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**(2011) 02 MAD CK 0013**

**In the Madras High Court**

**Case No :** C.M.A. No. 2540 of 2004 and C.M.P. No. 15099 of 2004

The Managing Director Metropolitan Transport Corporation  
Ltd.

APPELLANT

Vs

Durga Devi and Dena Dayalan

RESPONDENT

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**Date of Decision :** 23-02-2011

**Acts Referred:**

**Citation :** (2011) 02 MAD CK 0013

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

**Bench :** Single Bench

**Advocate :** P. Jagadeeswaran, for the Appellant; No Appearance, 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 Limited, against the judgment and

decree dated 21.04.2003 in M.C.O.P. No. 4075 of 1999 on the file of the Additional District and Sessions Judge, Fast Track Court No. 1,

Chennai.

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

On 26.07.1999, at about 01.30 p.m., when the (deceased) Umesh was travelling as a passenger in the Metropolitan Transport Bus bearing

Registration No. TN01-N-2776, Route 12-B and when the bus was proceeding on Thayagaraya Road, from east to west direction, driver of the

said bus drove the bus in a rash and negligent manner, as a result of which the (deceased) Umesh fell down and sustained injuries. He died on the

way to the Hospital. Hence, the Petitioners who are the legal-heirs have claimed a compensation of Rs. 2,25,000/-from the Respondent,

Metropolitan Transport Corporation Limited, Pallavan Salai, Chennai-2.

3. The Respondent, in his counter has resisted the claim and denied the averments in the claim regarding age, income and occupation of the

deceased as well as the manner of accident. It was stated that on 26.07.1999, when the Metropolitan Transport Bus bearing Registration No.

TN01-N-2776, Route 12B, was proceeding from Pattinampakkam to Vadapalani and at 13.35 hours, when the bus was nearing Ramakrishna

School on the Thiyagarajar Road ? Bhashyam Road, the deceased tried to get into the moving bus through the backside foot board, in a rash and

negligent manner, lost his grip and fell down on the road. As such, the accident had occurred only due to negligence of the deceased and it did not

occur due to any negligence on the part of the Respondent's bus. 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) On whose negligence was the accident caused?

(ii) Are the Petitioners entitled to get compensation?

If so, what is the quantum of compensation?

5. On the Petitioners side, two witnesses were examined and five documents were marked as Exs.P1 to P5 viz., First Information Report, Post-

mortem Report, Transfer Certificate issued by School, Legal-heir Certificate and Employment Certificate. On the Respondent's side one witness

was examined as RW1 and No. documents were marked.

6. The first Petitioner in the claim i.e., the mother of the deceased was examined as PW1. PW1 adduced evidence that was in consonance with the

averments made in the claim regarding manner of accident. In support of her evidence, she had marked Ex.P1, First Information Report and

Ex.P2, Post-mortem Report. PW2, the eyewitness of the accident adduced evidence that he and the deceased Umesh were travelling as

passengers in the bus bearing Registration No. TN01-N-2776 and had boarded the bus at Pondibazaar, in order to go towards Vadapalani. As

the bus was crowded, he had stood on the top step of the rear side foot board and the (deceased) was standing on the first foot step of the rear

side foot board. As the bus was proceeding on the Thiyagarajar Road from East to West, the bus driver had driven the bus at a high speed and in

a rash and negligent manner and applied brakes all of a sudden. Due to this, the (deceased) Umesh was thrown out of the bus, sustained injuries

and the deceased Umesh died while he was taken to the Hospital.

7. The driver of the Respondent's bus was examined as RW1. RW1, in his evidence adduced that on 26.07.1999, when he was driving the said

bus from Pattinapakkam towards Vadapalani, and at about 1.30 p.m., when he was proceeding on the Thiagaraya Road, from east to west and

turned his bus towards Bhasyam Road, near Ramakrishna Higher Secondary School, the conductor blew his whistle and hence he stopped the

bus. He was informed by the passengers that a person had fallen down from the bus. He had further stated that the person, who had fallen down,

was taken to the Hospital by the conductor of the bus and that he was not responsible for the accident. He adduced evidence that No. criminal

case has been filed against him, in the said accident. On cross examination of RW1, he had stated that the conductor blew his whistle and informed

him that a person had fallen down. Hence, the Tribunal on considering evidence of PW1, PW2 and RW1, were of the opinion that the accident

had been caused by the rash and negligent driving of the Respondent's bus driver.

8. The Tribunal on scrutiny of Ex.P3, Post-mortem report held that the age of the deceased was 18 years. Further, the Tribunal on scrutiny of

Ex.P4, the legal-heir certificate held that only the parents of the deceased could be considered as legal-heirs of the deceased and the brother and

sister of deceased could not be considered as legal-heirs of deceased, when the parents are alive. Hence, the Tribunal held that only the first and

second Petitioners are entitled for compensation and that the third and fourth Petitioners are not entitled for compensation as they are the brother

and sister of the deceased. The Tribunal after holding that the income of the deceased Umesh Kumar was Rs. 1,500/-per month, as per Ex.P5,

Salary Certificate, awarded a compensation of Rs. 1,92,000/-(Rs. 1,500 x 1/3 x 2 x 12 x 16) to the Petitioners as loss of income. Further, the

Tribunal awarded a sum of Rs. 5,000/-for funeral expenses and Rs. 10,000/-each to the first and second Petitioners for loss of love and affection.

In total, the Tribunal awarded a sum of Rs. 2,17,000/-as compensation to the Petitioners, and directed the Respondent to deposit the above said

award with interest at the rate of 9% per annum from the date of filing the petition till the date of deposit, within three months from the date of its order.

9. Aggrieved by the said award passed by the Tribunal, the Appellant / Metropolitan Transport Corporation Limited has filed the present appeal to set-aside the award passed.

10. The learned Counsel for the Appellant has argued in his appeal that the Tribunal ought to have held that the accident took place only due to the negligence of the deceased and ought to have considered the evidence of RW1 that there is No. fault on the part of the driver of the bus and that there is No. charge pending against the driver. It was also argued that the Tribunal erred in holding that the salary of the deceased was Rs. 1,500/- without any documentary evidence regarding salary slip of deceased. Hence, it was argued that the award granted by the Tribunal was excessive and arbitrary.

11. Considering the facts and circumstances of the case and arguments submitted by the learned Counsel for the Appellant, this Court is of the considered opinion that the Tribunal's decision on the two issues viz., negligence and quantum of compensation are correct as they have been decided by the Tribunal on the basis of First Information Report, evidence of eyewitness, salary certificate and age of the deceased. Therefore, the award granted by the Tribunal is confirmed.

12. On 20.09.2004, this Court imposed a condition on the Appellant / Metropolitan Transport Corporation Limited to deposit the entire compensation to the credit of M.C.O.P. No. 4075 of 1999 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No. 1, Chennai. Now, it is open to the claimants to withdraw their apportioned share amount, as fixed by the Tribunal lying in the credit of M.C.O.P. No. 4075 of 1999 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No. 1, Chennai, after filing a Memo along with this order.

13. 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. 4075 of 1999, dated 21.04.2003 on the file of Additional District and Sessions Judge, Fast Track Court No. 1,

Chennai is confirmed. There is No. order as to costs. Consequently, connected miscellaneous petition is closed.