

In the High Court of Judicature at Madras

Dated: 11.09.2015

Coram:

The Hon'ble Mr.Justice S.MANIKUMAR
and
The Hon'ble Mr.Justice M.VENUGOPAL

C.M.A.No.2076 of 2015

and

M.P.No.1 of 2015

Metropolitan Transport Corporation
(Chennai Division) Ltd.,
Rep. By its Managing Director,
Pallavan Salai, Chennai - 2 ..Appellant/Respondent
Vs.

1. S.Sathyakala
2. S.Anandhi (Minor)
Rep by her mother R1
3. R.Kalaiselvi
4.V.Rajamanickam ..Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to set aside the Judgment and Decree made in M.C.O.P.No.2116 of 2012 dated 11.03.2014 on the file of the Motor Accidents Claims Tribunal (III Court of Small Causes) Chennai.

For Appellant : Mr.S.Sivakumar

J U D G M E N T

[Judgment of the Court was delivered by
M.VENUGOPAL, J.]

The Appellant/Transport Corporation has preferred the instant the Civil Miscellaneous Appeal as against the Award dated 11.03.2014 in M.C.O.P.No.2116 of 2012 passed by the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai.

2.The Motor Claims Tribunal while passing the Award in M.C.O.P.No.2116 of 2012 (on a Claim Petition filed by the Respondents/Claimants) had resultantly held that the

Respondents are entitled to a total compensation of Rs.16,65,000/- (including interim award passed, if any) and directed the Appellant/Transport Corporation to deposit the same with interest at 7.5% per annum from the date of filing of the Petition, ie., 30.03.2012 till the date of deposit, within two months from the date of Award. Accordingly, the Tribunal allowed the Claim Petition with proportionate costs.

3.It transpires that the Claimants Tribunal, in the Award had mentioned that the 1st Respondent/Wife of the deceased was entitled to receive a sum of Rs.9,65,000/-, the 2nd Respondent/2nd Petitioner (daughter) was entitled to Rs.5,00,000/- and the 3rd and 4th Respondents (Parents of the deceased) were ordered to receive Rs.1,00,000/- each. Moreover, the Tribunal had directed that the share amount of the 1st, 3rd and 4th Respondents/Petitioners were to be deposited in any one of the 'Nationalised Banks' for a period of three years in cumulative deposit. Also it further had directed the share amount of the minor, 2nd Respondent/2nd Petitioner to be deposited in a 'Nationalised Bank' in fixed deposit till the minor Respondents/Petitioners attained majority. Further, the 1st Respondent/1st Petitioner being the mother of the 2nd Respondent/2nd Petitioner (minor) was directed to withdraw the accrued interest once in three months directly from the Bank.

4.Challenging the validity and legality of the Award passed by the Learned III Court of Small Causes, Chennai (Motor Accident Claims Tribunal) dated 11.03.2014, the Appellant/Transport Corporation has projected the present Civil Miscellaneous Appeal contending that the Award passed is an erroneous one, besides the same being contrary to Law, weight of evidence and probabilities of the case.

5.The Learned Counsel for the Appellant urges before this Court that the Claims Tribunal had committed an error in coming to the conclusion that the driver of the Appellant's Bus drove the vehicle in a rash and negligent manner and was responsible for the accident by discarding the evidence of R.W.1.

6. The Learned Counsel for the Appellant proceeds to take a plea that the Tribunal had failed to take into account that the accident took place only due to the negligence of the deceased and should have dismissed the Claim Petition. Further, the Tribunal should have fixed only 50% 'Contributory Negligence' on the part of the Appellant because of the reason that the accident took place owing to the 'Negligence' of the deceased.

7.The Learned counsel for the Appellant takes a stand that the Tribunal had erroneously added 50% towards Future Prospects, Rs.25,000/- - Funeral Expenses, Rs.1,00,000/- towards Love and Affection without any documentary evidence. Therefore, the amounts of the awarded under these heads are highly an excessive and arbitrary one. Added further, the Tribunal had erroneously adopted a multiplicand of '15' for the age of 38.

8.Before the Claims Tribunal, the Respondents/Petitioners in Paragraph No.23 of the Claim Petition stated that 'on 25.03.2012 at about 08.00 hrs, the deceased was travelling in a bus bearing registration No.TN-01-N-9847 from Guindy to Koyambedu, along 100 Feet Road, south to north direction and while the said bus was so proceeding near Kasi theatre signal point it stopped for want of signal. Further, the deceased was getting down from the bus and at that time, the driver of the bus without noticing the alighting of the passenger, moved the bus in a rash speed and negligent manner, due to which the deceased fell down and suffered serious injuries and died during the course of treatment on 26.03.2012. Moreover, the Respondent/Petitioners had also stated that the accident had taken place solely due to the rash and negligent driving of the bus bearing Registration No.TN-01-N-9847. As such, the Appellant/Respondent being owner of the bus is vicariously and statutorily responsible to pay compensation'.

9.The Respondents Nos. 1 to 4 / Petitioners in their claim petition had claimed a total sum of Rs.19,00,000/- as compensation. It is not in dispute that the Respondents 1 to 4 / Applicants are the sole surviving 'Legal Heirs' of the deceased Sivakumar (being the Wife, Daughter and Parents of the Deceased).

10.The Claims Tribunal had awarded a total compensation of Rs.16,65,000/- for the death of one R.Sivakumar by awarding compensation amounts under the various heads and the calculation of the said amounts mentioned as follows:-

Pecuniary Loss	-	Rs.	14,40,000
Loss and Consortium	-	Rs.	1,00,000
(Awarded to the 1 st respondent/1 st Claimant- Wife of the deceased)			
Funeral Expenses	-	Rs.	25,000
Love and Affection	-	Rs.	1,00,000
=====			
TOTAL		Rs.	16,65,000
=====			

11.The prime plea of the Appellant/Transport Corporation before this Court is that the Driver of the Appellant's bus bearing Regn. No.TN-01-N-9847 was not rash and negligent at the time of accident and further that in the Ex.P.1, First Information Report, it was mentioned that the accident had occurred due to the rash driving of the Transport Corporation's driver and the deceased fell down from the stationed bus at Kasi Theatre signal and fell down, since the driver started the bus in a rash and negligent manner. That apart, Head Constable one C.Vedhanayagam who was deputed at Kasi Theatre signal to perform traffic duty saw the male passenger falling down from the running bus at the time of its slow movement. In any event, the deceased/passenger was guilty of "Contributory Negligence"

12.Before the Tribunal, Ex.P.1 an attested copy of First Information Report in Crime No.110 of 2012 (registered by the J3 Guindy Traffic Investigation) was marked on the side of the claimants.

13. It is to be pointed out that when a plea of negligence is stated in petition it is to be proved by preponderance of probability. As a matter of fact, the concept of 'Contributory Negligence' implies that there has been a positive act by the party which resulted in an accident. In short, 'Contributory Negligence' can be inferred from the evidence adduced by the parties.

14. It is to be borne in mind that the true meaning of the term 'Contributory Negligence' is nothing else than negligence which causes or contributes to the injury or damage as per decision Caswell V. Powell Duffryn Associated Collieries (1939) 3 All E.R. 722 (HL).

15. In fact, in the decision Lewis V. Denye (1939) 1 All E.R. 310, 317 Du Parc LJ observed that 'the Doctrine of Contributory Negligence cannot be based upon a breach of duty to the negligent defendant'.

16. Further, in the decision Nance V. British Columbia Electric Railway Company 1951 (2) All E.R. at Page 448 and at Special Page 450 (PC) Viscount Simon observed that 'When Contributory Negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued, and all that is necessary to establish such a defence is to prove to the satisfaction of the jury that the injured party did not in his own interest take reasonable care of himself and contributed by this want of care to his own injury'.

17. In the decision *Swarna Lata V. Union of India* AIR 1963 Assam at Page 117 it was held that 'a defence based on 'Contributory Negligence' proceeds on the assumption that the claimant/plaintiff was himself negligent because he had the last opportunity to avoid the accident and did not do it or that he did not act with reasonable care and prudence and this negligence was the direct cause of the accident but for which the accident would not have taken place'.

18. In the decision *Ramesh V. Union of India* AIR 1965 Patna at page 167 it is held that 'principle of Contributory Negligence' is that the plaintiffs' negligence has contributed in part to his own harm and this reduces the damages payable to him and thus, affects the measure of damages.

19. In the decision *Union of India V. Supriya Ghosh* A.I.R. 1973 Patna at Page 129 it is held that 'the defence of Contributory Negligence' is appropriately concerned with the quantum of damages, and it is no bar to an action in 'Tort'.

20. In the decision *Sushma Mitra V. M.P. State Road Transport Corporation* 1974 MPLJ 16 at Pages 25 and 26 it is held that the plaintiff was not negligent in resting the elbow on the window-still of the bus as in the circumstances she could not have foreseen any harm to herself by so doing.

21. When the deceased was inside the bus and fell out because the driver took a sharp turn on the round about at a fast speed, it was held that the accident resulting in the death of the victim was due to the rash and negligence driving on the part of the bus driver as per decision *Smt. Bhagwani Devi V. Krishnakumar Saini* AIR 1985 P&H at page 347.

22. It is to be noted that there is no two opinion in regard to the fact that the driver of a bus which carries commuters/passengers owes a duty of care for their utmost safety and well being during their journey.

23. The complainant in Ex.P.1, First Information Report was one C.Vedhanayagam, Police Head Constable. Based on EX.P1, FIR, a Criminal case was registered against the driver of the bus belonging to the Appellant/Transport corporation bus. Also that Ex.P.5, Charge sheet was filed against the driver of the offending bus of the Appellant/Transport Corporation. In fact, the Police Head constable in Ex.P.1, FIR, as complainant, had stated that while he was on duty at 8.00 a.m., in the morning, the Metropolitan Bus bearing registration no.TN-01-N-9847 near Kasi theatre in the afore

said road in the direction of south to north came in a fast speed and when it came near the signal and slowed down at that time the passenger got down on the back of the stairs of the bus and fell down. Further, the bus came like halting, but driver of the bus had drove the bus speedily. When he went near the person, who had fallen down, the said person had sustained injury on right hand and on the left side of the back head. Further, he sent the said injured person to the hospital through an 108 Ambulance within a short time.

24. At this stage, it is pertinent for this Court to relevantly point out that the claims Tribunal, in its award had categorically stated that in the "First Information Report" it was mentioned as 'Hit and Run' but the driver of the Appellant's, offending vehicle was examined as R.W.1 (Before the Tribunal) had deposed that no accident took place in the alleged bus and that the bus had completed all its scheduled trips without any hindrance. As a matter of fact the evidence of R.W.1 (Driver) is quite contra to the Ex.P.1, Complainant's version that when he was deputed to duty near Kasi Theatre Signal, he saw a passenger getting down from the slow moving bus and at that time, the driver speedily took the bus without noticing the passenger getting down. As such, it is quite clear that the driver of the offending vehicle of the Appellant/Transport Corporation's bus was responsible for the accident and further due to his negligence the accident had occurred.

25. One cannot brush aside a very vital fact that it is the basic duty of the driver and conductor of the bus to check whether any person is boarding into the bus or getting down from the bus. In reality, the bus is moved from the bus stop where it halted, notwithstanding the fact that the said stop is a bus stop or not.

26. In the instant case, before the Claimants Tribunal, P.W.2 was examined on behalf of the Respondents 1 to 4 / the claimants and he had stated in his evidence that the deceased travelled in the bus bearing registration No.TN-01-N-9847 on 25.03.2012 at about 8.00 a.m and when the bus while proceeding along with 100 feet road, from south to north, at that time, near Kasi Theatre signal point, the bus was stopped and both were attempting to get down from the bus and that the driver without seeing the passengers getting down, moved the bus, as a result of which the deceased Sivakumar fell down and sustained serious injuries and he was taken to Government General Hospital in an ambulance and he had expired on 26.03.2012. Thus the evidence of P.W.2 unerringly points out that the driver of the Appellant/Transport Corporation's bus

was responsible for the happening of the occurrence/accident. Even though the deceased/passenger was attempting to get down from the bus 'No Contributory Negligence' could be attributed on his part, as in the circumstances he could not have foreseen any harm to himself by so doing.

27. In short, on the basis of Ex.P.1- First Information Report, Ex.P.5 - Charge Sheet, coupled with the evidence of eyewitness P.W.2, this Court comes to an inevitable and inescapable conclusion that R.W.1, driver of the Appellant's offending bus was squarely responsible for the happening of the accident and only because of his negligence and rash driving, the accident took place. Therefore, this Court rejects the unilateral, self interested testimony of the Driver viz., R.W.1 to the effect that no accident had taken place on 25.03.2012 at about 8.00 a.m and further that the bus had completed all its scheduled trips on that day without any hindrance.

28. The Respondent Nos. 1 to 4/Claimants in the claim petition had averred that the occupation of the deceased Sivakumar was Welder and was employed with M/s Shreemuve Pressure Castings and that his present income was Rs.6,250/- . In addition to monthly income, the deceased received Rs.2500/- - Rs.3500/- per month as overtime. P.W.3 in his evidence had deposed that the deceased Sivakumar worked as Welder cum Operator during the period from 01.09.2011 to 25.03.2012 and he earned a sum of Rs.8,418/- during February 2012. Apart from that, the deceased received Rs.40/- for an hour and in this process he received Rs.2,500/- by turning/overtime work. As a matter of fact, Ex.P.9, Salary statement indicates that the deceased Sivakumar received Rs.8,418/- during February 2012 and based on this, the Claims Tribunal had safely determined the monthly income of the deceased Sivakumar at Rs.8,000/- per month.

29. In regard to the age of the deceased at the time of accident, it is evident from Ex.P.3 Postmortem certificate that the deceased age was mentioned as 38 and in the absence of any other concrete document/evidence, this Court accepts Ex.P.3, Postmortem report, wherein the deceased age was mentioned as '38' and accordingly determines the age of the deceased Sivakumar at the time of accident as 38.

30. For arriving at a pecuniary loss, in regard to the death of the deceased Sivakumar, the Tribunal had taken into account 50% of the income for "Future Prospects" and accordingly arrived at a sum of Rs.4,000/- (Rs.8,000/- per month X 50/100) . Thus totally, the Tribunal had fixed the

monthly income of the deceased at Rs.12,000/-. From and out of his monthly income of Rs.12,000/-, the Tribunal had deducted 1/3rd sum namely Rs.4,000/- towards personal expenses of the deceased. As such, the pecuniary Loss per month was arrived at Rs.8,000/-. For one year, the same works out to Rs.8,000/-X12=Rs.96,000/-. Since the deceased age was determined at 38 at the time of accident, the multiplicand '15' was adopted by the Claims Tribunal. Viewed in that perspective, the pecuniary loss was determined at Rs.14,40,000/- (96,000x15) (Rupees Fourteen Lakhs and Forty Thousand only).

31.In so far as 'Loss of Consortium' to the 1st Respondent/1st Petitioner was concerned, the Claims Tribunal had awarded a sum of Rs.1,00,000/- (Rupees one lakh only) bearing in mind of a vital fact that at the time of the deceased husband's death, she was aged 29. This award of Rs.1,00,000/- (Rupees one lakh only) for Loss of Consortium to the 1st Respondent/1st Petitioner, is a just, fair and equitable one and as such, the same is not disturbed by this Court.

32.The Tribunal had awarded a sum of Rs.25,000/- (Rupees Twenty five thousand only) towards 'Funeral Expenses' on account of the death of the 1st Respondent/1st Petitioner's husband in a road accident and the same is not an excessive one. As such, the said amount is not displaced by this Court and the same is sustained.

33.Towards 'Love and Affection', the Respondents 1 to 4 / Claimants were awarded in all the sum of Rs.1,00,000/- (Rupees one lakh only) and certainly the same sum is not on the higher side, as opined by this Court. Therefore, the said amount is retained by this Court.

34.Thus, the total compensation of Rs.16,65,000/- (inclusive of 'No fall Liability') (Rupees Sixteen Lakhs and Sixty Five thousand only) granted in favour of the Respondents/Claimants for the death of R.Sivakumar by the Claims Tribunal in its award with interest at 7.5% per annum from the date of filing of the petition i.e., 30.03.2012 till the date of deposit to be paid by the Appellant/Transport Corporation does not suffer from any material irregularities or patent illegalities in the eye of Law.

35.Continuing further, even the apportionment of Rs.9,65,000/- (Rupees Nine Lakhs sixty five thousand only) to the 1st Respondent/1st Petitioner (wife of the deceased) and the grant of Rs.5,00,000/- (Rupees Five Lakhs) to the 2nd Respondent/2nd Petitioner and the entitlement of sum of

Rs.1,00,000/- (Rupees One Lakh only) granted in favour of Respondent Nos. 3 and 4 (Being the parents of the deceased) from and out of the total compensation awarded as stated supra are fair, valid and legally tenable one. Consequently, the Civil Miscellaneous Appeal fails.

In fine, the Civil Miscellaneous Appeal is dismissed leaving the parties to bear their own costs. The Award passed by the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai in M.C.O.P.No.2116 of 2012 dated 11.03.2014 is affirmed for the reasons assigned by this Court in this Appeal. Time for deposit is six weeks (less deposit of Rs.25,000/- already made) from the date of receipt of copy of the order. Consequently, Miscellaneous Petition is also closed.

sd/
ASSISTANT REGISTRAR (CS-III)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

ssd

To

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

+1 CC to MR.S.Sivakumar ADVOCATE. SR.NO. 50046

C.M.A.No.2076 of 2015 and
M.P.No.1 of 2015

CO-TEJ
JD 26/10/2015

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