

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.09.2015

CORAM

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

C.M.A.No.2195 of 2015
M.P.No.1 of 2015

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Anna Salai,
Chennai-2.Appellant/2nd Respondent

Vs.

1. V.Ezhilarasi
2. V.Sangeetha
3. V.Bala Manikandan
4. V.Krishnan
5. K.Damodaran (Driver)Respondents/Petitioners 1 to 4/
1st Respondent

Prayer: Appeal under Section 173 of the Motor Vehicles Act, 1988
against the Decree and Judgment passed by the Motor Accidents
Claims Tribunal (IIIrd Court of Small Causes), Chennai in
M.C.O.P.No.737 of 2011, dated 11.02.2014.

For Appellant : Mr.S.Sivakumar

JUDGMENT

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

Challenge in this appeal is to the finding, fixing
negligence on the driver of the Transport Corporation bus,
bearing Registration No.TN 01 N 4108 and the quantum of
compensation of Rs.12,90,500/-, awarded to the legal
representatives of the deceased.

2. Facts leading to the appeal are that on 16.06.2010,
about 6.45 A.M., when the 3rd claimant, V.Balamanikandan, along

with his mother, Dhanalakshmi, as pillion rider, was riding a motorcycle, bearing Registration No.TN 09 AJ 9448, from his house, at Nungambakkam, to his mother's office, near F3 Police Station, from South to North, a Metropolitan Transport Corporation bus, bearing Registration No.TN 01 N 4108, driven in a rash and negligent manner, by its driver, which came in the opposite direction, on the right side of the road, dashed against the motorcycle. As a result, both the rider and the pillion, fell down and sustained injuries. Mother died in the accident. In this regard, a case in Cr.No.194 of 2010, has been registered against the driver of the Metropolitan Transport Corporation bus, for the offences, under Sections 279 and 337 IPC., on the file of the R4 - Soundarapandiyanar Angadi Police Station. Husband of Dhanalakshmi, is stated to be pre-deceased. Children have filed M.C.O.P.No.737 of 2011, on the file of Motor Accidents Claims Tribunal (IIIrd Court of Small Causes), Chennai, claiming compensation of Rs.16,50,000/-. According to them, at the time of accident, the deceased was aged 45 years, working as a Sweeper in Division No.78, Corporation of Chennai and earned Rs.10,642/- per month.

3. The Metropolitan Transport Corporation Ltd., Chennai, has filed a counter affidavit and opposed the claim petition, on the grounds that, on enquiry with the crew, who had performed the duty 16.06.2012 (A.M., shift) in Route No.37/C, Registration No.TN 01 N 4108, no such accident occurred. No police complaint has been received from Police Control Room. It is also the contention that, in the accident register, it has been mentioned that the motorcyclist applied brakes and fell down and thus sustained injuries. For other reasons, stated in the counter affidavit, Corporation has denied negligence, attributed against its driver. Without prejudice to the above, they disputed the age, avocation and income of the deceased, and the compensation claimed under various heads.

4. Before the Claims Tribunal, Mr.V.Balamanikandan, motorcyclist, son of the deceased, examined himself as PW.1 and reiterated the averments made in the claim petition. PW.2, is stated to be the Sub-Inspector of Police, who registered the crime. Documents, Ex.P1 - Identity Card of the deceased, Ex.P2 - Voter Identity Card of the deceased, Ex.P3 - Pay Slip for the month of April' 2010, Ex.P4 - FIR in Cr.No.194 2010, registered on the file of R4 Pondy Bazaar Police Station, Ex.P5 - Post-mortem certificate, Ex.P6 - Death Report, Ex.P7 - Death Certificate, Ex.P8 - Legal Heir Certificate, Ex.P9 - Inquest

Report, Ex.P10 - Family Card, Ex.P11 - Pay Slip for the month of August 2009, Ex.P12 - Certificate regarding fire accident to the house, Ex.P13 - Paper publication, Ex.P14 - Outpatient Book, Ex.P15 - Medical Bills, Ex.P16 - Driving Licence, Ex.P17 - Insurance Policy and Ex.P18 - Registration Certificate, have been marked. Driver of the appellant-Transport Corporation bus, has been examined as RW.1, but no document has been filed.

5. Evaluating the oral and documentary evidence, the Claims Tribunal held that RW.1, driver of the bus, was negligent, in causing the accident. Accepting the contention of the respondents/claimants, as regards age, avocation and monthly income, the Claims Tribunal has determined the compensation at Rs.12,90,500/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit.

6. Placing reliance on the Accident Register, averred in the counter affidavit, Mr.S.Sivakumar, learned counsel for the appellant-Transport Corporation submitted that in the hospital, which treated the respondent/claimant, at the earliest point of time, PW.1, himself has stated that while going in the motorcycle, and to avoid hitting the bus, brakes were applied by him and thus, he fell down.

7. Learned counsel for the appellant-Transport Corporation therefore submitted that despite the specific averments made in the counter affidavit, filed by the Metropolitan Transport Corporation, the Tribunal has erred in not considering the same, in proper perspective and thus, committed a mistake in fixing negligence on the driver of the bus. He also submitted that the quantum of compensation awarded by the Claims Tribunal, is also excessive.

8. As regards the above submission, perusal of the impugned judgment, shows that the injured, PW.1, Mr.V.Balamanikandan, motorcyclist, has deposed that on the date of accident, while he was proceeding in his motorcycle, bearing Registration No.TN 09 AJ 9448, along with his mother, Dhanalakshmi, as his pillion rider, to his mother's office, near F3 Police Station, from South to North, a Metropolitan Transport Corporation bus, bearing Registration No.TN 01 N 4108, driven in a rash and negligent manner, by its driver, which came from the opposite direction, on the right side of the road, suddenly, came into left side of the road, dashed against the motorcycle, in front side and in the result, both fell down and sustained injuries. The pillion rider, Dhanalakshmi, sustained severe head

injuries and died.

9. PW.2, Mr.Ganesanathan, Sub-Inspector of Police, has deposed that on receipt of the complaint from Mr.Balamanikandan, at 8.45 A.M., on 16.06.2010, FIR was registered in Cr.No.194/2010, under Sections 279, 337 IPC., and thereafter, altered into 304-A IPC. After completion of investigation, charge sheet has also been filed against the driver of the bus in C.C.No.4448 of 2010. on the file of the Metropolitan Magistrate Court, Egmore, Chennai. Corroborating the oral testimony of Pws.1 and 2, the respondents/claimants have marked Ex.P4 - FIR. Upon perusal of the same, the claims Tribunal has observed that the contents of Ex.P4 - FIR, support the case of the respondents/claimants.

10. RW.1, driver of the Metropolitan Transport Corporation bus, has deposed that on the date of accident, i.e., on 16.06.2010, he had not driven the bus, pertaining to route No.17D. However, he has admitted that C.C.No.4448/2010, was pending against him, on the file of the 4th Metropolitan Magistrate Court, Chennai. According to him, on 16.06.2010, he was the driver of the bus, with Route No.37G. However, to substantiate that he was not the driver of the bus, with Route No.17D, or for the matter that he had driven the bus, with Route No.37G, no trip sheets of either of the buses, have been marked. Upon perusal of the contents of Ex.P4 - FIR, the Claims Tribunal has given a categorical finding that Registration Number of the bus, viz., TN 01 N 4148, has been clearly mentioned.

11. Thus, there is no doubt, as regards registration number of the bus, involved in the accident. As rightly observed by the Claims Tribunal, had RW.1, driver of the bus, not driven the bus, which caused the accident, nothing prevented him from producing the trip sheet of the vehicle, in which, he was engaged or to take steps to summon the relevant document from the Corporation. RW.1, has not chosen to do, either of the above.

12. Contentions advanced by Mr.S.Sivakumar, learned counsel for the appellant-Transport Corporation, on the basis of the xerox copy of the Accident Register, cannot be accepted for the sole reason that the said document has not been marked before the Claims Tribunal. Needless to state that mere averments made in the affidavit or counter affidavit, as the case may be, do not satisfy the test of proof.

13. 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."

14. 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."

15. 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."

16. 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.

17. In the light of the above discussion and the decisions, stated supra, we are of the view that the finding, recorded by the Claims Tribunal, fixing negligence on the driver of the Transport Corporation bus, bearing Registration No.TN 01 N 4108, does not warrant any interference and the same is confirmed.

18. On the quantum of compensation, it is the case of the respondents/claimants that the deceased was a Sweeper in Corporation of Chennai and earned Rs.10,642/-. To prove the same, legal representatives of the deceased have marked Ex.P3 - Pay slip for the month of April, 2010 and Ex.P11 - Pay slip for the month of August 2009. Upon perusal of Ex.P3 - Pay slip for the month of April, 2010, proximate to death, the Tribunal has found that the deceased had earned a gross salary of Rs.10,642/- per month, including the arrears of Rs.1,461/-. Therefore, the Claims Tribunal has fixed the monthly income of the deceased at Rs.9,175/-.

19. Having regard to the age of the deceased, 48 years, by applying a decision in Reshma Kumari and others v. Madan Mohan and another reported in 2013 (1) TNMAC 481 (SC), the Tribunal has added up 30% of the income and arrived at the monthly income of Rs.11,928/-, for the purpose of computing the loss of dependency. Taking into consideration, the decision in Sarla Verma v. Delhi Transport Corporation reported in 2009 (5) LW 561, the Tribunal has applied '13' multiplier. Thereafter, the Tribunal has deducted 1/3rd towards personal and living expenses and thus, calculated the loss of dependency of compensation at Rs.12,40,512/- (Rs.11,928/- x 12 x 13 x 1/3). That apart, the Tribunal has awarded Rs.10,000/- towards Funeral Expenses and Rs.40,000/- towards loss of love and affection. Altogether, the Claims Tribunal has awarded Rs.12,90,500/- with interest at the rate of 7.5% per annum, from the date of claim, till the date of

payment.

20. The method adopted by the Claims Tribunal, in computing loss of dependency compensation, cannot be said to be wholly illegal. Compensation awarded under the heads, Funeral Expenses and Loss of Love and Affection, is less. There is no award towards transportation and damages to clothes and articles. In the light of the above, the total compensation awarded to the legal representatives of the deceased, cannot be said to be on the higher side, warranting interference.

21. 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.737 of 2011, on the file of the Motor Accidents Claims Tribunal (IIIrd Court of Small Causes), Chennai, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents/claimants are permitted to withdraw the same, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

skm

To

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

2.The Record Keeper, V.R.Section,
High Court, Madras.

JSV (CO)
PSI (16.10.2015)

C.M.A.No.2195 of 2015