

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 01-10-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.2308 OF 2015

The Managing Director,
Tamil Nadu State Transport Corporation,
Tiruchirapalli-1. ... Appellant/Respondent

-vs-

1.Amsavalli
2.Kandasamy ... Respondents/Petitioner

Appeal Under Section 173 of the Motor Vehicles Act is filed against the judgment and decree, dated 19.02.2015, made in M.C.O.P.No.149 of 2014, on the file of Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For appellant : Mr.D.Venkatachalam

J U D G M E N T

(Judgment of the Court was delivered by S.Manikumar,J.)

Challenge in this appeal filed by the Managing Director, Tamil Nadu State Transport Corporation, is to the finding, fixing negligence on the driver of the appellant-corporation bus, bearing registration No.TN-45-N-2738, and the quantum of compensation of Rs.14,04,000/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit, awarded to the wife, and father of the deceased Elayaraja, stated to be 25 years, a Mason, by avocation.

2. The case of the respondents/claimants is that on 01.12.2013, about 09.45 a.m., the deceased Elayaraja was riding a TVS XL Super, bearing registration No. TN 61 3389 on Jayamkondam to Mathur Main Road, near Asaveerankudikadu Annai English School, a transport corporation bus, bearing registration No.TN-45-N-2738, driven by its driver, in a rash and negligent manner, dashed against the motorcycle, causing instantaneous death. In this regard, a case in Crime No.161/2013 under Section 304-A of IPC has been registered on the file of Kuvagam Police Station, against the driver of the bus.

3. Contending, inter alia, that the driver of the appellant-corporation bus had caused the accident, and that on account of the sudden demise of bread-winner, THE family has lost the earning and put to mental agony and hardship, wife and father of the deceased, have filed M.C.O.P.No.149 of 2014, on the file of Motor Accident Claims Tribunal, Perambalur, claiming compensation of Rs.30,00,000/-, with interest, at 12% per annum, and costs.

4. before the Claims Tribunal, denying the claim, the appellant-corporation, in its counter affidavit, has contended that it was the motorcyclist, who dashed against the bus. Negligence attributed on the driver of the bus has been denied. Without prejudice to the same, the appellant-corporation has disputed the age, avocation, income of the deceased, and the compensation claimed under various heads.

5. Before the Claims Tribunal, mother of the deceased examined herself as P.W.1, and reiterated the averments. P.W.2 is stated to be the eye-witness. Ex.P-1-FIR, Ex.P-2-Postmortem Report, Ex.P-3-Transfer Certificate of the deceased, Ex.P-4-Licence of the deceased, Ex.P-5-RationCard, and Ex.P-6-I.D.Card to prove the avocation as Mason, and Ex.P-7-Legal Heir Certificate, have been marked, on the side of the respondents/claimants. R.W.1 is the driver of the appellant-corporation bus. No documents have been marked, on his side.

6. On evaluation of both oral and documentary evidence, the Claims Tribunal held that the driver of the appellant-corporation bus, bearing registration No.TN-45-N-2738, was negligent, in causing the accident. Accepting the avocation, and fixing the monthly income of the deceased as Rs.6,000/-, and by addition of 50% towards future prospects, the Tribunal has computed the loss of dependency, by application of '17' multiplier, after deducting $1/3^{rd}$ towards the personal and living expenses. In addition to the above, the Claims Tribunal has awarded Rs.50,000/- towards loss of love and affection at Rs.25,000/- each; Rs.10,000/- for transportation; Rs.10,000/- for funeral expenses; and Rs.10,000/- for loss of estate; and Rs.1,00,000/- under the head 'loss of consortium', to the wife. Altogether, the Claims Tribunal has awarded Rs.14,04,000/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit.

7. Though Mr.D.Venkatachalam, learned counsel for the appellant, assailed the correctness of the Tribunal, fixing negligence on the driver of the appellant-corporation bus, contending inter alia, that mere registration of FIR is not sufficient to prove negligence, and further contended that the Claims Tribunal ought not to have ignored the testimony of R.W.1 and, consequently, negligence ought to have been fixed on the motorcyclist, this Court is not inclined to accept the said contentions, for the reason, that the oral testimony of P.W.1, as regards the manner of accident, is duly corroborated by Ex.P-1-FIR, in Crime No.161 of 2013, registered under Section 304 of IPC, against the driver of the bus, on the file of Kuvagam Police Station, and also supported by P.W.2, eye-witness, brother of the deceased. According to him, when he was a pillion, in another motorcycle, driven by one Mohan, the deceased was proceeding ahead of them, in a motorcycle, TVS XL Super, bearing registration No. TN 61 3389, and, at that time, the appellant-corporation bus, driven in a rash and negligent manner its driver, dashed against the motorcycle. Evidence of PW.2, was found to be cogent.

8. As per the counter affidavit of the appellant-corporation filed before the Claims Tribunal, their case is that on 01.12.2013, the bus was driven cautiously and at that time, the driver noticed a Moped rider, coming in the opposite direction in a rash and negligent manner, on the wrong side i.e., to the right side and therefore, the bus driver sounded horn and indicated through head lights of the bus, alerted the motorcyclist, and, despite the same, he was proceeding on the right side; and, thereafter, the bus was moved to the extreme left side and stopped, but, the motorcyclist, who had lost his balance, dashed against the front left portion of the bus, and thus, caused the accident.

9. Quite contrary to the same, and without any pleadings, R.W.1, driver of the bus, has adduced evidence, that on the fateful day, it was raining; the deceased was holding an umbrella; did not notice the bus, coming in the opposite direction; however, the driver swerved the bus to the extreme left side of the road; the motorcyclist hit the back left bumper, and, thus, caused the accident. There is absolutely no pleading, regarding the negligence of the motorcyclist, holding any umbrella, at the time, when the accident occurred. Nothing is stated about rain. In addition to the above, during cross-examination, R.W.1, driver of the bus, has also candidly admitted that FIR was registered against him. He had not preferred any complaint to the higher authorities, stating that a false case had been registered against him, nor chosen to give any complaint, on his own, alleging negligence against the motorcyclist. On the contra, he has also admitted, that, for the negligent act of causing accident, he was under suspension for one month, and that disciplinary proceedings initiated by the Corporation were also pending, when the trial before the Tribunal was in progress. Thus, by observing that the testimony of R.W.1 was contrary to pleadings and false and on the contra, the claimants have adduced cogent evidence, dully corroborated, the Claims Tribunal held that R.W.1 was solely negligent in causing the accident.

10. In this context, reference can be made to a few decisions, as regards preponderance of probability.

11. In N.K.V.Brother's Private Limited v. Kurmai [AIR 1980 SC 1354], has held that,

"Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

12. In a decision in Union of India v. Saraswathi Debnath reported in 1995 ACJ 980, High Court of Gauhati has held in Paragraph 6 as follows:

"The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

13. In *Bimla Devi & Ors. Vs. Himachal RTC* reported in 2009 (13) SCC 530, the Supreme Court held as follows:

"It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

14. It is the well settled law that proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, as to whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required. In the absence of any rebuttal evidence, the finding of the Tribunal regarding negligence cannot be termed as perverse or it is not a case of no evidence.

15. On the aspect of quantum of compensation, P.W.1, wife of the deceased, has deposed, that her husband was a Mason and he had also worked in Singapore. She claimed that he earned Rs.15,000/- per month. Based on the entry, 13.06.1987, mentioned in Ex.P-3-Transfer Certificate, and Ex.P-4-Driving Licence of the deceased, and having regard to the date of accident, 01.12.2013, the Claims Tribunal calculated the age of the deceased as 26 years, 5 months and 18 days, and fixed the same as 27 years.

16. Upon perusal of documentary evidence, in particular Ex.P-6-I.D.Card, issued by Tamil Nadu Construction Welfare Board, the Claims Tribunal has noticed that the deceased was a member of the said Board. Though there was no documentary evidence, regarding monthly income, having regard to the age of the deceased, 27 years, and when avocation is duly supported by Ex.P-6, the Claims Tribunal has fixed his monthly income as Rs.6,000/-. Thereafter, the Tribunal has added 50% of the same, under the head, future prospects. Thus, fixing Rs.9,000/- as the income for computing loss of dependency, and applying '17' multiplier, with a deduction of $\frac{1}{3}$ towards the personal and living expenses of the deceased, the Tribunal computed the loss of dependency as Rs.12,24,000/-. As P.W.1, wife, has lost her husband within one year from the date of marriage, and taking note of her age, the Tribunal has awarded Rs.1,00,000/-, for loss of consortium. The Tribunal has awarded Rs.50,000/-, for loss of love and affection. A sum of Rs.10,000/- has

been awarded for transportation; Rs.10,000/- for funeral expenses and Rs.10,000/- for loss of estate. Compensation awarded under the head 'funeral expenses' is less. Rs.50,000/- awarded under the head loss of love and affection is reasonable. There is no award towards damages to clothes and articles. The quantum of compensation of Rs.14,04,000/-, awarded to wife and father, cannot be said to be a bonanza or windfall, warranting any reduction. Finding of negligence, fixed on the driver of the appellant-corporation bus, is sustained. There are no merits in the appeal. Civil Miscellaneous Appeal is dismissed. No costs.

17. Consequent to the dismissal of the appeal, the appellant-Corporation is directed to deposit the entire award amount, less the statutory deposit of Rs.25,000/- already made, to the credit of M.C.O.P.No.149 of 2014, on the file of Motor Accident Claims Tribunal, Perambalur, within a period of four weeks from the date of receipt of a copy of this judgment. Upon such deposit, the respondents/claimants are permitted to withdraw the entire amount, as per the apportionment made by the Tribunal, on making necessary application before the Claims Tribunal. Consequently, the connected M.P.No.1 of 2015 is closed.

Dixit

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
Principal District Judge,
Perambalur

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C.M.A.No.2308 OF 2015

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