

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2015

CORAM:

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

C.M.A.No.1824 of 2015
M.P.No.1 of 2015

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Anna Salai, Chennai-2.

... Appellants/1st Respondent

versus

1.D.Akilandeswari
2.D.Hashni (Minor)
3.D.Vijayalakshmi

(Minor 2nd Respondent is represented
by her mother, 1st respondent)

... Respondents/
Petitioners & 2nd
Respondent

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.1372 of 2011, dated 01.04.2014, on the file of the Motor Accident Claims Tribunal (IIInd Court of Small Causes) Chennai.

For Appellant : Mr.S.Sivakumar

JUDGMENT

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

Challenge in this appeal, filed by the Managing Director, Metropolitan Transport Corporation Ltd., Chennai, is to the judgment and decree in M.C.O.P.No.1372 of 2011, dated 01.04.2014, on the file of the Motor Accident Claims Tribunal (IIInd Court of Small Causes) Chennai, by which, the Claims Tribunal has awarded compensation of Rs.15,08,000/-, with interest, at the rate of 7.5%, from the date of claim.

2. It is the case of the 1st respondent/claimant that on 11.12.2010, about 10.15 Hours, when her husband, Mr.D.Durga

Ram, was riding a Motorcycle, bearing Registration No.TN 02 AL 0025, along with one Selvam, as Pillion Rider, from Guindy to Anna Nagar, along C.I.T. Nagar, 1st Main Road, in South-North direction, opposite to Volkswagen Car showroom, a bus, bearing registration No.TN 01 N 3861, owned by the appellant-Transport Corporation, came from behind, in a rash and negligent manner, hit the motorcycle, due to which, the deceased fell down, sustained injuries and died on the spot. A case in Cr.No.483/S2/2010, under Sections 279 and 304(A) IPC., has been registered on the file of J-3 Guindy Police Station. At the time of death of the deceased, the 1st respondent/claimant was carrying her seven months old child in the womb. For the death of her husband, she filed compensation of Rs.18,00,000/-.

3. Opposing the claim, Metropolitan Transport Corporation (Chennai) Ltd., appellant herein, in its counter affidavit, has submitted that the accident has occurred, solely due to the rash and negligent driving of the motorcyclist, who attempted to overtake the Transport Corporation bus, through the gap between the bus and an autorickshaw, measuring a width of 3 to 4 feet. The moving autorickshaw grazed against the motorcyclist and as a result of which, the motorcyclist further grazed on the front left side body of the bus, lost his balance, fell down on the road, sustained injuries and later on, died. Without prejudice to the above, they disputed the age, avocation and income of the deceased and the compensation claimed under different heads.

4. Before the Claims Tribunal, 1st respondent/claimant examined herself as PW.1 and reiterated the manner of accident. PW.2, is stated to be an eye-witness. Documents, Ex.P1 - FIR, Ex.P2 - Rough Sketch, Ex.P3 - Driving Licence, Ex.P4 - Post-Mortem Certificate, Ex.P5 - Death Report, Ex.P6 - Legal Heir Certificate, Ex.P7 - Registration Certificate for Business Registration, Ex.P8 - Pan Card, Ex.P9 - Marriage Invitation, Ex.P10 - H.S.C Mark Sheet of PW.1 and Ex.P11 - Charge Sheet, have been marked on the side of the respondents/claimants. On behalf of the appellant-Transport Corporation, no oral or documentary evidence has been adduced.

5. On evaluation of pleadings and evidence, the Claims Tribunal found that the driver of the bus, bearing registration No.TN 01 N 3861, owned by the appellant-Transport Corporation, was negligent in causing the accident and quantified the compensation at Rs.15,08,000/- with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

Heard the learned counsel appearing for the appellant-Transport Corporation and perused the materials available on record.

6. Though Mr.S.Sivakumar, learned counsel for the appellant Transport Corporation submitted that the deceased, while attempting to overtake the bus, in the gap, between the bus and autorickshaw, grazed against the autorickshaw and touched the front left side body of the bus, fell down and sustained fatal injuries, this Court is not inclined to accept the same, for the simple reason that if there was any autorickshaw, 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 occurred. On the other hand, evidence of PW.1, is supported by PW.2, Arumuman, an eye-witness and corroborated by Ex.P1 - FIR, Ex.P2 - Sketch and Ex.P11 - Charge Sheet. Except R.W.1, driver of the bus, nobody has been examined to corroborate his version. No document has also been marked.

7. 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."

8. 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."

9. In *Bimla Devi & Ors. Vs. Himachal RTC* reported in 2009 (13) SCC 530, the Supreme Court held as follows:

"It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

10. It is the well settled law that proceedings before the Claims Tribunal are 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 rebuttal evidence, the finding of the Tribunal regarding negligence cannot be termed as perverse or it is not a case of no evidence.

11. Insofar as the quantum of compensation is concerned, P.W.1, wife of the deceased has adduced evidence that the deceased was a T.V.Mechanic and Proprietor of M/s.Om Sakthi Electrical, Chennai. To support the same, she has marked Ex.P7 - Registration Certificate of M/s.Om Sakthi Electrical, Chennai, Ex.P8 - Pan Card of the deceased. Having regard to the age of the deceased, documents, stated supra and the present day hike in the cost of the commodities, the Claims Tribunal fixed the monthly income of the deceased as Rs.7,500/-. Following the decision made in *Rajesh v. Rajbir Singh* reported in 2013 (2) TNMAC 55 (SC), the Claims Tribunal has added up Rs.2,250/- (30% of the monthly income) towards future prospects. Hence, the Tribunal has fixed the monthly income of the deceased at Rs.9,750/-, for the purpose of computing the loss of dependency.

12. Following the decision in Sarla Verma v. Delhi Transport Corporation reported in 2009 (5) LW 561, the Claims Tribunal applied '16' multiplier for computing the compensation. After deducting $1/3^{\text{rd}}$ towards personal and living expenses of the deceased, the Claims Tribunal has awarded Rs.12,48,000/- (Rs.9,750 x 12 x 18 x $1/3$), towards loss of dependency. Besides, the Claims Tribunal has awarded Rs.15,000/- towards Funeral Expenses, Rs.75,000/- for loss of consortium, Rs.1,20,000/- for loss of love and affection and Rs.50,000/- for loss of expectation. Altogether, the Claims Tribunal has awarded Rs.15,08,000/-, as total compensation.

13. Compensation of Rs.50,000/- under the head, loss of expectation, cannot be sustained. On the aspect of awarding lesser compensation for funeral expenses, in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Supreme Court held as follows:

"21. 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 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/-.

14. There is no compensation under the head, Transportation and loss of damages to clothes and articles. Considering the age of the wife, who has lost the consortium of her husband, a higher compensation can be awarded. There is no award under the head, loss of estate. Minor child has lost the guidance of her father. Excess amount of Rs.50,000/- awarded under the head, loss of expectation, can be adjusted against other heads.

15. Accident has occurred on 11.12.2010. The Claims Tribunal has taken note of the decisions of the Apex Court, while arriving at the quantum of compensation. Though the quantum of compensation is stated to be on the higher side, having regard to the avocation that the deceased was a

proprietor of M/s.Om Sakthi Electrical, Chennai, a sum of Rs.9,750/-, taken into consideration by the Claims Tribunal, for computing the loss of contribution to the family, cannot be said to be on the higher side. Quantum of compensation of Rs.15,08,000/-, awarded to the legal representatives of the deceased, cannot be said to be on the higher side, warranting interference.

16. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Transport Corporation is directed to deposit the award amount, with accrued interest and costs, to the credit of M.C.O.P.No.1372 of 2011, on the file of the Motor Accident Claims Tribunal (IIInd Court of Small Causes) Chennai, within a period of six weeks from the date of receipt of a copy of this order. The share of the minor shall be deposited in any of the Nationalised Banks in fixed deposit, under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minor shall be paid to the guardian once in three months, till she attains majority. On such deposit being made, except the minor, the respondents/claimants are permitted to withdraw the same, by making necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

skm

To

The Motor Accident Claims Tribunal
(IIInd Court of Small Causes) Chennai.

+1cc to Mr.S.Siva Kumar, Advocate, S.R.No.49060

C.M.A.No.1824 of 2015

MG(CO)
CA(16/10/2015)