool of blood.

(c) The deceased sustained severe injuries and died on the spot. The entire incident witnessed by Mr.Baskaran S/o. Anguchamy of Regunathapuram and Mr.Sathaiah, S/o. Veman, of Sadayanvalasai. They informed both to the petitioners and to the police. Based on the complaint given by Mr.A.Baskaran, the Kenikarai Police registered FIR against the TNSTC bus driver on 19.01.2017 in Crime No.68 of 2017 under Section 304(A) IPC.

(d) The accident had occurred only due to the rash and negligent act of the TNSTC bus driver. He was working under the direct control of the respondent during the course of his employment, the accident had occurred. Hence, the respondent alone is solely responsible to pay compensation to the petitioners.

(e) At the time of accident the deceased was aged about 45 years. He was hale and healthy. He was the sole bread winner of his family. He was getting monthly salary of Rs.60,060/-. For his personal expenses, he had spent a sum of Rs.16,350/- i.e., 1/3rd of his salary and the remaining amount of Rs.40,000/- was given by him to his family. Now the entire family is suffering a lot and if the accident had not happened he would have lived upto the age of 75 years and supported his wife children and sick mother by his income which he would have earned at least of Rs.65,00,000/- approximately to his family.

(f) On several heads the petitioners estimated and calculated their total loss to the tune of Rs.76,25,000/-. However they restricted their claim to the tune of Rs.60,00,000/-.

4. The brief averments contained in the counter filed by the respondent are as follows :

The respondent denied the entire averments contained in the petition save those that are specifically admitted in the petition and it is the petitioners have to prove the same. Though the respondent admitted that the accident had occurred, he denied the manner of accident as stated by the petitioners. The respondent contended that the bus driver, upon noticing the deceased coming in the opposite direction in a motor cycle riding the same in a rash and negligent manner, had stopped the bus but the deceased had collided the bus, thereby caused the accident. The respondent further alleged that, the deceased had consumed alcohol. According to the respondent, the bus driver was in no way responsible for the accident as he has not driven the vehicle in a rash and negligent manner and hence he is not liable to pay the compensation. It is for the petitioners to prove that they are the legal heirs of deceased by way of document. The amount claimed is highly excessive. Therefore the respondent contended that they are not liable to pay any compensation.

5. Before the Tribunal, during trial on the side of the petitioners, P.W.1 to P.W.3 were examined and Exs.P1 to Exs.P11 were marked. On the side of the respondent, R.W.1 was examined and no document was marked.

6. After hearing both sides, the trial Judge awarded a sum of Rs.10,50,100/- towards compensation for the claimants. The learned Judge directed the appellant / respondent Transport Corporation to pay the entire award amount within a month.

7. Aggrieved by the said order, the Civil Miscellaneous Appeal in C.M.A.(MD)No.1194 of 2018 has been filed by the Transport Corporation who is the respondent before the lower Court in MCOP. No.65 of 2017 against the negligence and quantum with the following among other grounds :

(i) That the Tribunal has erred in holding that the driver of the appellant was solely responsible for the accident. The conclusion of the tribunal was based on mere surmises and conjectures without considering the materials on the record.

(ii) That the tribunal has failed to fix the entire negligence on the deceased who drove the motor cycle bearing registration no. TN -63-N-1472 in a rash and negligent manner coming in the opposite direction dashed the halted bus and caused the accident and that the deceased was solely responsible for the accident.

(iii) That the Tribunal had erred in not taking the above said factual aspects into consideration. Without appreciating the law and facts and evidence, the Tribunal had wrongly fixed the entire responsibility for the accident on the part of the driver of the appellant Transport Corporation.

(iv) That the Tribunal had erred in law in not following the Norms and Guidelines Governing the Motor Accident Cases.

(v) That the Tribunal has erred in awarding a total compensation of Rs.10,50,100/- to the claimants / respondents which is very excessive and exorbitant one.

(vi) In the absence of any specific proof for the monthly income of deceased, the Tribunal has erred in fixing the monthly income of deceased as Rs.9,000/- which is excessive. In addition to that, the

Tribunal has added 10% additional income towards future prospects and taken the monthly income as Rs.9,900/- which is also high.

(vii) That the Tribunal has erred in deducting 1/4th income of deceased towards personal expenditure is unsustainable one.

(viii) That the Tribunal has erred in adopting multiplier 11 is high. Hence the loss of income awarded for Rs. 9,80,100/- is also high.

(ix) That the Tribunal has erred in awarding Rs. 40,000/- towards consortium to the 1st respondent being the wife of the deceased, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate which are also too high.

(x) In any event, the award of the Tribunal is highly excessive and liable to be set aside.

Hence, prayed to set aside the judgment of the trial Court and allow the Civil Miscellaneous Appeal.

8. Aggrieved by the said order, the Civil Miscellaneous Appeal in C.M.A.(MD)No.144 of 2022 has been filed by the claimants before the lower Court in MCOP.No.65 of 2017 for enhancement of award with the following among other grounds :

1. That the trial Court failed to consider the date of birth of the

deceased in the transfer certificate, which was mentioned by P.W.3, originally the date of birth of the deceased is 10.05.1970. But the trial Court wrongly calculated the age by fixing the date of birth as 16.09.1964 which was mentioned in the passport and the driving license.

2. That the trial Court failed to consider the income of the deceased. Ex.P6 is the salary certificate of the victim which shows the salary received by the victim in abroad for the month of March 2016. The victim was earning a sum of Rs.60,000/- per month. The trial Court simply stated that the victim not paying income tax to the Government of India and the salary was calculated as Rs.9,000/- per month.

3. That the trial Court failed to consider the love and affection, loss of enjoyment of life of the 1st appellant and mental agony and had awarded a meagre sum of Rs.40,000/- as consortium to the 1st appellant/1st claimant.

Hence, prayed to set aside the judgment of the trial Court and allow the Civil Miscellaneous Appeal by enhancing the award amount.

9. Heard the learned counsel on either side and perused the material available on records.

10. Since the Civil Miscellaneous Appeals arise out of the judgment in M.C.O.P.No.65 of 2017, issues, facts, evidence and documents involved in these Civil Miscellaneous Appeals are same, they are taken up for hearing together and are disposed of by this common judgment.

11. Now, this court has to decide the following points for consideration :

(1) Whether the accident occurred due to the rash and negligent act of the respondent's bus driver or the deceased caused the accident ?

(2) Whether the compensation awarded by the Tribunal is on the higher side?

12. Point No.1

The claim petitioner filed Ex.P1, FIR registered in crime No. 68 of 2017 dated 19.01.2017 registered by the Kenikarai Police against the driver of the Transport Corporation viz., Thiru. Karuppasamy, under Section 304A of IPC. The FIR was lodged by one Baskaran. In the complaint, he stated that on 19.01.2017 at about 2.00 P.M., the complainant and one Sathiya were travelling in a two wheeler, his uncle Mr. Sakthivel @ Sakthi was also riding his two wheeler bearing Registration No.TN 65AB 2521 (Hero Splendor Pro) in front of them. He, and Sathya were following his uncle Sakthivel @ Sakthi on another two wheeler, at about 3.30 p.m., on the Ramnad to Rameswaram highways near Pokuvarthu Nagar, they were travelling from West to East, a Transport Corporation bus coming from the opposite side viz., east to west drove in a rash and negligent manner and collided with his uncle's two wheeler. He was thrown off and fell into a pool of blood, immediately he and his friend lifted him, and found that his uncle had sustained a severe neck injury, abrasion on both sides of the body, he was succumbed to injury. He came to know that the Transport Corporation bus was driven by one Karuppasamy resident of Kamaraj Nagar. His uncle was taken by an ambulance to Government Hospital, Ramanathapuram, where the Doctor examined him and declared dead. Ex.P2 is the Postmortem certificate issued by the Assistant Surgeon, Government Hospital, Ramnathapuram, in which the Doctor noted the injuries sustained by the deceased and opined that the cause of death would appeared to be injury on vital organ.

13. The learned counsel appearing on behalf of the Transport Corporation argued that the deceased alone was riding the motorcycle bearing registration No.TN 63– N– 1472 in a rash and negligent manner came from the opposite direction and collided with stationed bus and hence, he is solely responsible for causing the accident.

14. In order to prove the same, the respondent neither filed any document nor examined any witness to show that the deceased collided with stationed bus. No complaint was lodged by the driver of the respondent bus. Whereas the petitioners examined one of the eyewitness as P.W.2, he supported the petitioner's case by stating that the driver of the Transport Corporation was solely responsible for the accident. The Transport Corporation driver was examined as R.W.1. During cross examination, he admitted that a criminal complaint was lodged against him and that final report was filed and taken on file in C.C.No.35 of 2017 and the same is pending. He further admitted that he was suspended in connection with the accident and was sent to Villupuram Training Centre.

15. The Petitioners clearly proved through both oral and documentary evidence that the negligence was on the part of the respondent's driver and the trial Court rightly held that the driver of the Transport Corporation bus was responsible for the accident. Since the Transport Corporation is the owner of the vehicle, it is vicariously liable to pay the compensation on behalf of its employee. Therefore, we do not find any reason to interfere with the finding of the trial Court.

16. Point No.2 :

The learned trial Judge fixed the monthly income of the deceased at Rs.9,000/- per month. The learned counsel appearing on behalf of the Transport Corporation argued that the monthly income fixed by the Tribunal is on the higher side and the same is liable to be set aside.

17. On the other hand, the learned counsel appearing on behalf of the claimants contended that the income fixed by the Tribunal is meagre, as the deceased was earning a sum of Rs.60,000/- per month as salary. The trial Court declined to accept the claim citing the absence of income tax returns and bank passbook entries to substantiate the claim of income despite production of the salary certificate. It ought to have

accepted the income since salary slip Ex.P8 and other supporting documents were produced on behalf of the deceased and prayed to enhance the income of the deceased.

18. The trial Court in its judgment accepted the salary certificate, however, stated that the deceased returned to India on 30.11.2016, he was not employed at the time of his death in India, he was not an income taxpayer and the fact that when he was working in abroad, he would have spent more than half of the salary towards accommodation, food and other expenditure, he would have sent only Rs. 10,000/- to his family. The trial Judge further stated that the 1st petitioner failed to file proof to show that the exact amounts sent by her husband.

19. We have carefully verified the documents produced by the petitioners to establish the income of the deceased. Ex.P6 is the salary restructuring order dated 26.04.2011 issued by the employer of the deceased viz., AL-Gurg Stationery, an Enterprise of Easa Saleh At Gurg Group of Dubai, UAE company. As per Ex.P6, dated 21.01.2011 which is the Salary increment order, his new salary was structured at 3000 AED as on 26.04.2011. Ex.P8 is the pay slip issued by the said company which

shows that he received a sum of 3300 dirhams, during the month of September 2015 and during March 2016 he received a sum of 3400 dirhams. The service certificate issued by authorized Secretary of Al-Gurg Stationery, an Enterprise of Easa Saleh At Gurg Group of Dubai, UAE dated 04.04.2017 which was marked as Ex.P5 shows that the deceased Sakthivel @ Sakthi joined in their company on 25.11.2010 and was working till 23.11.2016, and his latest assignment was van driver and his last drawn salary was 3400 AED. The passport issued to the deceased by the Republic of India dated 08.03.2007 valid up to 07.03.2017 and renewed upto 22.11.2026. The passport entries upon perusal, shows that the deceased was travelling to Arab country on multiple times. The resident permit issued to the deceased on 05.12.2015 was valid until 04.12.2017 annexed with the passport indicates that he was employed as a professionally light vehicle driver with Al-Gurg Stationery, an Enterprise of Easa Saleh At Gurg Group of Dubai. Ex.P10 is the driving license issued by United Arab Emirates, valid until 10.11.2019. The above mentioned documents clearly established that the deceased was working as a driver in United Arab Emirates prior to his death and derived a sum of **3400 AED** at the time of his death. The service certificate issued by the employer, established that he was employed up to November 2016.

20. The accident took place during January 2017. The petitioner contended that the deceased had come on leave to India. Since the employer in the service certificate did not mention that his service was terminated and as the same was issued after his death, and his residence permit was valid till December 2017, it is established that he was permitted to travel to India on leave, during that period, he met with an accident.

21. The trial Court disregarded the certificate issued by employer, stating that the petitioners failed to produce an income tax certificate and passbook to show that her husband had transferred money to the family. It is true that the Income Tax payment details have not been produced. Merely because the petitioners have failed to produce passbook to prove the money transferred by the deceased it cannot be a ground to deny compensation by holding that the income of the deceased was not proved.

22. On verification, it was found that during the year 2017

the value of one dirham was Rs.18.20. Since it has been established, that the deceased Sakthivel @ Sakthi was working as driver in Arab Emirates and was deriving 3400 dirham at the time of death, his income is equivalent to (3400 x 18.20) Rs.61,880/-.

23. The learned counsel for the appellants/claimants argued that the age of the deceased at the time of accident was 47 years, but the year of birth was mistakenly given as 1964 in the passport. On perusal, we find that the School Transfer Certificate issued by Government Higher School, Regunathapuram, Ramnathapuram District was marked as Ex. P11 in which it was categorically mentioned that his date of birth is 10.05.1970 and the compensation has to be calculated by taking into consideration, the age of the deceased. The same was seriously opposed by the Transport Corporation.

24. On perusal of the record, Ex.P11 Transfer Certificate in which the date of birth of the deceased was mentioned as 10.05.1970, whereas in the passport, his date of birth is mentioned as 16.09.1964. The deceased had also stated his date of birth as 16.09.1964 in the driving license as 16.09.1964 which was marked as Ex.P10. Normally, when a

person applies for visa, the date of birth is a crucial piece of information and without verifying the relevant documents, the passport authorities would not have issued visa. The Visa should have been issued only based on a proper certificate produced by the deceased. The passport, visa and the driving license were issued by the Republic India and United Arab countries solely based on the documents produced by deceased as well as the declaration by him. Hence this Court cannot conclude that the date of birth was entered by mistake. Furthermore, the deceased was issued passport during the year 2007 (08.03.2007) and died during January 2017. During this period, he did not take any steps to correct his date of birth. Therefore, we conclude that the date of birth of the deceased is 16.09.1964 as per the passport, and not as per school certificate.

25. Since the trial Court did not properly fix the annual income of the deceased, the order of the trial Court requires modification by enhancing the compensation. By applying the guidelines of the Hon'ble Supreme Court held in ***National Insurance Co. Ltd vs Pranay Sethi [(2017) 16 SCC 680]***, the award is modified and enhanced as follows :

Income of the deceased at the time of accident is (3400 x 18.20) Rs.61,880/- Add future prospects 10% = 6188 (61880 + 6188 = 68068) yearly income = 68068 x 12 = Deduct 1/4th = 17017 (68068 -17017) = 51051 Multiplier would be 11 = 51051 x 12 x 11 = deduct income tax for Rs.67,38,732/- upto Rs.2,50,000/- no tax for Rs.2,50,000/- x 10% = Rs.25,000/- for Rs.5,00,000/- x20 % = Rs.1,00,000/- for Rs.57,38,732/- x 30% = Rs.17,21,619/- Total tax = Rs.18,46,619/-	Rs.8,16,816/- Rs.67,38,732/- Rs.18,46,619/-
After deduction of income tax, the income is	Rs.48,92,113/-
Loss of Love and affection/consortium	Rs.2,00,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Total	Rs.51,22,113/-

Based on the evidence and the legal principle, the claimants would be entitled to a sum of Rs.51,22,113/- as compensation. Therefore, this Court enhancing the compensation to the tune of Rs.51,22,113/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. Out of the said compensation, the 1st Claimant is entitled to a sum of Rs.16,22,113/-, Claimants 2 and 4 are entitled to a sum of Rs.10,00,000/- each towards compensation and the 5th claimant is entitled to a sum of Rs.5,00,000/- towards compensation. The Point No.2 is answered accordingly.

23. C.M.A.(MD)No.1194 of 2018

In the result, the Civil Miscellaneous Appeal is dismissed and the award is enhanced as in C.M.A.(MD)No.144 of 2022. No costs. Consequently, connected miscellaneous petition is closed.

24. C.M.A.(MD)No.144 of 2022

In the result, the Civil Miscellaneous Appeal is allowed. The award passed by the trial Court is modified and the respondent/Transport Corporation is directed to pay a sum of Rs.51,22,113/- to the appellants/claimants along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit of the amount, less the amount if already deposited to the credit of M.C.O.P.No.65 of 2017 on the file of the Additional District Court, Motor Accident Claims Tribunal, Ramanathapuram, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the 1st appellant /1st claimant is entitled to a sum of Rs.16,22,113/-, the appellant 2 to 4/claimants 2 and 4 are entitled to a sum of Rs.10,00,000/- each towards compensation and the 5th appellant /5th claimant is entitled to a sum of Rs.5,00,000/- towards their share and On such deposit, the 1st & 5th appellants /1st & 5th claimants are permitted to withdraw the same, less the amount already withdrawn, if any, together with proportionate interest and costs, by filing an appropriate petition before the Tribunal. The Tribunal is directed to deposit the share of the minor appellants 2 to 4/ claimants 2 to 4 in a nationalized bank in an interest bearing deposit scheme until they attain majority. The 1st appellant herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months. No costs. The appellants are directed to pay the appropriate Court fee for the enhanced award amount. Consequently, connected miscellaneous petition is closed.

(A.D.J.C., J.) & (R.P., J.)
02.07.2025

Index : Yes / No
NCC : Yes / No

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To

1.The Motor Accident Claims Tribunal
Additional District Court,
Ramanathapuram,

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

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Common Judgment in
C.M.A.(MD)Nos. 1194 of 2018 & 144 of 2022

02.07.2025