

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 08-10-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.2357 OF 2015

The Managing Director,  
Tamil Nadu State Transport Corporation Limited,  
No.12, Ramakrishna Road,  
Salem - 636 007. ....Appellant/Respondent

-vs-

1.Punithamani  
2.Sudheer Kanna  
3.Sobana Priya ....Respondents/Petitioners

Appeal is filed against the judgment and decree, dated 27.10.2014, made in M.C.O.P.No.642 of 2012, on the file of Motor Accident Claims Tribunal, (Special District Court), Salem.

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 of Tamil Nadu State Transport Corporation Limited, Salem Division, is to the finding, fixing negligence on the driver of the bus, bearing registration No.TN-30-N-0118, and the quantum of compensation of Rs.13,24,240/-, with interest, at the rate of 7.5% per annum, from the date of claim till deposit, awarded to the claimants, vide judgment and decree in M.C.O.P.No.642 of 2012, dated 27.10.2014, by the Motor Accident Claims Tribunal, Special District Court, Salem.

2. As per the version of the claimants/mother, aged about 38 years, brother, aged about 20 years, and sisiter, aged about 19 years, respectively, of the deceased Vijay Anand, that, on 19.03.2012, he was returning from Salem to his house on a motorcycle at Omalur, near Vellakkal Medu, Dalmiya Road, Omalur Main Road, a Transport Corporation bus, bearing registration No.TN-30-N-0118, belonging to the appellant-corporation, which came from behind, driven in a rash and negligent manner, by its driver, dashed against the

motorcycle, and due to the impact, he fell down, sustained head and multiple injuries, all over the body. He was rushed to Manipal Hospital, Salem, for treatment. Despite the same, he died on 20.03.2012. In this regard, a case in Crime NO.181 of 2012 under Sections 279 and 304-A of IPC has been registered on the file of Salem Transport Investigation Wing.

3. Before the Claims Tribunal, legal representatives/claimants contended, that, at the time of accident, the deceased was aged 21 years. He was a brilliant student in the college. He had also won first position in Tamil Nadu State Kick Boxing Championship-2010. After his education, he joined a company, called Embrex, and, as a Medical Representative, started earning Rs.9,000/- per month. Based on the above averments, the legal representatives/claimants, have filed M.C.O.P.No.642 of 2012, on the file of Motor Accident Claims Tribunal, (Special District Court), Salem, claiming compensation of Rs.20,00,000/-, including medical expenditure, incurred.

4. Before the Tribunal, the appellant-Corporation, in its counter affidavit, has denied the manner of accident. According to the appellant-Corporation, on 19.03.2012, about 19.30 hours, when the bus was proceeding from Salem to Omalur, near Vellakal Medu, Dalmiya Road, the motorcyclist, who was carrying 2 boxes, on the petrol tank, was talking over mobile phone, lost his balance, fell down and sustained injuries. The bus never hit the motorcycle or its rider. Thus, by denying the manner of accident and without prejudice to the same, disputed the age, avocation and income of the deceased, and also the quantum of compensation, claimed under various heads.

5. Mother of the deceased examined herself as P.W.1 and reiterated the averments made in the claim petition. P.W.2 is stated to be the eye-witness. Ex.P-1-FIR, Ex.P-2-Post-mortem Certificate, Ex.P-3-Death Certificate of the deceased, Ex.P-4- Legal heir certificate, Ex.P-5- Statement of Marks of the deceased, Ex.P-6- Transfer Certificate, Ex.P-7-Volley Ball Certificate, Ex.P-8 and Ex.P-9-Boxing Certificates, Ex.P-10-Entrepreneur Awareness Camp Certificate, Ex.P-11-Entrepreneur and Awareness Holder Salary Certificate, and Ex.P-12-Medical Bills, have been marked on the side of respondents/claimants. R.W.1-Driver of the bus, has adduced evidence. No documents have been marked.

6. On evaluation of oral and documentary evidence, the Claims Tribunal held that the driver of the appellant-Corporation bus was negligent in causing the accident. On the basis of the documents, stated supra, supporting avocation and monthly income, and the marks obtained in Ex.P-5 Certificate in B.B.A., and sports activities, the Claims Tribunal presumed that there would be future prospects to the deceased, had he been alive, and, having regard to the monthly income of Rs.9,500/- claimed in the petition, fixed the same, for the purpose of computing dependency. The annual income works out to Rs.1,14,000/-. Deceased was the eldest son in the family.

Father had pre-deceased. Considering the above factors, instead of deducting 50% towards the personal and living expenses, the Tribunal has deducted 1/3<sup>rd</sup> toward the same, and, by applying '18' multiplier, computed the loss of dependency as Rs.13,68,360/-. In addition to the above, the Tribunal has awarded Rs.25,000/- under the head 'funeral expenses', and Rs.20,000/- each, to mother, brother and sister, for loss of love and affection. Based on Ex.P-12-Medical Bills, the Tribunal has awarded Rs.13,020/-. In all, the Tribunal has computed compensation as Rs.14,71,380/-. Though the quantified annual income of Rs.1,14,000/- for levy of income-tax falls within the ceiling limit for the 2011-2012, the Claims Tribunal, by an erroneous deduction of 10% towards income-tax, has awarded total compensation of Rs.13,24,240/-, 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, has assailed the finding, fixing negligence on the driver of the appellant-Corporation bus, contending, inter alia, that the Claims Tribunal has erred in fixing negligence on the driver of the appellant-Corporation bus, on the sole ground of registration of FIR, and that the Tribunal has erred in not giving due weightage to the testimony of R.W.1-Driver of the bus, who had categorically deposed that it was the motorcyclist, while carrying two boxes of drugs on the petrol tank, was speaking over cell phone, lost balance, fell down on the road, sustained injuries, and, thus, caused the accident, this Court is not inclined to accept the said contentions, for the reason that the oral testimony of P.W.1 and P.W.2, eye-witness, is duly corroborated by Ex.P-1-FIR. Besides, during cross-examination, R.W.1, driver of the bus, has candidly admitted that, for the accident, departmental proceedings have been initiated against him. Testimony of R.W.1 is also not supported by any independent evidence. When the department itself has taken disciplinary proceedings against R.W.1, driver of the bus, it is not known as to how they could before the Tribunal contend that there was no negligence on his part, in causing the accident. Ex.P-1-FIR is to set the criminal law in motion. Examination of police officer is not mandatory in accident claim cases. If there was any illegality in registration of a crime committed by the driver, it is always open to him to oppose, in the manner known to law, which, in the case on hand, has not been done. Notwithstanding the same, it is well known that in the accident claim cases, it is the tortious act, which is tested on the principles of preponderance of probability and, therefore, even taking it for granted that registration of crime is tested in a Court of law, that would not preclude the powers of the Tribunal, to test the case and the manner of accident. The proceedings before the Criminal Court and the Tribunal are entirely different. Conceptually, they are different, to put it in simple terms, a tort is different from crime. Suffice to prove negligence, by adducing cogent and legally acceptable evidence. Version of the legal representatives/claimants is duly supported and corroborated.

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

9. 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."

10. 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."

11. It is the well settled law that the proceedings before the Claims Tribunal are summary in nature and it is sufficient 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. Testing the finding of the Tribunal on the principles of preponderance of probability cannot be termed as perverse or it is not a case of no evidence. Therefore, finding of negligence, fixed on the driver of the appellant-Corporation bus, is sustained.

12. The Tribunal has fixed the age of the deceased as 21 years. Ex.P-11 is the Appointment order, issued by the Company, wherein, it has been mentioned that the deceased was appointed as a Trainee Sales Officer, with a consolidated salary of Rs.2,500/- per month, with daily allowance of Rs.150/-. HRA has been fixed as Rs.1500/- per month. Calculating the salary for 20 days, the Tribunal has determined the monthly income of the deceased as Rs.7,000/-. Having regard to the age of the deceased and the participation in Boxing events, the Tribunal, though observed that the deceased had good prospects in future, and also felt that a sum of Rs.10,500/- can be fixed, as the monthly income, for

the purpose of computing loss of dependency, yet, as the legal representatives/claimants had claimed Rs.9,500/- only as the monthly income, decided to apply the same, for calculating the loss of dependency. He was the eldest member in the family and a bachelor. Mother is a widow. Therefore, instead of computing the loss of dependency, by deducting 50% towards his personal and living expenses, the Tribunal has deducted 1/3 towards the same. Therefore, the Tribunal, by applying '18' multiplier, has computed the loss of dependency as Rs.13,68,360/-. In addition to the above, the Tribunal also awarded compensation under other heads. As observed earlier, the Tribunal has committed a gross error in deducting 10% towards income-tax. Compensation awarded under the heads, consortium and loss of love and affection, is less. There is no award for the conventional damages, to clothes and articles. Compensation of Rs.13,24,240/- awarded to the legal representatives of the deceased/respondents cannot be said to be a bonanza or windfall to the family, who has lost the eldest member. There is no merit in the appeal. Civil Miscellaneous Appeal is dismissed.

13. Consequent to the dismissal of the appeal, the appellant-Corporation is directed to deposit the entire award amount, less Rs.25,000/- statutory deposit, to the credit of M.C.O.P.No.642 of 2012, on the file of Motor Accident Claims Tribunal, (Special District Court), Salem, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents/claimants are permitted to withdraw their respective shares, as per the award of the Claims Tribunal, by making necessary application before the Tribunal. No costs. Consequently, the connected M.P.No.1 of 2015 is closed.

sd/-  
ASSISTANT REGISTRAR

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

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To

The Motor Accident Claims Tribunal,  
(Special District Court),  
Salem.

+1 CC to Mr.D.Venkatachalam Advocate. SR.NO. 55768

C.M.A.No.2357 OF 2015

CO-TEJ  
JD 15/10/2015