

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date :10.07.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.1184 of 2015

and Cross Objection No.72 of 2015

and

M.P.No.1 of 2015

Metropolitan Transport Corporation Ltd.
Represented by its Managing Director
No.2, Pallavan Salai, Chennai-2.

...Appellant in C.M.A.No.1184 of 2015 and
Respondent in Cross Objection No.72 of 2015

vs.

1.N.Nirmala
2.Minor K.M.Dilipkumar
3.Minor K.M.Vedhapriya
(Minors are represented
by its natural Guardian
and mother Nirmala).
4.P.Rajam

...Respondents in C.M.A.No.1184 of 2015 and
Cross Objectors in Cross Objection No.72 of 2015

Prayer: Challenge is made in this Civil Miscellaneous Appeal to the award, dated 10.10.2014 and made in the Motor Accident Claim Petition in M.C.O.P.No.5668 of 2012 on the file of the Motor Accident Claims Tribunal, (III Court of Small Causes) Chennai.

For appellant in CMA : M/s.S.Swaminathan
For appellant in Cross Obj :Mr.L.P.Shanmugasundaram
For respondents in CMA :Mr.L.P.Shanmugasundaram
for Caveators/R1 to R4
For Respondents Cross Obj : Mr.S.Swaminathan

COMMON JUDGMENT

(Judgment of the Court delivered by T. MATHIVANAN, J.)

The award, dated 10.08.2014 and made in the Motor Accident Claim Petition in M.C.O.P.No.5668 of 2012 on the file of the Motor Accident Claims Tribunal, (III Court of Small Causes, Chennai) is under challenge in this civil miscellaneous appeal as well as in the cross objection.

2.The Metropolitan Transport Corporation Ltd. has preferred an appeal in C.M.A.No.1184 of 2015 as against the award and the claimants in the claim petition in M.C.O.P.NO.5668 of 2012 have preferred the cross objection No.72 of 2015 seeking enhancement of the award.

3.The claimants 1 to 4 are the wife, minor children and mother of the deceased one K.T. Mathivannan.

4.What it transpires from the averments of the claim petition is that on 27.8.2012 at about 11.45 a.m., the deceased was riding his two wheeler bearing registration No.TN 20 BP 3426 at CTH Road, Thiruninravur near Lakshmi Vinayagar Temple, when the passenger bus bearing Registration No. TN 01 N 5310 had hit against the two wheeler ridden by the deceased.

5.On account of this heavy impact the deceased had succumbed to the injuries instantaneously on the spot. Hence, the claimants had moved the Motor Accidents Claims Tribunal (III Court of Small Causes, Chennai) with a claim petition claiming a sum of Rs.38 lakhs.

6.The transport corporation had contested the claim petition on the ground that the occurrence was taken place due to the rashness and negligence on the part of the rider of the scooty. However, the claims Tribunal based on the evidences available on record had proceeded to award a sum

of Rs.37,36,040/- on various heads and directed the Transport Corporation to pay this amount with interest at the rate of 7.5. p.a. from the date of the petition till the date of deposit.

7.This award has been challenged in the present appeal as well as in the cross objection as afore stated.

8.Heard Mr. S.S.Swaminathan, learned counsel appearing for the appellant Transport Corporation and Mr.L.P. Shanmugasundaram, learned counsel appearing for the cross objectors/claimants.

9.Mr.S.S.Swaminathan, learned counsel appearing for the appellant Transport Corporation has advanced his arguments both on the point of negligence as well on quantum.

NEGLIGENCE:-

10.The first claimant Mrs.Nirmala, who is none other than the wife of the deceased had examined herself as P.W.1. One Murali, who is said to be the eye witness for the occurrence was examined as P.W.2.

11.It is apparent from the records that one Arun Kumar had lodged a complaint in respect of the occurrence and based on his complaint a case in Cr.No.1162 of 2012 under Sections 279 and 304-A I.P.C. was registered by the Traffic Investigation Wing, Poonamallee.

12.In fact, the first claimant (P.W.1) had not witnessed the occurrence directly. P.W.2 has deposed that at the time of occurrence, he was also proceeding in his two wheeler behind the offending bus. His evidence had withstood the test of cross examination. He has deposed that the deceased was proceeding in his two wheeler in front of the bus when the occurrence was taken place.

13.The driver, who was on the steering wheel of the bus at the material point of time, was examined as R.W.1 on behalf of the Transport Corporation.

14.It is revealed from the evidence of P.W.2 that at about 11.45 a.m., on the date of occurrence near Vinayakar Koil, the bus came from east to west in a rash and

negligent manner and hit against the TVS Scooty which was ridden by the deceased in front of the bus.

15. On account of the impact, the rider of the Scooty had lost his control and fallen on the road. While so, the rider's head was run over by the back wheel of the bus and on account of this reason, his head was crushed and died on the spot.

16. The averments of F.I.R., which was lodged by one Arunkumar immediately after the accident, would lend support to the evidence of P.W.2. The rough sketch which was marked as Ex.P.2 has also corroborated the evidence of P.W.2.

17. On a combined study of the evidence of P.W.2, Ex.P.1 F.I.R., Ex.P.2 Rough Sketch, the Tribunal has come to the conclusion that the occurrence was taken place due to the rash and negligent driving of R.W.1, who was the driver of the offending vehicle.

18. We also endorse the finding of the Tribunal with reference to the fixing of negligence on the part of the driver of the Transport Corporation.

QUANTUM:-

19. As per the claimants, the deceased was aged about 44 years at the time of his death. They have claimed that he was working as Grade I Mechanic with I.D.No.08089528 in Southern Railway and earned a sum of Rs.18,550/- per month. Ex.P.7 is the Salary Certificate. Ex.P.8 is the Identity Card of the deceased. Ex.P.9 is the Diploma Certificate and Ex.P.10 is the Degree Mark Sheet of the deceased. Ex.P.11 is the Degree Certificate.

20. As per Ex.P.11 Degree Certificate, his date of birth is 5.5.1968. Based on Ex.P.11, the Tribunal has found that the deceased had completed 44 years and three months at the time of his death. Therefore, the Tribunal, has fixed his age as 44 years. Ex.P.7 Salary Certificate would go to establish the fact that the gross salary of the deceased was Rs.29,487/- and the details of his salary are as under:-

Basic Pay	:	Rs.10,860/-
D.A.	:	Rs. 8,879/-
H.R.A.	:	Rs. 4,098/-
Grade Pay	:	Rs. 2,800/-

Total		Rs.26,637/-

21. In toto, he was getting a sum of Rs.26,637/-. Since he was aged about 44 years, as per the Second Schedule of the Motor Vehicles Act, the Tribunal has selected the multiplier of 15. His family is consisting of four members and therefore, as per Sarla Verma's case, $\frac{1}{4}$ deduction was given from his monthly salary towards his personal expenses. After giving this $\frac{1}{4}$ deduction, $\frac{3}{4}$ th remainder would be Rs.19,978/-.

22. Applying the multiplier of 15, the loss of dependency of the family has been calculated at Rs.35,96,040/- (Rs.19,978 x 12 x 15). Besides, certain amounts were granted under the following heads in favour of the claimants:-

- a. Loss of Consortium to the first petitioner : Rs. 25,000/-
- b. Loss of Love and Affection : Rs.1,00,000/-
- c. Funeral Expenses : Rs. 15,000/-

23. Thus, the Tribunal has totally awarded a sum of Rs.37,36,040/- under the above heads.

24. Mr. S. Swaminathan, learned counsel appearing for the Transport Corporation has submitted that the Tribunal was wrong in fixing his monthly income at Rs.26,637/- without any proper reasoning.

25.He has further submitted that the Tribunal ought not to have awarded a sum of Rs.1,00,000/- towards loss of love and affection. The submission made by Mr.S.Swaminathan is not discernible and is deserved to be rejected, because the Tribunal has rightly placed reliance upon the Salary certificate under Ex.P.7 and come to the conclusion that his monthly income was Rs.26,637/- and after giving $\frac{1}{4}$ deduction, as observed by the Apex Court in Sarla Verma's case, $\frac{3}{4}$ remainder was determined at Rs.19,978/-.

26.Since the deceased was aged about 44 years, the multiplier was also rightly selected as 15, which according to our view, the award passed by the Tribunal does not require our interference.

27.Similarly, it is significant to note here that the claimants have totally claimed a sum of Rs.38,00,000/-. The Tribunal has awarded a sum of Rs.37,36,040/-, that is, nearing the actual claim made by the claimants.

28.On an analysis of the calculation made by the Tribunal, we do not think that the award passed by the Tribunal require any enhancement.

29.Having regard to the related facts and circumstances of the case, we are of the considered view that both the appeal as well as the cross objection are liable to be dismissed.

30.Accordingly, the appeal as well as the cross objection are dismissed.

31.The Metropolitan Transport Corporation is directed to deposit the entire award amount within a period of four weeks from the date of receipt of copy of this order, if not deposited earlier. On such deposit being made, the claimants are at liberty to withdraw their respective shares as per the direction given by the Tribunal in the award.

32.In so far as the share of the minor claimants 2 and 3 are concerned, it shall be deposited in any one of

the Nationalised Banks in a fixed deposit scheme until they attain majority. The first claimant being their mother and guardian is entitled to withdraw the accrued interest on such fixed deposit once in three months directly from the Bank for the welfare of the minors.

With the above directions, both the appeal as well as the cross objection are dismissed confirming the award passed by the Tribunal. However, there will be no order as to costs. Connected M.P. is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
IIIrd Small Causes Court,
Chennai.

+2cc to Mr.S.S.Swaminathan, Advocate, S.R.No.35113

+1cc to Mr.L.P.Shanmughasundaram, Advocate, S.R.No.69258

C.M.A.No.1184 of 2015
and Cross Objection No.72 of 2015
and
M.P.No.1 of 2015

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