

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2015

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THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.No.1738 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Division-II,
Salem. Respondent/Appellant

vs.

1.Lakshmi
2.Minor Sivaranjini
3.Ambujam

(Minor respondent 2 is
represented through their
next friend and mother, the first
respondent).
Petitioners/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 27.09.2013 passed in M.C.O.P.No.592 of 2009 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge), Cuddalore.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.D.S.Thirumavalavan

J U D G M E N T

The Tamilnadu State Transport Corporation is on appeal challenging the award dated 27.09.2013 passed in M.C.O.P.No.592 of 2009 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge), Cuddalore.

2. It is a case of fatal accident. On 14.09.2005 at about 4.00 a.m., when the deceased Pachaiyappan was changing the punctured right side back wheel of the lorry, the appellant transport corporation bus

bearing Registration No.TN290N-1565 came from Bangalore side to Tiruvannamalai in a rash and negligent manner and hit against the deceased at Paichal, Thiruvannamalai. As a result of the accident, the bus ran over on him and died on the spot. The postmortem was done by the Government Hospital, Tiruvannamalai. His wife, minor daughter and mother have filed a claim for compensation in a sum of Rs.10,00,000/- According to the claimants, the deceased was working as a lorry driver and was earning a sum of Rs.6,000/- per month.

3. In support of the claim, the wife of the deceased was examined as P.W.1. P.W.2 is the occurrence witnesses. Exs.P-1 to P-8 were marked, the details of which are as follows:-

Ex.P-1 is the copy of FIR dated 14.09.2005,
Ex.P-2 is the copy of MVI report dated 15.09.2005
Ex.P-3 is the copy of postmortem certificate dated 14.09.2005
Ex.P-4 is the original driving licence of the deceased Pachaiyappan
Ex.P-5 is the copy of driving license pertaining to the respondent's
(appellant herein) driver
Ex.P-6 is the copy of the RC pertaining to the respondent's driver
(appellant herein)
Ex.P-7 is the copy of death certificate
Ex.P-8 is the copy of legal heir certificate.

The driver of the appellant transport corporation bus was examined as R.W.1. Exs.P-1 to P-8 were marked, the details of which are as follows:-

Ex.R1 is the copy of the complaint.
Ex.R2 is the copy of the petition
Ex.R3 is the postal acknowledgement cards.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that there was no contra evidence on the side of the appellant herein with regard to the negligence came to conclusion that the accident had occurred only due to the rash and negligent act of the driver of the appellant transport corporation bus and consequently fixed the liability on the appellant transport corporation to compensate the claimants. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No.	Head	Amount granted by the Tribunal
1	General compensation to the dependents of the deceased (Rs.3,375/-x 12 x 17 = Rs.6,88,500/-)	Rs.6,88,500/-
2	Loss of love and affection	Rs. 30,000/-
3	Funeral expenses	Rs. 10,000/-
4	Loss of consortium to wife	Rs. 20,000/-
	Total	Rs.7,48,500/-

6. Insofar as the compensation is concerned, based on the evidence of the first claimant, as against the income of Rs.6,000/- per month claimed, the Tribunal fixed the income of the deceased at Rs.4,500/- per month in respect of the 27 years old deceased, a driver having valid driving licence. This income can be justified in view of the fact that the accident in this case happened in the year 2005 and on the basis of the following decisions:-

(a) A Division Bench of this Court in B.Anandhi - vs. - Latha reported in 2002 ACJ 233 (P.SATHASIVAM, J., as he then was) observed that a coolie would earn Rs.100/- per day. In that case, the accident happened in the year 1995.

(b) The Apex Court in State of Haryana and another - vs. - Jasbir Kaur and others reported in 2004-1 Law Weekly, was of the view that an agriculturist would earn Rs.3,000/- per month. In that case, the accident happened in the year 1999.

In the above cited cases, the income of the deceased was taken at Rs.3,000/- per month for the year 1995 and 1999 respectively, whereas in the present case, the accident happened in the year 2005. Considering the same, the income of the deceased, a 27 years old driver supporting, wife children and mother and also considering the rise in cost of living and inflationary trend, the income fixed by the Tribunal is justified.

7. The Tribunal deducted $\frac{1}{4}$ towards personal expenses of the deceased. This appears to be justified.

8. The Tribunal adopted 17 multiplier in terms of Second Schedule to Section 163A of the Motor Vehicles Act, considering the age of the deceased who was 27 years old at the time of death and this is in consonance of the Apex Court's decision in Sarla Verma - vs. - Delhi Transport Corporation, 2009(2) TNMAC 1 (SC). Therefore, this Court finds no good reason to reduce the multiplier and the quantum of compensation awarded.

9. There is no serious objection in respect of the other amounts granted or the interest granted at 7.5% per annum.

10. Finding no merit, the Civil Miscellaneous Appeal is dismissed at the admission stage. Counsel for the appellant seeks eight weeks' time to deposit the award amount. Time is granted to deposit the award amount together with interest and costs, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the major claimants are permitted to withdraw their respective share as ordered by the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

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s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

The I Additional District Judge,
(Motor Accidents Claims Tribunal)
Cuddalore.

+ 1 cc to Mr.D.Venkatachalam, Advocate SR 44739

+ 1 cc to Mr.D.S.Thirumavalavan, Advocate SR 45252

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