

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.08.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M. VENUGOPAL

C.M.A. No.1578 of 2015
and
M.P.No.1 of 2015

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Villupuram Division IV,
Tiruvannamalai ... Appellant/Respondent

Vs.

1.Eswari
2.Thamaraiselvi
3.Dhanapriya
4.Andal ... Respondents/Petitioners

Prayer: Appeal under Section 173 of the Motor Vehicles Act, 1988
against the Decree and Judgment passed by the Motor Accidents
Claims Tribunal (Sub Judge), Cheyyar in MCOP No.145 of 2011
dated 04.06.2014.

For Appellant : Mr.P.Paramasiva Doss

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this appeal is to the judgment and decree in
MCOP No.145 of 2011 dated 04.06.2014 by which, the claims
tribunal has awarded compensation of Rs.16,41,900/-, with
interest, at the rate of 7.5% per annum, from the date of claim
to the date of realisation, to the legal representatives of the
deceased.

2. Facts of the case as adduced from the material on record
are that on 24.03.2011, at 14.30 hours, when the breadwinner

Rajasekaran, was travelling in a Government bus bearing Regn.No.TN32 N 3426 Route No.208 at Vandavasi - Chetpet Road, near Vallam Koot road, another Government bus bearing Regn.No.TN32N2202, driven in a rash and negligent manner by its driver, dashed against the bus bearing Regn.No.TN32N3426, in which, Rajasekaran travelled. Due to the collision, he sustained fatal injuries. Initially, he was admitted in Government Hospital, Vandavasi and thereafter, referred to Government General Hospital, Chennai. Despite treatment, he died. A case in Crime No.27 of 2011 for offences under Sections 279, 337 and 338 IPC was registered on the file of Vadavanakkampadi Police Station.

3. Before the tribunal, respondents/claimants have contended that as a driver in the Tamil Nadu State Transport Corporation Limited, Vandavasi, the deceased earned Rs.13,435/- as monthly income. He was aged 48 years. They claimed compensation of Rs.18 Lakhs.

4. Before the claims tribunal, the Tamil Nadu Transport Corporation Limited, Villupuram Division IV, Tiruvannamalai, appellant herein has denied the manner of accident. According to the Corporation, when the transport corporation bus bearing Regn.No. TN32N2202 was driven cautiously, near Vallam Koot Road, due to the defect in the steering wheel, the said vehicle could not be swerved and thus, collided with another transport corporation bus bearing Regn.No.TN32N3426. According to the Corporation, the accident occurred solely due to the mechanical defect and that there was no negligence on the part of the driver of the bus, bearing Regn.No.TN32N2202. They denied the quantum of compensation claimed under various head.

5. Before the claims tribunal, wife of the deceased examined herself as PW1 has reiterated the manner of the accident. Ex.P1, Copy of FIR in Cr.No.27/2011 of Vadavanakkambadi Police Station, Ex.P2, Copy of Section alteration report, Ex.P3, Copy of Death Report, Ex.P4, Copy of Post Mortem certificate, Ex.P5, Legal Heir certificate and Ex.P6, Salary Certificate, have been marked. On the side of the appellant, Tamil Nadu Transport Corporation Limited, Villupuram Division IV, Tiruvannamalai, driver of the bus bearing Regn.No.TN32N2202, has been examined. No document has been filed.

6. Adjudicating the rival contentions and on the material on record, the Motor Accidents Claims Tribunal [Sub Judge],

Cheyar, fixed negligence on the driver of the Tamil Nadu Transport Corporation bus bearing Regn.No.TN32N2202.

7. Having regard to the avocation of the deceased i.e., driver in the Tamil Nadu State Transport Corporation, age and income and factors to be taken into consideration for the purpose of determining compensation, the tribunal has awarded compensation of Rs.16,41,900/-,with interest at the rate of 7.5% per annum, from the date of claim till the date of realisation.

8. Though, Mr.Paramasiva Doss, learned counsel for Tamil Nadu Transport Corporation Limited, Villupuram Division IV, Tiruvannamalai, the appellant herein has assailed the correctness of the finding of the claims tribunal, fixing negligence on the driver of the Tamil Nadu Transport Corporation Limited bus, bearing Regn.No. TN32N2202, on the grounds inter alia that mere registration of the criminal case against RW1, driver of the bus alone is not sufficient to arrive at the conclusion that he was rash and negligent in driving the said vehicle and also contended that the claims tribunal has failed to consider that the accident occurred only due to the mechanical defect, this Court is not inclined to accept the said contentions, for the reason that the claims tribunal, on careful consideration of the oral testimony of PW1, wife, has held that her evidence is duly corroborated by the narration of the incident in Ex.P1, First Information Report lodged by one Ganesan against the driver of the Tamil Nadu Transport Corporation Limited, Villupuram Division IV, Tiruvannamalai bus bearing Regn.No. TN32N2202. Further, while considering the testimony of RW1, Elumalai, driver of the Tamil Nadu Transport Corporation bus bearing Regn.No.TN32N2202, the tribunal has also observed that his testimony, was not corroborated by any independent witness or document and accordingly, fixed the negligence.

9. It is well settled in motor accident claims cases that finding regarding negligence is arrived at by the Claims Tribunal on the principles of preponderance of probabilities. Strict proof of evidence is not required like that of a criminal case. It is also well settled that the adjudication of claims before the Motor Accident Claims Tribunal is summary in nature. Testing the finding of negligence recorded by the Claims Tribunal, on the above said principles, this Court is of the view that there is no perversity in the finding of negligence, warranting interference and the same is confirmed.

10. On the question of quantum, admittedly, the deceased was employed as a driver in Tamil Nadu State Transport Corporation bus. To prove the income and occupation, respondents/claimants have marked Ex.P6, Pay certificate for the month of March 2011, wherein, it has been clearly mentioned that the income of the deceased, at the time of accident was Rs.13,435/-. Though, in Ex.P4, Postmortem certificate, age of the deceased was mentioned as 40 years, the tribunal, taking note of the entry in Ex.P6, pay certificate fixed the age as 48 years.

11. Deceased is survived by his wife, daughter, son and mother. Having regard to the entries in the II schedule to Section 163-A of the Motor Vehicles Act, and to meet the ends of justice, the tribunal has adopted 13 multiplier for computing the loss of contribution to the family. There are four dependants. Therefore, following the decision of the Apex Court in Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation and another, reported in 2009 (2) TN MAC 1 (SC), the tribunal has deducted 1/3 towards the personal and living expenses of the deceased. Thus, deducting 1/3 of the monthly income and by applying 13 multiplier, the tribunal has computed the loss of contribution to the family as Rs.15,71,856/-. A sum of Rs.10,000/- has been awarded under the head 'funeral expenses'. The tribunal has also awarded Rs.20,000/- under the head 'consortium'. Towards the loss of love and affection to the children and mother, the petitioners 2 to 4 in MCOP, the tribunal has ordered Rs.40,000/-. Thus, a total sum of Rs.16,41,856/- has been arrived at, as compensation and that the same has been rounded off to Rs.16,41,900/-. The tribunal has apportioned the compensation to the legal representatives of the deceased.

12. Though, Mr.Paramasiva Doss, learned counsel for Tamil Nadu Transport Corporation Limited, Villupuram Division IV, Tiruvannamalai, the appellant herein contended that the compensation awarded is on the higher side, this Court is not inclined to accept the same, for the reason that the tribunal has considered the income drawn by the deceased, at the time of the accident, which is duly supported by Ex.P6, Pay Certificate. It is unfortunate that the Transport Corporation Limited, which has all the service records including the income drawn by the deceased / its own employee, at the time of accident has questioned the determination of income, by the tribunal. Compensation awarded under the head loss of consortium, loss of

love and affection and funeral expenses, cannot be said to be on the higher side, rather, it is low.

13. Finding of negligence, and the quantum of compensation awarded to the legal representatives of the deceased have been arrived at on proper appreciation of facts and evidence. Award in MCOP No.145 of 2011 dated 04.06.2014 on the file the Motor Accidents Claims Tribunal (Sub Judge), Cheyyar, is confirmed. Apportionment is sustained as per the order the tribunal. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

14. Consequent to the dismissal of the appeal, the appellant-Tamil Nadu Transport Corporation Limited, Villupuram Division IV, Tiruvannamalai, is directed to deposit the entire award amount, with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and costs, less the amount already deposited, if any, to the credit of MCOP No.145 of 2011 dated 04.06.2014 on the file the Motor Accidents Claims Tribunal (Sub Judge), Cheyyar, within a period of six weeks from the date of receipt of a copy of this order. It is open to the respondents/claimants to seek for disbursement of the award amount, by making necessary applications.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. Motor Accidents Claims Tribunal,
Sub Judge, Cheyyar.

2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.P.Paramasiva doss, Advocate, S.R.No.42157

C.M.A. No.1578 of 2015

NM(CO)

CA(27/10/2015)