

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-08-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.1705 OF 2015

State Express Transport Corporation Limited,
represented by its Managing Director,
Pallavan Salai,
Chennai-02.

...Appellant/Respondent

-vs-

1.D.Malliga
2.K.Maragadham
3.R.Sudha
4.A.Mala
5.R.Vembu
6.D.Kowsalya
7.D.Kalpana
8.D.Kayalvizhi

...Respondents/Petitioners

Appeal against the award, dated 12.08.2014, made in MCOP No.3895 of 2010, on the file of Motor Accident Claims Tribunal-cum-Vth Court of Small Causes, Chennai.

For appellant : Mr.P.Paramasivadoss

For respondents : Mr.N.M.Muthurajan

JUDGMENT

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

Challenge in this appeal is to the finding, fixing negligence on the driver of the State Transport Corporation bus, bearing registration No.TN-01-N-6778, and also to the quantum of compensation of Rs.11,99,000/- with interest at the rate of 7.5% per annum, from the date of claim till deposit.

2. Facts, as adduced from the material on record are, that on 04.10.2010, at about 05.45 hours, when G.Dakshinamoorthy, husband of the first respondent, was riding a motorcycle bearing registration No.IN-09-AV-1851 from West Mambalam to Vadapalani along Jawaharlal Nehru 100 Feet Road from South to North direction near Indira Gandhi

Housing Board, Ashok Nagar 15th Avenue, the appellant-State Transport Corporation bus, bearing registration No.TN-01-N-6778, which came from behind, driven in a rash and negligent manner by its driver, hit the motorcycle, as a result of which, the motorcyclist fell down, sustained severe head injuries and died on the spot. With regard to the said incident, a case in Crime No.392/S2/10 for the offences under Sections 279 and 304 (A) of IPC has been registered on the file of J-3 Guindy Police Station, Chennai, against the driver of the abovesaid bus.

3. Before the Claims Tribunal, the respondents/claimants have contended that the accident had occurred only due to rash and negligent driving of the bus bearing registration No.TN-01-N-6778, by its driver. P.W.1, wife of the deceased, has adduced evidence, but she has not witnessed the accident. However, to support her testimony, she has marked Ex.P-1 FIR; Ex-P-2 Rough Sketch and Ex.P-6 Copy of Chargesheet, filed against the driver of the bus. No oral or documentary evidence has been adduced on behalf of State Transport Corporation Limited, the appellant herein.

4. On evaluation of pleadings and evidence, more particularly Ex.P-6, Chargesheet, which was to the effect that the driver of the Transport Corporation bus has been charged under Sections 279 and 304-A of IPC, and in the absence of any contra evidence, the Claims Tribunal fixed the negligence on the driver of the bus.

5. Before the Tribunal, the respondents have contended that the deceased was a driver, engaged by M/s.Thirumala Associates, SRM University, Chennai, and he was aged 55 years. Besides, they have also examined one N.Balachandar, a representative of Thirumala Associates, and through him, marked Ex.P-11, Salary Certificate. Though the said Salary Certificate did not bear the seal of Thirumala Associates, having regard to the details in Ex.P-9, Service and Salary Certificate, issued by M/s.Thirumala Associates, the Tribunal has fixed the monthly income of the deceased at Rs.9,120/-.

6. Though in Sarala Verma and Others v. Delhi Transport Corporation and Another, reported in 2009 (6) SCC 121, the Hon'ble Apex Court held that no addition under the head 'future prospects' be made for persons above the age of 50 years, as the deceased was aged 55 years at the time of accident, the Claims Tribunal added up 15% of Rs.9,120/- towards future prospects and, thus, fixed the income at Rs.10,488/-, for computing the loss of contribution to the family.

7. Upon perusal of Ex.P-7, legal heir certificate, the Claims Tribunal has noticed that besides respondent No1/wife, the other claimants are daughters of the deceased, all married. Though compensation has been claimed for them also, having noticed their marital status, the Claims Tribunal, by observing that they are not entitled to claim compensation, except under the head 'loss of love and affection', deducted 1/3 towards personal and living expenses of the deceased. After deducting 1/3 from Rs.10,448/- equivalent to Rs.6,992/-, the Tribunal rounded off the same to Rs.7,000/-; and computed the loss of contribution to the family.

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8. For determining the age of the deceased, the Claims

Tribunal, as per the entry in Ex.P-4, Post-mortem Certificate, and Ex.P-5, Death Report, fixed the age of the deceased as 55 years. The multiplier applied for computing the loss of contribution is 11. The total compensation awarded under the head 'loss of dependency' is Rs.9,24,000/- (Rs.7000x12x11).

9. Following the decision of the Hon'ble Supreme Court in *Rajesh v. Rajbir Singh and Others*, reported in 2013 (9) SCC 54, the Claims Tribunal has awarded a sum of Rs.1,00,000/- to respondent No.1, wife, towards 'consortium'. A sum of Rs.25,000/- has been awarded under the head 'transportation'. As per the decision in *Rajesh's* case, cited supra, a sum of Rs.25,000/- has been awarded towards funeral expenses. As the other respondents have lost love and affection of their father, the Claims Tribunal has awarded a sum of Rs.1,00,000/- under the head 'loss of love and affection'. A sum of Rs.25,000/- has been awarded under the head 'loss of estate'. Altogether, the Claims Tribunal has awarded a sum of Rs.11,99,000/- with interest at the rate of 7.5% from the date of claim till the date of deposit.

10. Though Mr.P.Paramasivadosh, learned counsel for the appellant, has assailed the correctness of the findings of the Tribunal, fixing negligence on the driver of the Transport Corporation bus, bearing registration No.TN-01-N-6778, on the grounds, inter alia, that the Tribunal has failed to verify the details of the criminal case registered against the driver and that, it also failed to consider that the deceased had contributed to the accident, this Court is not inclined to accept the said submissions, for the reason, that the oral testimony of P.W.1, wife, as regards the manner of accident, is duly supported by an eye witness P.W.2, and corroborated by Ex.P-1 FIR, Ex.P-2 Rough Sketch, and Ex.P-6 Copy of Chargesheet.

11. Though the appellant Corporation in his counter affidavit has projected a case that it was the motorcyclist, who dashed against the bus, fell down and sustained injuries, there is, absolutely, no corroborative evidence to that effect.

12. Yet another fact to be considered is that the appellant State Transport Corporation has not examined the driver of the bus, alleged to have caused the accident. When the Transport Corporation has failed to examine the driver, against whom accusation is made, adverse inference can always be drawn. Reference can be made to the following decisions.

(i). In *New India Assurance Co. Ltd., v. Debajani Sahu* reported in I (2002) ACC 103 (Ori.), the Orissa High Court held that,

"8. In the present case, the Claims Tribunal found about the negligence of the bus driver on the basis of the evidence of the P.Ws. It is contended that P.W. 2 himself being the driver employed by the deceased was a highly interested witness and his evidence cannot be accepted as reliable. There is no dispute in the fact that the accident was caused involving the scooter and the bus. Even assuming that the evidence of P.W. 2 is not accepted, still then the doctrine of *res ipsa loquitur* is applicable. In such a situation, the owner of the bus should have examined the driver of the bus to explain the circumstances under which the accident occurred, as the other person involved in the accident having died cannot speak from the grave to explain

the circumstances under which the accident had taken place. Of course, the bus owner has remained ex-parte, but no attempt was made by the Insurance Company which was contesting the case even on merit (whether justifiably or not is immaterial), has not chosen to adduce any evidence to rebut the evidence of P.W. 2, not has bothered to summon the bus driver to explain the circumstances under which the accident took place. In such a case, an adverse inference can be drawn against the owner/Insurance Company for not examining the bus driver who would have been the best witness to explain the circumstance under which the accident occurred. In such view of the matter, the finding of the Tribunal on the question of negligence cannot be assailed and the contention in this regard raised by the Counsel for the appellant cannot be accepted."

(ii). In *Sitabai v. Ishak Hussain* reported in I (2001) ACC 761 (DB), the Madhya Pradesh High Court, at Paragraph 5, held as follows:

"5. In this case, the claimants could not examine any eyewitness of the accident. It was difficult for the claimants to search an eyewitness as the claimants were not present on the spot at the time of accident. This difficulty is avoided by applying the maxim *res ipsa loquitur*. Their Lordships of the Supreme Court in case of *Puspabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.*, reported in 1977 ACJ 343 (SC), observed:

"The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident 'speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the

management used proper care."

In this case, the respondent No. 1 was driving the vehicle which left the road and dashed against a tree. In view of this maxim, the burden shifts on the respondent No. 1 to prove that he was not negligent. It was in the special knowledge of respondent No. 1 as to how the vehicle left the road and came down and struck against a tree. The respondent No. 1 did not examine himself. Under such circumstances, adverse inference that he drove the vehicle in a rash and negligent manner as a result of which this accident occurred, shall be drawn against him. The learned Tribunal committed error in not applying this maxim. We hold that the accident occurred due to rash and negligent driving of the vehicle by respondent No. 1."

(iii). In *Beni Bai & others v. A. Salim & another* reported in II (1999) ACC 408 (DB) (M.P.), the Madhya Pradesh High Court, held as follows:

In the circumstances, for non-examination of the material witnesses particularly the driver and the conductor, who had the first hand knowledge of the manner in which the accident occurred, necessarily an adverse inference has to be drawn against the respondents. For want of evidence on behalf of the respondents, the plea raised in defence cannot be said to be established. On the other hand, the appellants have examined Atmaram, A.W.1. who was at the spot, who stated that at the bus stop when the passengers were getting down from the bus, the driver without seeing that the passengers have got down or not, started the bus and there one boy came under the wheel of the bus. From the circumstances, it cannot be inferred that the deceased might have jumped from the running bus. Hence it was the duty of the driver and conductor to have taken care to see whether passengers have got down from the bus or not, then only the driver could have started the bus. As the driver and conductor have failed in their duties to take care, we hold that the accident occurred due to negligence of the driver of the city bus. This Court in similar circumstances where the same type of defence was taken, has observed that it is the driver of the passenger bus who has to take care that the passengers who wish to get down from the bus have got down and then to start the bus. But that care was not taken. Therefore, it was held that the accident was caused because of the negligence of the driver and conductor.

Rash and negligent driving is a personal act of the driver of a vehicle, who had caused the accident. On the facts and circumstances of the case, the State Transport Corporation has failed to prove the same, and, as stated supra, it has not even examined the driver.

13. 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 or it is a case of no evidence. Hence, the finding of negligence fixed on the driver of the State Transport Corporation, is confirmed.

14. In so far as the quantum of compensation of Rs.11,99,000/- awarded to the legal representatives of the deceased with interest at 7.5% per annum from the date of claim, it is the case of the Transport Corporation that the Tribunal ought to have fixed Rs.3,000/- only as the monthly income of the deceased, for computing the loss of contribution to the family. It is the further case of the Transport Corporation that Rs.9,120/-, fixed by the Claims Tribunal, on the basis of Service and Salary Certificate issued by Thirumala Associates, is erroneous, for the reason that Ex.P-11 Salary Certificate, issued by the employer, does not bear the seal of Thirumala Associates.

15. To support the avocation and income earned by the deceased, normally the legal representatives would examine either the employer or his representative. Income or Salary Certificate would also be marked. In the case on hand, a representative of Thirumala Associates, who has been examined as P.W.3, has deposed that between 2002 and 04.10.2010, the deceased was engaged as a driver and, at the time of accident, he was paid Rs.9,500/- as salary, besides daily batta of Rs.250/-. Ex.P-11 is the Salary Certificate, but, it did not contain the seal of Thirumala Associates, whereas, as per Ex.P-9, Salary Certificate issued by Thirumala Associates, the monthly income of the deceased was Rs.9,120/-. The oral testimony of P.W.1, wife, as regards avocation and monthly income earned by the deceased at the time of accident, is fully supported by the version of P.W.3, a representative of Thirumala Associates, and Ex.P-9 Service and Salary Certificate. Ordinarily, a certificate issued by the employer would not bear any seal. It could be on a letter head of the employer, even without any seal.

16. Considering the then prevailing cost of essential commodities, price index, inflation and the requirement as to meet out the expenses towards food, shelter, transportation and other basic amenities, a sum of Rs.9,120/- fixed as monthly income, on the basis of oral and documentary evidence adduced by the respondents/claimants, cannot be said to be on the higher side. The deceased was stated be aged 55 years and there is no dispute over that.

17. Though in Sarala Verma v. Delhi Transport Corporation, 2009 (6) SCC 121, the Hon'ble Supreme Court has held that there need not be any addition under the head 'future prospects' if the age of the deceased is beyond 50 years, the Tribunal has added up 15% of the income of Rs.9,120/- towards future prospects and, thus, taking the actual income of the deceased as Rs.10,448/-, applied 1/3 multiplier, for computing the loss of dependency. Addition of 15% income, in our opinion, can be justified, by applying the ratio of the subsequent decision of the Apex Court in Rajesh and Others v. Rajbir Singh and Others, reported in 2013 (9) SCC 54, wherein, at paragraph No.9, the Hon'ble Supreme Court has held that "Having regard to the fact that in the case of those self-employed or on fixed wages, where there is

normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable." Funeral expenses of Rs.25,000/- can also be justified, in terms of the judgment of the Hon'ble Supreme Court in Rajesh's case, cited above, wherein, at paragraph 18, the Apex Court has held as follows :

"18. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head "funeral expenses". The "price index", it is a fact has gone up in that regard also. The head "funeral expenses" does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is a follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of "funeral expenses", in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

It is noticed, that, in the said judgment, the accident had occurred on 05.10.2007, whereas, in the case on hand, it was on 04.10.2010.

18. A sum of Rs.1,00,000/- awarded under the head "consortium", though challenged by the appellant Corporation as excessive, has also been duly considered by the Apex Court in Rajesh's case, wherein at paragraph 17, it has been held as follows :

"17.... In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts

award at least rupees one lakh for loss of consortium."

19. Even taking for granted that sum of Rs.25,000/- awarded under the head "transportation" is on the higher side, having regard to the failure on the part of the Tribunal in awarding a reasonable compensation under the head "damage to clothes and articles" and the lesser amount of Rs.25,000/- awarded under the head "loss of estate" to the daughters, the amount, if any excess under the head "transportation", can be adjusted.

20. On going through the entire award and the methodology adopted by the Claims Tribunal in apportioning the compensation under the context, we find that the appellant Corporation has not made out any case on merits, warranting interference, on the finding of the Tribunal, fixing negligence on the driver of the appellant Corporation bus, or the quantum of compensation awarded to the legal representatives of the deceased.

21. There are no merits in the appeal. Civil Miscellaneous Appeal is dismissed. Consequently, the appellant Corporation is directed to deposit the entire award amount with accrued interest and costs, less statutory deposits already made, within a period of six weeks to the credit of of M.C.O.P.No.3895 of 2010 on the file of Motor Accident Claims Tribunal-cum-V Court of Small Causes, Chennai. On such deposit being made, the respondents/claimants, being majors, are permitted to withdraw the shares apportioned to them, with proportionate accrued interest, by filing necessary application before the Tribunal. No costs. The connected M.P.No.1 of 2015 is closed.

-sd/-

ASSISTANT REGISTRAR (CS-II)

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SUB-ASSISTANT REGISTRAR

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To

The Motor Accident Claims Tribunal-cum-V Small Causes Court, Chennai.

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+1 CC to MR.P.Paramasiva Doss ADVOCATE. SR.NO. 44800

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