

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 29.07.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.1321 of 2015
and
M.P.No.1 of 2015

The Branch Manager
Tamil Nadu State Transport Corporation Ltd.
G.W.T. Road, Ponnerikarai, Karaipettai
Kancheepuram. ...Appellant/Respondent

vs.

1.Bhavani
2.Kalaivani
3.Yogalakshmi
4.Minor Sundari
(Minor is represented
by mother and guardian Bhavani)
5.Saraswathy ...Respondents /Claimants

Prayer: Challenge is made, under Section 173 of the Motor Vehicles Act, 1989 in this Civil Miscellaneous Appeal to the award, dated 19.2.2015 and made in the Motor Accident Claim Petition in M.C.O.P.No.204 of 2012 on the file of the Motor Accident Claims Tribunal, (District Judge, District Court No.II), Kancheepuram.

For appellant : Mr.P.Paramasivadosh

For respondents/
Caveators : M/s.N.Sudharsan

JUDGMENT

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

This memorandum of civil miscellaneous appeal has been directed against the award, dated 19.2.2015 and made in the Motor Accident claim petition in M.C.O.P.No.204 of 2012 on the file of the Motor Accident Claims Tribunal (District Court No.II, Kancheepuram).

2.The appellant herein is the Tamil Nadu State Transport Corporation, Kancheepuram, whereas the respondents are the claimants 1 to 5 in the claim petition.

3.The claims Tribunal based on the evidences available on record had proceeded to award a sum of Rs.75.00 lakhs as against the claim of Rs.80.00 lakhs in favour of the claimants. This has been challenged by the Tamil Nadu State Transport Corporation, Kancheepuram, in this appeal.

4.Heard Mr.P.Paramasivados, learned counsel appearing for the appellant Transport Corporation and Mr.N.Sudharsan, learned counsel appearing for the respondents 1 to 3 and 5.

5.Mr.P.Paramasivados has argued on all the grounds challenging the award of the Tribunal.

6.The deceased Sabapathy is the husband of the first claimant and father of the claimants 2 to 4. The fifth claimant is the mother of the deceased.

7.It is alleged that on 13.2.2012 at about 9.45 a.m., a passenger bus bearing Registration No.TN-21-N-1206, which was proceeding from Chengalpattu towards Dindivanam, driven by its driver in a rash and negligent manner, had hit against a stationed Tata Sumo Car bearing Registration No.PY-01-AG-5959 and on account of the sudden impact, the Tata Sumo Car was thrown on the other side of the road and hit against the Hundai car bearing Registration No.TN-09-BK-1145, which was driven by the deceased towards Chengalpattu. On account of this accident, his Hundai Car got damaged and the deceased had also succumbed to the multiple injuries instantaneously on the spot.

8. Alleging that the accident was caused due to the rash and negligent driving of the passenger bus belonging to the appellant Transport Corporation, the claimants had filed the claim petition claiming a sum of Rs.75.00 lakhs for the loss of the death of the Kartha of the family, viz., Sabapathy.

9. Mr. P. Paramasivadosh, learned counsel appearing for the appellant Transport Corporation has argued that there was no evidence to prove the allegation that due to the rash and negligent driving of the driver of the bus, the accident was taken place.

10. He would further submit that since more than two vehicles were involved in this accident, negligence could not be fixed solely on the driver of the bus and that either composite or contributory negligence could be fixed on the drivers of the vehicles involved in the accident.

11. He has also argued that since three vehicles were involved in the occurrence, the owners of all the vehicles and their respective Insurance Companies ought to have been impleaded in the claim petition and since they were not parties to the claim petition, the claim petition itself was bad for non-joinder of necessary parties and hence, the appellant Transport Corporation was not liable to pay the compensation.

12. He has also argued that the multiplier selected by the Tribunal based on the alleged age of the deceased was against the decision of the Apex Court in Sarla Verma's case and therefore, on this ground also the award was liable to be set aside.

13. On the other hand, Mr. N. Sudharsan, learned counsel appearing for the claimants has submitted that though the claimants had claimed totally a sum of Rs.75.00 lakhs, the Tribunal had only awarded 50% of the original claim and since, the actual sufferers were only the claimants, he has urged that the appeal filed by the Transport Corporation might be dismissed.

14. We have considered the submissions made on behalf of both sides and carefully perused the averments of grounds of appeal including the award.

15.It is revealed from paragraph No.3 of the counter statement filed by the appellant transport corporation that the driver of the appellant transport corporation took the bus on a trip from Koyembedu at 7.40 p.m. on 13.2.2012 in order to go to Puducherry.

16.While so, a Tata Sumo Car bearing Registration No.PY-01-AG-5959, which was proceeding in front of the passenger bus, near the median strip had stopped suddenly due to sudden puncture of one of it's tyres.

17.The driver of the transport corporation was unable to swerve the bus to his left side as the vehicles were continuously as well as fastly plying on the road. However, he was trying to stop the bus by putting his all-out efforts. In spite of his best effort, the bus had hit against the Tata Sumo Car and on account of the impact, the said Tata Sumor Car had crossed the median strip and hit against the Hundai Car bearing Registration No.TN-09-BK-1145, which was coming on the other side and ultimately it resulted in the accident.

18.According to the appellant transport corporation, the accident was inevitable as the Tata Sumo Car was stopped suddenly due to the puncture of one of its tyres.

19.From the averments of the counter statement filed by the appellant transport corporation, we are able to understand that the driver of the bus while driving the vehicle had failed to leave sufficient space, i.e., 30 metres while driving the vehicle behind the on going Tata Sumo Car. The driver of the Tata Sumo Car could not have anticipated that one of the tyres of his vehicle was going to get punctured. Had the driver of the bus been driving the vehicle after leaving sufficient space as provided in the Motor Vehicles Act, i.e., 30 metres space, the accident could have been averted.

20.Since the driver had failed in his duty to maintain 30 metres space, the bus had happened to hit against the rear side of the Tata Sumo Car and on this impact, the Tata Sumo Car was thrown out on the opposite side, in which the deceased was driving his Hundai car from the opposite direction.

21.On account of this reason, the Tata Sumo Car had hit against the Hundai car and the deceased had happened to die in the accident.

22.The Tribunal has also found that the accident was taken place due to the rash and negligent driving of the driver of the bus, which does not require our interference and for the aforesaid reason, we also endorse the view taken by the Tribunal that due to the rashness and negligence on the part of the driver of the bus, the accident was taken place.

23.It is pertinent to note here that the transport corporation had not examined the driver of the bus, who was on the steering wheel at the relevant point of time, instead, one Damodharan, who was on duty as conductor of the offending vehicle was examined as R.W.1. But his evidence would not lend any support to the case of the appellant.

24.On the other hand, the evidence of P.W.2, who is said to be the eye witness has fully supported the averments of the F.I.R., which was marked as Ex.P.1 in this case.

25.Keeping in view of the above facts, we are in agreement with the finding of the Tribunal that the accident was taken place only due to the rash and negligent act of the driver of the appellant transport corporation.

26.On coming to the ground of quantum, it is established through Exs.P.5 and P.7, copies of the licence for custom house agent and licence in customs house respectively, that the deceased was working as Customs Agent at the relevant point of time. Ex.P.6 is the Income Tax return for the assessment year 2011-12. Exs.P.13 to P.16 are the copies of the Income Tax Returns for the assessment years from 2009-2010 to 2011 to 2012 respectively.

27.Apart from this, Ex.P.8 would go to establish the fact that one Boominathan and the deceased had entered into a partnership agreement and both were having equal shares in their business. It is also revealed that both were doing business of Shipping and Clearing Services under the name and style of Swati Shipping and Clearing Services.

28.As per Ex.P.6, the annual income of the deceased was only Rs.4,94,905/- and based on this document (Income Tax Return) and Ex.P.8 Partnership Deed, the claims Tribunal had fixed the monthly income of the deceased at Rs.50,000/-. As per Ex.P.6 Income Tax Return, the date of birth of the deceased is 20.6.1962 and it would further reveal that the age of the deceased was 49 years 7 months and 23 days at the time of his death. Hence, the Tribunal had fixed his age as 50 years and as observed by the Apex Court in Sarla Verma's case (2009 (2) TNMAC 1 (SC), the Tribunal had selected the multiplier of 11.

29.After giving 1/3rd deduction towards personal expenses of the deceased, the 2/3 remainder would be 33,333/-. Accordingly, the annual dependency of the family would be at Rs.3,99,996/-. Applying the multiplier of 11, the loss of dependency of the family could be arrived at Rs.43,99,956/-. However, the Tribunal has made it as Rs.44,00,000/-.

30.Besides this, the Tribunal has also awarded certain amounts under the following heads:

- a.Funeral Expenses : Rs. 5,000/-
- b.Loss of Consortium to the first claimant : Rs.25,000/-
- c.Loss of Love and Affection to the claimants 2 to 4 each Rs.20000/- : Rs.60,000/-
- d. Loss of Love and Affection to the fifth claimant : Rs.10,000/-

31.Totally, the Tribunal has awarded a sum of Rs.45,00,000/- under the above heads and the transport corporation was also directed to pay this amount with interest at the rate of 7.5. p.a. along with costs from the date of claim petition till the date of realisation.

32.Keeping in view of the above facts, we find that the award of the Tribunal does not require our interference excepting to confirm it. The Transport Corporation is directed to deposit the amount within a period of 6 weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit being made, the claimants 1 to 3 and 5 are at liberty to withdraw their respective shares as

allotted by the Tribunal. The share of the minor claimant shall be invested in a Nationalised Bank until she attains majority. The first claimant being the guardian and mother of the fifth minor claimant is at liberty to withdraw the accrued interest from such deposit once in three months for the welfare of the minor.

With the above directions, the civil miscellaneous appeal is dismissed with costs. Connected M.P. is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The District-Judge,
District Court No.II,
(Motor Accidents Claim Tribunal),
Kancheepuram.

2.The Branch Manager,
Tamil Nadu State Transport Corporation Ltd,
G.W.T. Road, Ponnerikarai, Karaipettai,
Kancheepuram.

+1cc to Mr.P.Paramasivadoss, Advocate, S.R.No.39064

+1cc to Mr.N.Sudharasan, Advocate, S.R.No.39510

C.M.A.No.1321 of 2015
and
M.P.No.1 of 2015

gr(CO)
srg(12/02/2016)

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