

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	20.06.2023
PRONOUNCED ON :	17.07.2023

CORAM :

THE HON'BLE MRS.JUSTICE J.NISHA BANU
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.4861 of 2019
and Cross Objection No.16 of 2020
and C.M.P.Nos.12511, 274 & 14375 of 2020 and 271 & 274 of 2021

In C.M.A.No.4861 of 2019:

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Trichy Main Road,
Villupuram Post and District. .. Respondent / Appellant

Versus

1. Mythili
2. Minor Aneesh
(Minor represented by his next friend
mother Mythili)
3. Kanagaraj
4. Rukmani .. Petitioners / Respondents

In Cross Objection No.16 of 2020:

1. Mythili
2. Minor Aneesh
(Minor represented by his next friend mother Mythili)

3. Kanagaraj
4. Rukmani

.. Cross Objectors/ Claimants

Versus

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Trichy Main Road,
Villupuram Post and District.

.. Respondents/Appellants

PRAYER IN C.M.A.No.4861 of 2019: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.03.2019 made in M.C.O.P.No.739 of 2016 on the file of the Motor Accident Claims Tribunal, the Speial District Judge, Dharmapuri.

PRAYER IN CROSS OBJECTION No.16 of 2020: Cross Objection filed under Order XLI Rule 22 of the Civil Procedure Code read with Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.739 of 2016 dated 21.03.2019 on the file of Motor Accident Claim Tribunal-cum-the Special District Judge, Dharmapuri and prays to set aside the decree and judgment in the above M.C.O.P.No.739 of 2016 and enhance the award amount.

In C.M.A.No.576 of 2022 :

For Appellants : Mr.P.Kumaresan,
Additional Advocate General
Assisted by Mr.G.Saravanakumar

For Respondents : Mr.S.Sathiaseelan

In Cross Objection No.16 of 2020:

For Cross Objectors : Mr.S.Sathiaseelan

For Respondents : Mr.P.Kumaresan,
Additional Advocate General
Assisted by Mr.G.Saravanakumar

COMMON JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.

The Tamil Nadu State Transport Corporation Limited has filed C.M.A.No.4861 of 2019 aggrieved by the Award of the Motor Accidents Claims Tribunal, Dharmapuri dated 21.03.2019 in M.C.O.P.No.739 of 2016 in and by which, the claim made by the respondents herein in the MCOP, for compensation towards the death of one Kumar in the motor accident, was partly allowed by awarding a total sum of Rs.83,47,120/- (Rupees eighty three lakhs forty seven thousand one hundred and twenty only). The respondents/ claimants have filed cross objections in Cross.Obj.No.16 of 2020 being not satisfied with the compensation awarded stating that the award is on the lesser side. As such, both the appeal and cross objection are taken up together and disposed of by this common judgment.

2. The case of the respondents/ claimants is that one Kumar is the husband of the first claimant, father of the second claimant and son of the third

and fourth claimants. In the year 2016, the said Kumar was aged 33 years. He was having a M.Sc and a M.Phil degree in Chemistry and was working as Assistant Manager -Technical (Industry) with M/s.Exide Industries, Hosur. While so, on 03.04.2016, when he was waiting at the Salem New Bus stand to board a bus to Hosur, the bus bearing registration number TN 32 N 3750 was driven rashly and negligently in the reverse direction by the driver, without noticing the deceased on the rear side and as a result of which, the deceased was caught between the offending bus and yet another bus which was standing behind and he was crushed to death. Hence, the claim petition was filed claiming a total sum of Rs.2,00,00,000/- (Rupees Two Crores only) as compensation.

3. The claim was resisted by the appellant Corporation on the ground that it was only the fault of the deceased as well as the other bus which came and suddenly stopped at that place and merely because the driver of the offending bus took him to the hospital on humanitarian consideration, a complaint was lodged in his absence by the conductor of the other bus in a malafide manner and based on the said complaint, the present claim petition is filed.

4. The trial Court proceeded on the strength of the said pleadings. The first claimant examined herself as P.W.1 and one Suresh Babu, the Manager from the employer of the deceased was examined as P.W.2 and one Govindarajan, who was the conductor of the other bus which was standing behind and who lodged the complaint was examined as P.W.3. Exhibits P1 to P32 were marked on behalf of the claimants. On the side of the respondent Corporation, one Jayaraman, the driver of the offending bus and one Ramalingam, the conductor of the said bus were examined as R.W.1 and R.W.2 and Exhibits R1 and R2 were marked. Thereafter, the Tribunal considered the case of the parties and found that the accident entirely happened only on the negligence of the driver of the bus namely R.W.1 and held that the appellant Corporation is liable to pay the compensation. Thereafter, calculated the compensation, by taking the monthly income of the deceased at Rs.47,900/- as per the salary slip and calculated the compensation and passed the Award.

5. Mr.P.Kumerasan, learned Additional Advocate General appearing on behalf of the appellant Corporation would submit that in this case, it can be seen that when the offending bus was starting towards its destination from the bus bay, it was only the deceased who was erroneously and negligently

standing on the rear side of the bus. Further, without noticing the bus being reversed, it is only the other bus bearing Reg.No.TN 29 N 2021 which came suddenly and stopped at the place and only the acts of the said bus driver and the deceased alone was responsible for the accident. In any event, atleast the percentage towards the contributory negligence of the deceased as well as the said bus ought to have been deducted from the total compensation payable by the appellant.

6. Per contra, Mr.S.Sathiaseelan, learned counsel appearing on behalf of the claimants would submit that in this case, the negligence has rightly been fixed by the Tribunal by considering the evidence on record by duly analysing the evidence of P.W.3 and the records of the connected criminal case including the First Information Report and the evidence of R.W.1, the driver of the offending bus and therefore, would submit that the appeal filed by the appellant should be rejected.

7. Additionally, the learned counsel would submit that while considering the salary slip, the trial Court did not include the employer's contribution towards the Provident Fund, HRA., etc., while determining the monthly

income and would rely upon the judgment in *S.Rhama & others vs. Tamil Nade State Transport Corporation Limited* reported in 2010 (1) TN MAC 6 (DB).

8. The learned counsel further submitted that the deduction of income tax ought not to have been done and relied upon the judgment of the Hon'ble Supreme Court of India in *Courts on its own motions vs. the H.P. State Cooperative Bank Ltd. and others* reported in 2014 SCC Online HP 4273 and the judgment made in the *Managing Director, TNSTC vs. Chinnadurai* reported in 2016 (2) TN MAC 71.

9. The learned counsel also relied upon the judgment in *United India Insurance Co. Lts. vs. Shanathi and others* reported in 2018 (2) TN MAC 32 (DB) for the proposition that the Income Tax deduction has not been properly calculated by the Tribunal. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court of India in *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others* reported in (2018) 18 SCC 130 for the proposition that consortium should have been awarded to each of the claimants.

10. We have considered the rival submissions made on either side and perused the material records of the case.

11. On a perusal of the evidence on record, more specifically, the evidence of R.W.1 himself, who was examined on behalf of the appellant Corporation, it is clear that without noticing the deceased, who is standing on the rear side, the bus was being reversed without listening to the proper guidance of the conductor. As a matter of fact, R.W.1 admits as follows:-

“நடத்துனர் பேருந்தை தட்டிய பிறகு நான் உடனே பேருந்தை நிறுத்தினேன்”.

Therefore, it goes without saying that the accident happened only because of the negligence on the part of R.W.1 and thus, the appellant Corporation is liable to pay the compensation.

12. The learned Additional Advocate General would submit that even assuming that the driver of the appellant Corporation is alone responsible, still the act of the deceased, who instead of standing in the bus bay, was negligently standing in the middle of the bus stand, where the buses will go either way, which also contributed to the accident.

13. To an extent, if the rules in our bus stand are strictly followed by providing access only to the platforms and not to the bus stand in general, this argument can be appreciated. But in the Indian context, it is common knowledge that the passengers enter the bus stand and the platform from all directions and so far, the bus stands are not provided with busbays with access only through subways or overhead platforms with due gates, which is the case in railway stations and airports and it is the case which is done in bus stands in many other countries. Therefore, the said argument cannot be accepted. Secondly, even if a contributory negligence is to be considered, it can be considered only upto the level of 20%.

14. Now coming to the quantum, the salary slip has been marked as exhibit Exh.P.12 and as per the same, the gross total earnings is mentioned as Rs.47,921/- which is taken by the trial Court. Therefore, it cannot be said that the trial Court did not take into consideration the allowances and other things mentioned in the salary bill. As far as the Income Tax is concerned, 20% on the over all slab has been reduced which is in consonance of the Ruling in ***United India Insurance Co. Ltd.'s*** case (cited supra). In the said judgment, it is held that the percentage of tax should be chargeable, after giving standard deduction as per the slab. In this case, an overall sum of 20% has been taken by the

Tribunal.

15. Similarly as per *Magma General Insurance's* case (cited supra), consortium would include spousal, parental and filial and all the four claimants are entitled for consortium. In view of the findings, we recalculate the quantum as follows:-

- (i) Monthly income as per salary certificate is Rs.47,921/-
- (ii) Annual Income will be Rs.47,921 x 12 = Rs.5,75,052/-
- (iii) To calculate actual salary as per paragraph no.94.3 of *National Insurance Company Limited Vs. Pranay Sethi and Ors.* reported in (2017) 16 SCC 680, i.e. by deducting the tax from the salary, then that would be, Rs.5,75,052/- – Rs.2,50,000/- = Rs.3,25,052/-
- (iv) The total tax payable is Rs.40,010/-. Therefore, the actual salary is Rs.5,75,052/- – Rs.40,010/- = Rs.5,35,042/-. Further divided by 12 will amount to Rs.44,586/- Therefore, the actual salary per month of the deceased will be Rs.44,586/-
- (v) To add 50% of the actual salary, i.e. Rs.22,983/- as future prospects as per *Pranay Sethi's* case (cited supra), will be Rs.66,879/-

(vi) The age of the deceased is 30 years. Therefore, the multiplier adopted is 16, as per *Sarla Verma (Smt) and Ors. Vs. Delhi Transport Corporation and Anr* reported in (2009) 6 SCC 121.

Therefore, Rs.66,879/- x 12 x 16 which equals Rs.1,28,40,768/-

Therefore, the total compensation will be:

Particulars	Amount
A) Compensation towards pecuniary loss	Rs.1,28,40,768/-
B) Loss of consortium	40,000/- x 4 = Rs.1,60,000/-
C) Loss of estate	Rs.15,000/-
D) Funeral expenses	Rs.15,000/-
Round up Total	Rs.1,30,30,768/-
Less 20% for Contributory negligence	Rs.1,30,30,768 (-) 26,06,163 Rs.1,04,24,605/-

Thus, the respondent-claimants will be entitled to a total compensation of **Rs.1,04,24,605/-** (Rupees One Crore Four Lakhs twenty four thousand six hundred and five only). The said compensation is apportioned as follows:-

Enhanced Compensation	Wife	Son	Father	Mother
Rs.1,04,24,605/-	Rs.55,00,000/-	Rs.37,00,000/-	6,00,000/-	6,24,605/-

16. In the result, C.M.A.No.4861 of 2019 filed by the Transport Corporation stands dismissed and the cross objection filed by the claimants is partly allowed in the following terms:-

(i) The compensation awarded by the trial Court is enhanced from Rs.83,47,120/- to Rs.1,04,24,605/- along with interest at the rate of 7.5% from the date of petition till the date of realisation with costs;

(ii) The appellant Corporation is directed to deposit the entire compensation less already the sum deposited, within a period of six(06) weeks from the date of receipt of a copy of this order;

(iii) The first, third and fourth claimants will be entitled to withdraw the entire sum along with accrued interest proportionately;

(iv) The second claimant, being a minor, his share shall be deposited in Court in any interest bearing deposit in any nationalised bank until the attainment of his majority; and

(v) Consequently, connected miscellaneous petitions are closed.

(J.N.B., J.)

(D.B.C., J.)

17.07.2023

Index : yes Neutral Citation : yes
Speaking order
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To:

The Special District Judge,
The Motor Accident Claims Tribunal,
Dharmapuri.

C.M.A.No.4861 of 2019
& Cross Objection No.16 of 2020

J.NISHA BANU, J.,

and

D.BHARATHA CHAKRAVARTHY, J.,

sts

Common Judgment in
C.M.A.No.4861 of 2019
and Cross Objection No.16 of 2020

Dated:
17.07.2023