

**(2011) 06 MAD CK 0020**  
**In the Madras High Court**  
**Case No : C.M.A. No. 1583 of 2011**

The Managing Director Metropolitan Transport Corporation  
Division No. I Ltd. APPELLANT

Vs

Kurshith Begam and D. Allaudeen RESPONDENT

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**Date of Decision :** 27-06-2011

**Acts Referred:**

**Citation :** (2011) 06 MAD CK 0020

**Hon'ble Judges :** C.S. Karnan, J

**Bench :** Single Bench

**Advocate :** V. Kasiviswanathan, for the Appellant; S. Gangaram Prasad, for the Respondent

**Final Decision :** Dismissed

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## Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant / Metropolitan Transport Corporation Division No. I, Limited against

the judgment and decree made in M.C.O.P. No. 27 of 2002, dated 21.07.2006 on the file of Motor Accidents Claims Tribunal, Small Causes

Court, Chennai.

2. The short facts of the case are as follows:

On 02.11.2001, at about 15.00 hours, when the (deceased) Naushid Khan was travelling as a passenger on the rear foot board, along with

another passenger in the Metropolitan Transport Corporation bus bearing Registration No. TN01-N-2811 (route 17D) and when the bus was

proceeding from south to north on the Patheon road, New Flyover, Egmore, Chennai, the driver of the bus drove the bus in a rash and negligent

manner and close to the side iron railing and sign board on the flyover, without giving sufficient space for the vehicle, as a result of which the victim

and another passenger, who were travelling on the rear foot board, Collided with the side iron railings and sign board and were thrown out of the

Metropolitan Transport Corporation bus on to the road below (Pantheon Road) resulting in grievous injuries to the (deceased) Naushid Khan,

who latter succumbed to his injuries in the hospital. Hence the Petitioners, who are the legal-heirs of the deceased, have filed the claim for Rs.

6,00,000/-against the Respondents, Metropolitan Transport Corporation (Chennai) Limited.

3. The Respondent, in his counter has resisted the claim and denied the averments in the claim regarding the manner of accident. It was stated that

on 02.11.2001, when the bus bearing Registration No. TN01-N-2811, Route No. 17D, was on its trip from K.K. Nagar to Parrys and when the

bus was proceeding on its course slowly and cautiously, from south to North on Pantheon Road New flyover, the deceased who was travelling as

a passenger in the front foot board with his body hanging outside the bus was warned by the crew to get inside. But in spite of warning, he still

hung out as a result of which he had dashed against the side railings and sustained fatal injuries. As such it was submitted that there was

contributory negligence on the part of the deceased for the occurrence of accident. It was also stated that the claim was excessive.

4. On the averments of both parties, the Tribunal had framed three issues for consideration, namely;

(i) Did the accident happen due to the rash and negligent driving of the Respondent's driver?

(ii) Did the deceased Naushid Khan also contribute to the occurrence of the accident by hanging out while travelling in the foot steps of the bus?

(iii) Are the Petitioners entitled to get compensation? If so, what is the quantum of compensation they are entitled to get?

5. On the Petitioners side three witnesses were examined and eight documents were marked as Exs.P1 to P8 viz, First Information Report, Rough

Sketch, Post-mortem report, Death Certificate, Legal-heir certificate, Transfer Certificate, Charge Sheet and driving licence. On the Respondents

side, the driver of the bus was examined as RW1 and No. documents were marked.

6. PW3, the eyewitness of the accident adduced evidence that was in consonance with the averments made in the claim regarding manner of

accident. He had adduced evidence that the accident occurred only due to the negligence of the bus driver. But RW1, the driver of the bus, had adduced evidence that the accident had occurred only because of the fact that the deceased Naushid Khan while travelling on the rear foot steps of the bus had hung out and as a result had hit himself against the side railings, had fallen down and sustained fatal injuries. But the Tribunal were of the opinion that negligence could be attributed to the deceased, only if he had not been able to balance himself and had fallen down from the moving bus. But in the instant case, as the accident occurred on a bridge which is wide, the Tribunal were of the opinion that if the driver had not been negligent, he need not have taken bus to the extreme left of the bridge. More so, as he was aware that passengers were travelling on the foot steps of the bus. On the Respondents side, it was not stated that the bus was taken to the extreme left in order to give way to other heavy vehicles coming on the opposite side. Moreover, the Tribunal held that the conductor of the bus had also been negligent as he should have warned such foot board passengers to come inside the bus or also asked them to get down from the bus. The Tribunal further held that as the conductor of the bus was in a more advantageous position to explain exactly where the deceased had stood and how he had travelled in the bus. As such, the Tribunal were of the opinion that both the driver and conductor of the bus have been negligent. From a scrutiny of Ex.P1, First Information Report and Ex.P2, Rough Sketch, it is evidence that the accident had been caused by the negligence of the bus driver. Pursuant to the First Information Report, a charge sheet had also been filed against both the conductor and driver of the bus as per Ex.P7. As such the Tribunal held that the accident had been caused by the rash and negligent driving of the Respondent's bus driver. On scrutiny of Ex.P6, transfer certificate issued at School to the deceased, it is seen that the date of birth of deceased was 05.08.1981. As the accident had occurred on 02.11.2001, the tribunal held that the age of deceased was 21 years.

7. The Tribunal, on considering that the deceased was working in a private firm as attender, held that his notional income could be taken as Rs.

2,500/-per month as mentioned in the claim. Adopting a multiplier of ""17"" , the Tribunal awarded a sum of Rs. 3,40,000/-(Rs. 2,500 x 1/3 x 2 x 12

x 17) as compensation to the Petitioners under the head of loss of income due to death of their son. Further, the Tribunal awarded Rs. 3,000/-

towards funeral expenses and Rs. 20,000/-for loss of love and affection as compensation to the Petitioners. In total, the Tribunal awarded a sum of

Rs. 3,63,000/-to the Petitioners together with interest at the rate of 7.5% per annum from the date of filing the petition till date of deposit, within

two months from the date of its order.

8. Aggrieved by the said award passed by the Tribunal, the Appellant / Metropolitan Transport Corporation Division No. I Limited, has filed the present appeal to set-aside the award passed.

9. The learned Counsel for the Appellant has argued that the Tribunal failed to note that the accident occurred solely due to the negligent act of the

deceased who hung out his body while travelling as a passenger in the foot board of the bus. It was argued that at least, contributory negligence

should have been laid on the deceased for the cause of the accident. It was also pointed out that the multiplier relevant to age of the parents of the

deceased should have been adopted as the deceased was a bachelor and hence the multiplier of 17 adopted by the Tribunal was erroneous. As

such, it was argued that the total compensation of a sum of Rs. 3,63,000/-awarded by the Tribunal was excessive.

10. The learned Counsel for the claimant argued that the accident had happened due to the rash and negligent driving of the bus by its driver. The

deceased's age was 22 years and he was earning Rs. 4,000/-per month as attender and part time automobile broker. He contributed maximum of

his earnings to his parents. The Tribunal, after considering the evidence of witnesses, age and income of the deceased, had granted the award. The

award granted under the head of funeral expenses is on the lower side. The Tribunal had also fixed the income of the deceased as Rs. 20,000/-per

annum, after deducting personal expenses and this is also on the lower side.

11. Considering the facts and circumstances of the case and arguments advanced by the learned Counsels on either side and on perusing the

impugned award of the Tribunal, this Court is of the considered opinion that the deceased was a earning member; his age was 22 years; he was the

only son to the claimants. Therefore, the quantum of compensation awarded i.e., a sum of Rs. 3,63,000/-is not on the higher side. Regarding

negligence issue, the Tribunal had decided the issue against the Respondent's driver and this is also correct. Therefore, this Court confirmed the

impugned award as it is found to be fair and justifiable. The learned Counsel for the claimants submitted that the Appellant Corporation had

already complied with the impugned order of the Tribunal and the amount had also been received by the claimants.

12. Resultantly, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed by the Motor Accidents Claims

Tribunal in M.C.O.P. No. 27 of 2002, dated 21.07.2006 on the file of II Small Causes Court, Chennai is confirmed. There is No. order as to

costs. Consequently, connected miscellaneous petition is closed.