

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2015

CORAM

THE HON'BLE MR.JUSTICE N. KIRUBAKARAN

C.M.A.No.1240 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram Division .I) Ltd.,
Rangapuram, Vellore - 9. ... Appellant/Respondent.

/vs/

1.Sulochana

2.Vimala

..

Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed by the Motor Accident Claims Tribunal, Vellore, (I Additional District and Sessions Court, Vellore) in M.C.O.P.No.410/2011 dated 29.10.2014 for awarding compensation.

For Appellant : Mr.P.Parama Siva Doss

For Respondents : Mr.C.Prabhakaran

JUDGMENT

The Civil Miscellaneous Appeal has been preferred by the Transport Corporation against the award of Rs.8,56,800/- awarded by tribunal as compensation for the death of one R.Samy, aged about 35 years, who was a mason alleged to have earned about a sum of Rs.9,000/-, in the accident occurred on 14.06.2010

2. Mr.P.Parama Siva Doss, learned counsel appearing for the transport corporation would submit that the alleged accident on 14.06.2010 did not involve the vehicle of the transport corporation and on the day of accident, the buses were diverted due to Tamil Conference in Vellore and therefore, the accident would not have occurred involving the vehicle. Secondly, he would submit that the accident occurred on 14.06.2010, whereas the M.V.I report was made ready only on 02.07.2010. Moreover, a counter complaint, earlier, was given by the transport Corporation denying the accident and the

investigation is pending. Therefore, he seeks to set aside the award with regard to the negligence aspect.

3. However, Mr.C.Prabhakaran, learned counsel appearing for the respondents/claimants would submit that the accident occurred on 14.06.2010 and on the same day itself, FIR was registered. The contention of the transport corporation was not proved before the tribunal. Hence, he supported the award.

4. Heard the parties and perused the records.

5.The case of the claimants is that when the deceased was boarding a bus in the bus stop, the driver of the bus suddenly started the bus in a rash and negligent manner, resulting in falling of the deceased and succumbing to injuries. The accident occurred on 14.06.2010 and on the same day itself, Ex.P1-FIR was registered, in which, the registration number of the vehicle had been given. When such details are given properly in the FIR itself, it is too late for the transport corporation to contend that the bus was not involved in the accident. When the FIR itself was registered on the same day giving the details of the vehicle, it might not be possible for the complainant to assume and presume the correct registration number of the transport corporation vehicle. Therefore, the said contention of the transport corporation is liable to be rejected.

6. Though it is stated that for the accident which occurred on 14.06.2010, M.V.I report was made ready only on 02.07.2010, for the accident dated 14.06.2010, the Motor Vehicle Inspector alone has to conduct the inspection and make the report ready. For the fault/mistake/delay on the part of the motor vehicle inspector, the claimants cannot be made to suffer. In any event, the delayed report does not make any difference as the Ex.P1- FIR itself would reveal the manner of the accident and the involvement of the transport corporation bus. Moreover, Ex.P1 - FIR was filed against the driver of the bus.

7. Though it is contended very vehemently by Mr.P.Parama Siva Doss, that a counter complaint was given and the investigation is under process, any belated action on the part of the transport corporation cannot stall the claim proceedings. That apart, no such copy of the complaint was filed before the trial court. When such is the position, the contention does not merit consideration by this Court.

8. The tribunal, taking into consideration the filing of the Ex.P1 FIR against the driver of the bus and based on the evidence P.W.2, eye witness, has rightly come to the conclusion that the accident occurred because of the negligence of the driver of the transport corporation. Even R.W.1 driver has admitted in his cross-examination that on the date of the accident, he only drove the

vehicle and the vehicle was sent for M.V. Inspection. Based on oral as well as documentary evidence, the tribunal rightly concluded that the accident occurred because of the rash and negligent driving of the bus and the same cannot be set aside.

9. The deceased was aged about 35 years and alleged to be earning about a sum of Rs.9,000/- per month. In the absence of any material evidence regarding proof of income, the tribunal took Rs.4,500/- as notional income; deducted $1/3^{\text{rd}}$ towards personal expenses, adopted multiplier 16 determined Rs.5,76,000/- as loss of income. In 2010, it is not possible to get manual labour for Rs.4,500/- and therefore, even in the absence of any proof regarding income, this Court determines monthly income at Rs.6,500/- as per judgment of the Hon'ble Apex Court in Syed Sadiq V. Divisional Manager, United India Insurance Co. Limited., (2014 (1) TNMAC 459 (SC)), wherein, for a vegetable vendor who got injured in the accident which occurred in the year 2008, the monthly income was determined to be Rs.6,500/- and along with 50% future prospects, to the monthly income was fixed as Rs.9,500/-. However, in the case on hand along with future prospects, this Court determines the monthly income of the deceased at Rs.6,500/-.

10. The tribunal rightly deducted $1/3^{\text{rd}}$ towards personal expenses. After deduction, "the monthly contribution of the deceased to his family" would be Rs.4,333/- (Rs.6,500/- $1/3^{\text{rd}}$ of Rs.6,500/-). Adopting the multiplier 16, according to the age of the deceased viz., 35 years, the loss of income would be (Rs.4333 X 12 X 16) Rs.8,31,999/-. Rs.25,000/- was awarded by the tribunal towards "loss of consortium" to the first respondent/first claimant and the same is enhanced to Rs.1,00,000/- as per the judgment of the Apex Court in Rajesh and others V. Rajbir Singh and others (2013 (3) CTC 883). Funeral expenses of Rs.10,000/- awarded is confirmed. Rs.3,000/- awarded towards transportation is enhanced to Rs.10,000/-. Rs.50,000/- awarded towards "Loss of Love and affection" to the second respondent is reduced to Rs.25,000/-. When the victim died, there is no question of awarding Rs.20,000/- towards mental agony. Hence, the same is deleted. Rs.1,72,800/- as future prospects is also deleted. Award of Rs.8,56,000/- is enhanced to Rs.9,76,999/- and rounded off to Rs.9,75,000/- along with 7.5% interest.

11. Though the appeal has been preferred by the transport corporation against the award of Rs.8,56,000/-, this Court while dismissing the appeal has suo-motu enhanced the compensation from Rs.8,56,800/- to Rs.9,75,000/- even in the absence of appeal/Cross appeal, invoking order 41 Rule 33 CPC by re-appreciating the evidence on record.

12. The appellant is directed to deposit the entire award amount, as per the modified award passed by this Court, along with interest and costs within a period of 6 weeks from the date of receipt of a copy of this order, failing which, the Chairman/Managing Director and

Chief Accountant cum Financial Advisor of the appellant corporation shall appear before this Court after six weeks.

13. On such deposit being made, the first respondent /claimant is permitted to withdraw only 50% of her share of the award amount within a period of one week thereafter and the balance amount is required to be deposited in any one of the Nationalized banks, atleast for a period of three years in fixed deposit. The second respondent/second claimant is only entitled to a sum of Rs.25,000/- alone. The claimants shall pay additional court fee for the enhanced amount, if any.

With the above said observation and direction, the Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed. Post the case on 12.10.2015 for compliance.

sms

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

Note: Office is directed to send order copy directly to the claimants at free of cost.

To

1. The Motor Accident Claims Tribunal,
Vellore, (I Additional District and Sessions Court, Vellore)
2. Sulochana, w/o.Late Samy.
11, Bajanai Koil Street,
Palla Edayampatti village,
Vrichipuram Post, Vellore.
3. Vimala w/o.Late Sathappan,
11, Bajanai Koil Street,
Palla Edayampatti Village,
Vrichipuram Post, Vellore.
4. The Chairman/Managing Director and
Chief Accountant cum Financial Advisor,
Tamil Nadu State Transport Corporation,
(Villupuram Division I) Ltd. Rangapuram,
Vellore.

+ 1 cc to Mr.P.Paramasivadosh, Advocate SR 35296

+ 1 cc to Mr.C.Prabakaran, Advocate SR 35232

ev(co)

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