



C.M.A.No.239 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 18.02.2026
Pronounced on 24.04.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No. 239 of 2026

1. Gopal
2. Kanagammal

...Appellants

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Periyamilaguparai, Trichy-I,
Service Office, Manager,
Tamil Nadu State Transport Corporation
Main Road, Durimangalam Post,
Perambalur

...Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the order dated 08.11.2022 made in MCOP No.338 of 2018, on the file of the Motor Accident Claims Tribunal, Principal District Court at Perambalur.

For Appellants : Mr.M. Lokesh
For Respondent : Mr. M. Murali Vinodh



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JUDGMENT

This Appeal, under Section 173 of Motor Vehicles Act, has been filed by the appellants / claimants in MCOP No.338 of 2018, on the file of the Motor Accident Claims Tribunal, Principal District Court at Perambalur. for enhancement of the sum awarded by the claims tribunal.

2. Shortly stated, on 30.03.2012, at about 6.30 a.m, when the deceased Aashni was standing near Kalingamudaiyanpatti school on the left southern side of the road, a bus bearing Registration No.TN 45 N 2883 belonging to the Tamil State Transport Corporation bus came from Meyyampatti to Thuraiyur, which was turned near Kalingamudaiyanpatti school bend in a rash manner by its driver, and dashed against the deceased Aashni, as a result of which, she sustained injuries and died on the spot. FIR was registered against the driver of the bus.

3. The parents of the deceased preferred a claim petition for a compensation of Rs.10,00,000/- for the loss caused to them due to the death of their daughter.



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4. The respondent / Transport Corporation resisted the claim petition by stating that the accident had happened when the deceased child tried to cross the road suddenly from right side to left side and that the parents of the deceased child did not take care of the safety of their child and contributed to accident and hence prayed for dismissal of the claim petition.

5. The learned Tribunal, after analysing the oral and documentary evidence, awarded a compensation of Rs.4,36,000/- to the appellants / petitioners, after deducting 20% contributory negligence on the part of the mother of the deceased child since she did not take sufficient care to see that her child is not playing in the road side, and directed the respondent corporation to pay the said amount together with interest at the rate of 7.5% per annum from the date of claim petition, till the date of realisation, excluding the default period, if any. Aggrieved over the 20% negligence fixed on the part of the mother of the deceased and the notional income fixed by the Tribunal, the appellants / petitioners are on appeal.

6. Mr.M.Lokesh, the learned counsel for the appellants / claimants submits that, the Tribunal though observed that the contributory negligence



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cannot be fixed on the child, fixed 20% contributory negligence, which warrants interference by this Court. He would further submit that, the Hon'ble Supreme Court, in several cases, fixed the notional annual income of the deceased child between Rs.40,000/- and Rs.60,000/-. However, the Tribunal erroneously fixed a sum of Rs.30,000/- as notional income of the deceased child, relying on the judgment in which the accident happened in the year 1992. He would further submit that the Tribunal failed to award any amount towards loss of estate and transportation expenses as per the rulings of the Apex Court. Hence prayed for enhancement of compensation.

7. On the other hand, the learned counsel appearing for the respondent / Transport Corporation would submit that the learned Tribunal, upon considering the facts and circumstances of the case, has awarded just compensation, which warrants any interference by this Court.

8. Heard on both sides. Records perused.

9. Through this appeal, the claimants are challenging the fixation of 20% contributory negligence fixed by the tribunal on the part of the mother



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due to careless attitude. Contributory negligence generally cannot be fixed on a mother solely leaving the child on the road without care, since contributory negligence cannot be presumed without a direct evidence of negligent supervision. It is the case of the claimants that on the fateful day, when the child Aashni was standing near Kalingamudalianpatti school on the left southern side of the road, the respondent bus came in a rash and negligent manner and dashed against the child, as a result, she died on the spot. Whereas, the contention of the respondent is that the driver was driving the vehicle in a slow manner and that time, the child tried to cross the road from right to left, and got hit against rear right corner of the bus. On the side of the respondent, the driver of the bus was examined as R.W.1. However, no independent witness was examined on the side of the respondent to speak about the manner of accident. Whereas, on the side of the claimants, P.W.2 eye witness, has clearly deposed about the accident and no contra evidence was in let by the respondent except the interested witness, the driver of the offending vehicle. The learned Tribunal has fixed 20% contributory negligence based on the evidence of R.W.1, which cannot be accepted. No doubt, it is difficult to prove contributory negligence against a very young child as they cannot be expected to behave with the same maturity as an adult.



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However, contributory negligence cannot be presumed without evidence.

Moreover, the driver of the vehicle still has a duty of care to anticipate potential hazards like children near a road, and drive cautiously. The tribunal failed to note that Ex.P1 FIR was registered against the driver of the offending vehicle. Therefore, fixation of 20% contributory negligence, without any evidence, is unwarranted and liable to be set aside.

9.1. With regard to the quantum of compensation, the Tribunal has taken the notional annual income of Rs.30,000/- for the accident that happened on 30.03.2012. The learned counsel for the appellants / claimants has relied upon the judgments reported in ***J. Kanagaraj and another vs. Metropolitan Transport Corporation Ltd., reported in 2017 (2) TN MAC 702*** and ***Thangavel and others vs. Managing Director, Tamil Nadu State Transport Corporation Limited reported in 2025 SCC OnLine SC 1649*** . In the above judgments the notional income of the deceased child was fixed at Rs.5,000/- per month. Hence, applying the same, the notional income of the child in the present case is fixed at Rs.5,000/- per month and accordingly a sum of Rs.9,00,000/- (60,000 x 15 multiplier) is awarded towards loss of dependency. The Tribunal has awarded just compensation under the other heads, which

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warrants any interference.

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10. The following tabular column would show the compensation awarded by the tribunal and the compensation awarded by this Court under various heads.

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Modification
1.	Loss of dependency	4,50,000/- (30000 x 15)	9,00,000/- (60,000 x 15)	enhanced
2.	Filial Consortium	80,000/- (2x40000)	80,000/- (2 x 40000)	confirmed
3.	Funeral Expenses	15,000/-	15,000/-	confirmed
4.	Total	5,45,000/-	9,95,000/-	enhanced
	Contributory negligence	20%	-	
	Total	4,36,000/-	9,95,000/-	Enhanced by 5,59,000/-



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11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. 20% contributory negligence fixed on the part of the mother of the deceased child by the Tribunal is set aside.
- iii. The quantum of compensation awarded by the Tribunal is enhanced to Rs.9,95,000/- from Rs.4,36,000/-.
- iv. The appellants / claimants are directed to pay court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of Court fee.
- v. The respondent/Transport Corporation is directed to deposit a sum of Rs.9,95,000 /- (less the amount already deposited) with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this order, to the credit of MCOP No.338 of 2018, on the file of the Motor Accident Claims Tribunal, Principal District Court at Perambalur.
- vi. On such deposit being made, the claimants are at liberty to withdraw the same with costs and interest, as per the apportionment made by the



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tribunal, after filing a proper petition for withdrawal. Interest for

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default period is waived.

24.04.2026

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Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To

1. The Principal District Judge, Motor Accident Claims Tribunal,
Perambalur.
2. The Managing Director,
Tamil Nadu State Transport Corporation,
Periyamilaguparai, Trichy-I,
Service Office, Manager,
Tamil Nadu State Transport Corporation
Main Road, Durimangalam Post, Perambalur



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K.GOVINDARAJAN THILAKAVADI, J.

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**Pre-delivery judgment in
C.M.A.No. 239 of 2026**

24.04.2026