

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2015

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE M.VENUGOPAL

C.M.A. No.1518 of 2015
M.P.No.1 of 2015

The Managing Director,
Metropolitan Transport Corporation Ltd.,
No.2, Anna Salai,
Chennai - 2. ... Appellant/Respondent

vs

1.T.Sarasammal
2.C.Achudhan ... Respondents/Petitioner

Civil Miscellaneous Appeal filed under section 173 of the motor vehicle Act against the fair and decretal order dated 27.08.2014 passed in M.C.O.P.No.3204 of 2012 by the II Judge, Small Causes Court, Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.S.S.Swaminathan

For Respondents : Mr.Varadha Kamaraj

JUDGMENT

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

Questioning the liability and the quantum of compensation, the appellant/Transport Corporation has preferred this appeal as against the award dated 27.08.2014 passed in M.C.O.P. No.3204 of 2012 by the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai.

2. Brief facts are that on 13.03.2012 at about 16.15 hours, when the deceased was travelling as a pillion rider in TVS Scooty bearing Regn. No.TN 20 BW 9542, driven by one Nithyakalyani from Veltech College to Avadi, the bus bearing Regn. No.TN 01 N 4407 belonging to the appellant Transport Corporation suddenly hit the two wheeler, due

to which, the deceased, pillion ridder, was thrown out of the vehicle; the bus ran over her; she was dragged to 100 metres and died on the spot. A criminal case was registered in Crime No.391 of 2012 on the file of Traffic Investigation, Poonamallee.

3. The deceased was a spinster, at the time of accident. For the death of the deceased, the claimants viz., parents have filed claim petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.30,00,000/-.

4. Before the Tribunal, the appellant Transport Corporation has filed counter, denying the manner of accident, age and income of the deceased.

5. Before the Tribunal, mother of the deceased examined herself as P.W.1, Principal of Students Affairs in Vel Tech College has been examined as P.W.2 and one R.Selvakumar, eye witness has been examined as P.W.3. On the side of claimants, Exs.P1 to P15 have been marked. On the side of respondent, driver of the bus has been examined as R.W.1 and no documentary evidence was adduced.

6. Upon consideration of the materials available on record, the Tribunal fixed the income of the deceased at Rs.27,750/- per month. After deducting 50% of the amount towards the personal expenses of the deceased and adopting 17 multiplier, the Tribunal has calculated the loss of dependency at Rs.28,30,500/- ($\text{Rs.27,750/-} \times 1/2 \times 12 \times 17 = \text{Rs.28,30,500/-}$). The Tribunal has awarded a total compensation of Rs.30,55,500/- as under:

Loss of dependency ..	Rs.28,30,500.00
Funeral expenses ..	Rs. 25,000.00
Loss of love and affection ..	Rs. 2,00,000.00
	= = = = =
Total	Rs.30,55,500.00
	= = = = =

7. By inviting the attention of this court to Ex.P11 rough sketch, filed before the Claims Tribunal and the contents of Ex.P10 first information report in Crime No.391/2012 registered against the driver of the State Transport Corporation bus involved in the accident, Mr.S.S.Swaminathan, learned counsel for the appellant/Transport Corporation submitted that the accident, has occurred solely due to the rash and negligent riding of an unknown motorcycle, which grazed against the right side bumper of the Scooty bearing Regn. No.TN 20 BW 9542, in which, the deceased was travelling as a pillion rider. He further added that the scooty attempted to overtake the bus, on the right side and during that process, hit the

right side corner of the bus and thus, the rider of the Scooty alone had caused the accident. According to him, the contents of Ex.P10, first information report and the position of the scooty, as shown in Ex.P11 rough sketch, duly corroborate the version of the appellant Transport Corporation and in the above said circumstances, the Tribunal ought not to have fixed negligence on R.W.1/driver of the State Transport Corporation bus. Yet another argument made by the learned counsel for the appellant Transport Corporation is that when Ex.P10 - F.I.R. was stated to have been given by one Ms.Nithyakalyani, rider of TVS Scooty, deliberately, the respondents/claimants have chosen not to examine her as a witness to speak about the manner of accident, as reflected in Ex.P10 - F.I.R., whereas, some other person, has been examined as eye witness - P.W.3. Learned counsel for the appellant further submitted that the accident occurred solely due to the rash and negligent riding of the scooty bearing Regn. No.TN 20 BW 9542 and that is why, the claim petition has been filed, without impleading the owner of the scooty and the insurance company. It is his further contention that the claim petition ought not to have been entertained. For the above said reasons, he prayed for reversal of the finding on negligence.

8. In so far as the quantum of compensation is concerned, the learned counsel for the appellant submitted that the Tribunal has failed to deduct 10% of the income towards the statutory income tax deduction, while computing the total compensation. He has also submitted that the Tribunal has committed an error in applying a higher multiplier of 17 for the purpose of computing the loss of contribution to the family.

9. On the above submission, we have heard Mr.Varadha Kamaraj, learned counsel for the respondents/claimants, who fairly submitted that having regard to the income of the deceased, 10% deduction, ought to have been made towards income tax. However, on the finding of negligence fixed on R.W.1/driver of the State Transport Corporation bus, it is the contention of the learned counsel for the respondents/claimants that the said finding cannot be termed as perverse, warranting interference. Learned counsel further submitted that the Tribunal, by adopting a proper multiplier, has calculated the loss of pendency. In addition to the above, he submitted that the Claims Tribunal has not awarded adequate compensation for Transportation and damages to clothes and articles.

Heard the learned counsel for the parties and perused the materials available on record.

10. Though Mr.S.S.Swaminathan, learned counsel for the appellant Transport Corporation submitted that an unknown motorcycle, grazed against the TVS Scooty, which attempted to overtake the bus on the right side and thus the right side bumper of the Scooty, dashed

against the bus, the pillion rider fell down and therefore, submitted that the Tribunal has committed an error in not appreciating the oral testimony of R.W.1, which, according to him, is duly corroborated by the contents of Ex.P10 - F.I.R. and Ex.P11 - sketch, and further added that even, if it is taken for granted that the scooty was hit from behind, the pillion rider could have fallen only in front of the bus and that there was no possibility of the back wheel of the bus running over the pillion rider, causing death, this Court is not inclined to accept the above said contentions, for the reason that if there was any other vehicle, which was also involved in the accident, as averred and submitted, nothing prevented R.W.1, driver of the bus, from lodging a complaint to the police station, within whose jurisdiction the accident had occurred. Even accepting for argument sake, that it was an unknown motorcyclist, who had initially hit the scooty and thereafter, the scooty hit the right side of the bus, except R.W.1, nobody has been examined to corroborate his version. No document has been marked to support his version. However from the arguments, it could only be deduced that the appellant Transport Corporation has made an attempt to dislodge the case of the respondents/claimants, as regards the manner of accident, as spoken to by P.W.1 and duly corroborated by P.W.3, stated to be the eye witness.

11. After analysing the testimony of P.Ws.1 and 3, the Claims Tribunal has recorded that their testimony as cogent and nothing has been elicited in the cross-examination to disown their reliability. Though Mr.S.S.Swaminathan, learned counsel for the Corporation submitted that the author of Ex.P1 - FIR, was not examined and that some other person has been cited as an eyewitness, that would not tilt the case of the respondents/claimants, for the reason that the Transport Corporation had ample opportunity to cross-examine the said witness, PW.3.

12. Needless to state that FIR is only to set the Criminal law in motion. However, it is also a document to corroborate the manner of accident. In a given case, it could be the earliest document. Sometimes, when the injured is taken to the hospital, and if FIR is registered on the information from the hospital, the Accident Register would be the earliest document. Merely because, the author was not examined, it cannot be ignored. In the instant case, on evaluation of the evidence of Pws.1 and 3, the Claims Tribunal has clearly recorded that their testimony is not shattered.

13. FIR lodged cannot be a substitute for the exhaustive version about the manner of accident. It is well settled that statements made on solemn affirmation, are subject to cross examination, whereas, FIR is never lodged on solemn affirmation. Further, it is also well settled that the object of FIR is only to set the criminal

law in motion. On investigation, the Police may close the FIR or lay charge sheet against the driver, who has actually caused the accident. FIR is a public document. Non examination of the author of the complaint is not fatal to the claim. Thus, the contents of the FIR are always open to scrutiny by the Courts/Tribunals and it can be used for corroborating or contradicting the testimony of the witnesses, regarding the manner of accident. Therefore, the contents of FIR, cannot be simply accepted, as true and correct version, as regards the manner of accident and it is the duty of the Tribunal to examine the same, along with oral and other documentary evidence, adduced.

14. Sketch is a piece of evidence, which may be, used as evidence, to analyse the overall evidence adduced by the parties, in arriving at the conclusion of negligence. But that alone cannot be taken as the substantive evidence to prove negligence. As regards credence to be given to a sketch, this Court in Divisional Manager, New India Assurance Co. Ltd., v. District Superintendent of Police, Vellore reported in 2012 AAC 2451 (Mad.), held as follows:

"Rough sketch drawn by the police, in a road accident cannot be taken as a conclusive proof, as to the manner of accident, for the reason that, on the main road or on a high way, depending upon the speed, weight of the vehicles involved in the accident, the last minute attempt on the part of the drivers involved in the accident to swerve the vehicles, to avoid any head on collision, the control of the vehicles, on account of the impact or the injuries sustained by the drivers, the position of the vehicles, may change. After the accident, the vehicles cannot always be expected to come to a sudden halt. In a case involving two or more vehicles, after the impact, the vehicles would come to a halt, on account of either the driver losing control over the vehicle or if the driver, not injured seriously, depending upon gravity of the injuries, and still able to control the vehicle, he would stop the vehicle. If both the drivers sustain injuries and not in a position to control, depending upon the factors stated supra, which are illustrative, the vehicles would come to a halt. There may be a possibility a vehicle like a motor cycle, with a lesser weight may even be dragged on in the same direction, in which, a bigger vehicle is operated."

15. Though Mr.S.S.Swaminathan, learned counsel appearing for the Transport Corporation submitted that whenever there is an accident, involving a Transport Corporation bus, invariably, the Police registers a criminal case, only against the driver of the bus, without appreciation of the facts, we cannot countenance such arguments because, if the driver of the bus was not at fault, he can always bring it to the notice of the Police, which in the case on

hand, does not appear to have been done.

16. In N.K.V.Brother's Private Limited v. Kurmai reported in AIR 1980 SC 1354, while dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court 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."

17. 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."

18. It is the well settled law that proceedings before the Claims Tribunal are being summary in nature and it is suffice to consider, 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 strong rebuttal evidence, the finding of the Tribunal regarding negligence cannot be termed as perverse or it is not a case of no evidence.

19. Yet another factor to be considered is that even taking it for granted that Ex.P11 - Sketch, supports the case of the Transport Corporation, as to the manner of accident, the Transport Corporation should have summoned the Investigating Officer, who prepared the sketch, to support on their side, as a defence witness. The Transport Corporation has failed to do so. Therefore, when the Transport

Corporation rests its defence, solely on the basis of the contents of Ex.P10 - FIR and Ex.P11 - Sketch, burden is shifted on them, to prove the defence, which they have miserably failed.

20. Even taking it for granted that there is any weakness in the case of the respondents/claimants, needless to state that a party has to fall or succeed on the basis of his own case. Thus, on evaluation of the pleadings and evidence, this Court is of the considered view that the appellant-Transport Corporation has not substantiated its case of an unknown Motorcycle, dashing against the scooty and thereafter, the scooty hit the bus.

21. Fall of the rider or the pillion rider on the road, as the case may be, depends upon, the impact of the accident, maneuverability of the rider, after the impact, weight of the persons travelling in the motorcycle, direction in which the motorcycle was hit and many other factors. Merely because the pillion rider was stated to have been thrown away and run over by the back wheel of the bus, it cannot be contended that as the scooty was travelling ahead of the bus, due to the impact, she would have fallen only on the left side of the bus and that there was no possibility, for the rear wheel of the bus to run over the pillion rider, causing instant death.

22. Testing the finding on negligence on the principle of preponderance of probability, and in the absence of any concrete rebuttal evidence adduced by the Transport Corporation except R.W.1, whose evidence is not even corroborated, this Court is not inclined to reverse the finding on negligence fixed on R.W.1, driver of the bus bearing Regn. No.TN 01 N 4407.

23. Insofar as the quantum of compensation, P.W.1 mother of the deceased has adduced evidence that the deceased was a Lecturer in Vel Tech College, Avadi, Chennai. It is the contention that even though the Tribunal has taken the income at Rs.27,750/- per month, the Tribunal has not chosen to deduct any amount towards income tax. It was submitted that as per the decision of the Honourable Supreme Court in National Insurance Co. Ltd. vs. Indira Srivastava and others ((2008) 2 SCC 763), the Tribunal ought to have deducted amount towards income tax.

24. Having regard to the income of the deceased, we are of the view that it would be reasonable to deduct only 10% towards income tax. Accordingly, 10% from the income is deducted towards income tax and it works out to Rs.24,975/- per month. Being a spinster, 50%

deduction is made towards the contribution of the deceased to the family. After deducting 50%, the income determined for the purpose of annual loss of contribution to the family is Rs.12,487.50. Though the learned counsel for the Appellant Transport Corporation submitted that the age of the parents ought to have been taken into consideration for the purpose of deciding the multiplier, following the decision in Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and another (2009(2) TNMAC 1), this Court is not inclined to accept the same. Application of 17 multiplier, taking into consideration the age of the deceased is sustained. Thus loss of contribution to the family is worked out to Rs.25,47,450/- (Rs.12,487.50 x 12 x 17).

25. The Tribunal has not awarded any compensation for Transportation and Damages to Clothes and Articles. Hence Rs.10,000/- is awarded towards Transportation and Rs.2,000/- is awarded for damages to clothing and articles. The amount awarded by the Tribunal at Rs.25,000/- towards Funeral Expenses and Rs.2,00,000/- towards Love and Affection, is reasonable and hence, maintained.

26. For the reasons stated above, the compensation awarded by the Tribunal is reduced to Rs.27,84,450/- as under:

Loss of dependency	..	Rs.25,47,450.00
Funeral expenses	..	Rs. 25,000.00
Loss of love and affection	..	Rs. 2,00,000.00
Transportation	..	Rs. 10,000.00
Damages to Clothing and Articles	..	Rs. 2,000.00
		= = = = =
Total	..	Rs.27,84,450.00
		= = = = =

27. In the result, the Civil Miscellaneous Appeal is partly allowed. It is submitted that the appellant-Transport Corporation has

deposited Rs.25,000/-. Therefore, the appellant is directed to deposit balance award amount as modified by this Court along with 7.5% interest within a period of six weeks from the date of receipt of a copy of this judgment. Out of the reduced compensation, the

respondents/claimants are permitted to withdraw the sum ordered in equal, making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

-Sd/-
Assistant Registrar

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Sub Assistant Registrar

mmi/skm

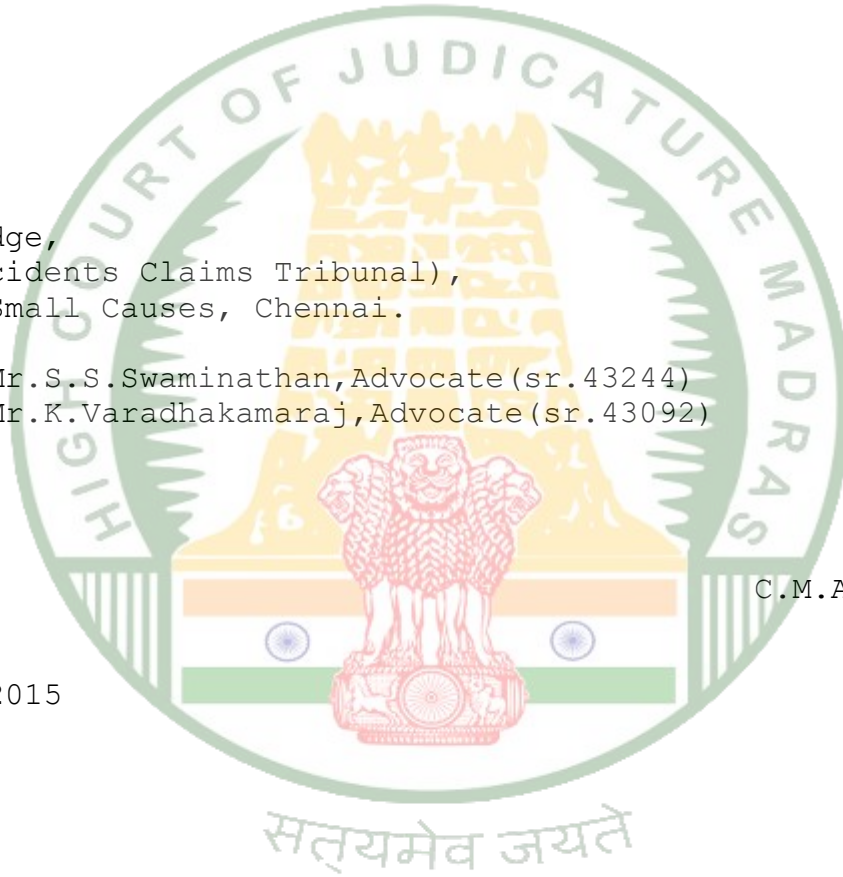
To

The II Judge,
(Motor Accidents Claims Tribunal),
Court of Small Causes, Chennai.

+1 cc to Mr.S.S.Swaminathan,Advocate(sr.43244)
+1 cc to Mr.K.Varadhakamaraj,Advocate(sr.43092)

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