

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.10.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M. VENUGOPAL

C.M.A.No.2292 of 2015

M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore. .. Appellant/2nd Respondent

Vs.

1. N.Sivagami
2. Santhoskumar
3. Hariharan (Driver) .. Respondents/Petitioners
1 & 2/1st Respondent

Prayer: Appeal under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (Special Subordinate Judge), Coimbatore, in M.C.O.P.No.601 of 2013, dated 10.02.2015.

For Appellant : Mr.V.Udaya Kumar

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 38 N 2295 and the quantum of compensation of Rs.39,10,000/-, awarded to the legal representatives of the deceased.

2. Facts leading to the appeal are that on 12.03.2013, about 10.40 A.M., when the deceased N.Thirumoorthy, after completing his duty from LMV Company, Perinaickenpalayam, was riding a Motor Cycle, TVS Star City, bearing Registration No.TN 39 AH 8740, on the extreme left side of the road, near Angalaparameswari Temple at Kovilampalayam, a bus, bearing Registration No.TN 38 N 2295, owned by

the appellant-Transport Corporation, came in a rash and negligent manner, dashed against the motorcycle, due to which, the motorcyclist sustained grievous injuries and succumbed on the spot. In this regard, a case in Cr.No.50 of 2013, has been registered against the driver of the Metropolitan Transport Corporation bus, for the offences, under Sections 279 and 304-A IPC., on the file of the Kovilapalayam Police Station, Coimbatore. Mother and brother of the deceased have filed M.C.O.P.No.601 of 2013, on the file of Motor Accidents Claims Tribunal (Special Subordinate Judge), Coimbatore, claiming compensation of Rs.20,30,000/-. According to them, at the time of accident, the deceased was aged 36 years, as an Operator in M/s.Lakshmi Machine Works Ltd., earned Rs.25,134/- per month.

3. The Tamil Nadu State Transport Corporation Ltd., Coimbatore, has filed a counter affidavit and opposed the claim petition, on the ground that it was the motorcyclist, who was speaking over his cell phone, while riding the motorcycle and while attempting to cross the 11 feet road, dashed against the front side bumper, fell down and thus sustained injuries. For reasons stated supra in the counter affidavit, the Transport 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, mother of the deceased examined himself as PW.1 and reiterated the averments made in the claim petition. PW.2, Mr.S.Chandrasekaran, is stated to be an eye-witness. PW.3, Mr.Yuvaraj, Senior Officer (Personnel), Lakshmi Machine Works, Periyanaickenpalayam, Coimbatore, has been examined. Documents, Ex.P1 - FIR, Ex.P2 - Charge Sheet, Ex.P3 - Rough Sketch, Ex.P4 - Motor Vehicles Inspector's Report, pertaining to the vehicle, bearing Registration No.TN 39 AH 8740, Ex.P5 - Motor Vehicles Inspector's Report, pertaining to the vehicle, bearing Registration No.TN 38 N 2295, Ex.P6 - Post-Mortem Certificate, Ex.P7 - Death Report, Ex.P8 - Legal Heir Certificate, Ex.P9 - Pay Slip of the deceased for the month of October 2012, given by Lakshmi Machine Works, Periyanaickenpalayam, Coimbatore, Ex.P10 - Driving Licence, Ex.P11 - Authorization Letter of PW.3 and Ex.P12 - Salary 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.39,10,000/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit.

Heard Mr.V.Udayakumar, learned counsel for the appellant and perused the materials available on record.

6. As regards the manner of accident, PW.1, Mother/claimant has adduced evidence. PW.2, eye-witness, has stated that it was the driver of the bus, who drove the same, in a rash and negligent manner and caused the accident. Though the appellant-Transport Corporation has denied the manner of accident and also attributed negligence on the deceased, analysing the evidence of Pws.1 and 2, the Claims Tribunal has categorically recorded that the evidence of Pws.1 and 2 is duly corroborated by Ex.P1 - FIR, Ex.P2 - Charge Sheet, Ex.P3 - Rough Sketch, Ex.P4 - Motor Vehicles Inspector's Report, pertaining to the vehicle, bearing Registration No.TN 39 AH 8740 and Ex.P5 - Motor Vehicles Inspector's Report, pertaining to the vehicle, bearing Registration No.TN 38 N 2295.

7. The appellant-Transport Corporation, in its counter affidavit, has contended that when RW.1, driver, drove the bus, by observing the traffic rules and regulations, at a controllable speed and carefully negotiated a curve, near Angalammal Koil, Kottaipalayam, the motorcyclist, who came in the opposite direction, while speaking over Cell Phone, attempted to cross the 11 Feet road to the right side and dashed against the front right side bumper, fell down and sustained fatal injuries. To support their case, RW.1, Driver of the bus, has been examined. However, the oral testimony of RW.1, has not been supported by any independent evidence or corroborated by any document.

8. 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."

9. 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."

10. 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."

11. 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.

12. 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 38 N 2295, does not warrant any interference and the same is confirmed.

13. On the quantum of compensation, it is the case of the respondents/claimants that the deceased was an Operator in M/s.Lakshmi Machine Works Ltd., and earned Rs.25,134/-. To prove the same, legal representatives of the deceased have marked Ex.P9 - Pay slip for the month of October, 2012 and Ex.P12 - Salary Certificate. Upon perusal of the same, the Tribunal has found that the deceased had earned a gross salary of Rs.28,475/- per month, including the deduction of Rs.462/- towards Income-Tax. Therefore, the Claims Tribunal has fixed

the monthly income of the deceased at Rs.28,013/- and the same has been rounded-off to Rs.28,000/-.

14. Having regard to the age of the deceased, 36 years, by applying a decision in Rajesh v. Rajbir Singh reported in 2013 (3) CTC 883 (SC) and Santhosh Devi v. National Insurance Company Ltd., reported in 2012 (2) TNMAC 1 (SC), the Tribunal has added 30% of the income under the head, future prospects and arrived at the monthly income of Rs.42,000/-, 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. As the deceased was a bachelor, thereafter, the Tribunal has deducted 50% towards personal and living expenses and thus, calculated the loss of dependency as Rs.37,80,000/- (Rs.42,000/- x 12 x 13 x 50%). That apart, the Tribunal has awarded Rs.25,000/- for Funeral Expenses, Rs.1,00,000/- for loss of love and affection and Rs.5,000/- for loss of estate. Altogether, the Claims Tribunal has awarded Rs.39,10,000/- with interest at the rate of 7.5% per annum, from the date of claim, till the date of payment.

15. The method adopted by the Claims Tribunal, in computing loss of dependency compensation, cannot be said to be wholly illegal. 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.

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.601 of 2013, on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Coimbatore, 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.

Skm

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub-Assistant Registrar

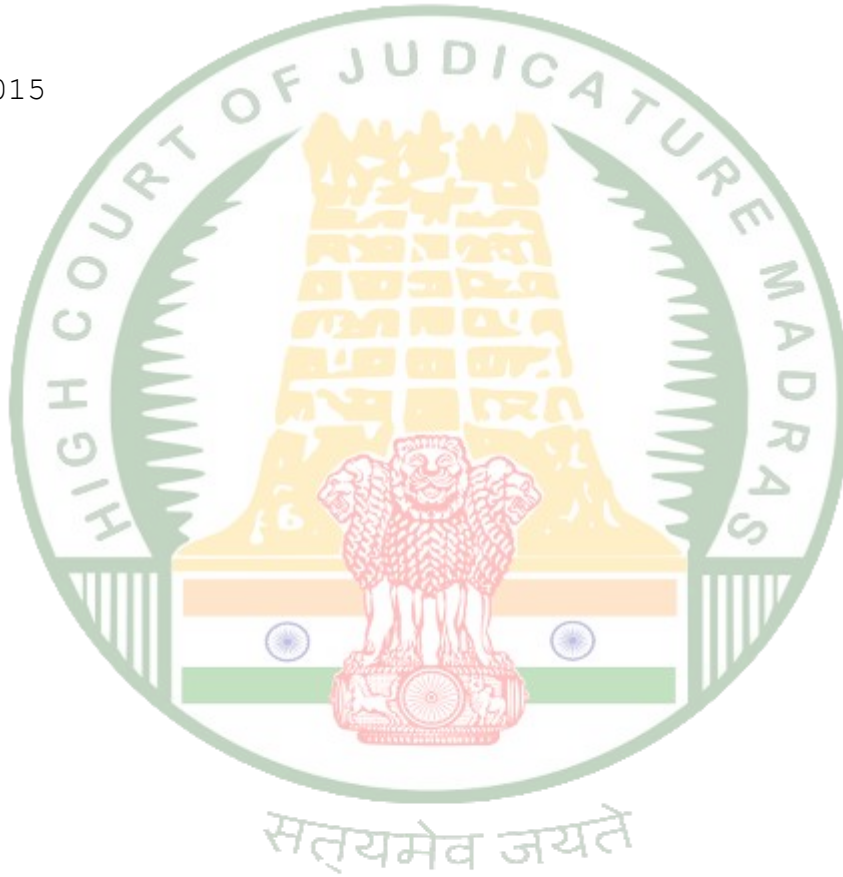
To

The Motor Accident Claims Tribunal
(Special Subordinate Judge),
Coimbatore.

+1 C.C. To MR.V.Udhayakumar, Advocate in SR.NO.56351

C.M.A.No.2292 of 2015

AK(CO)
sd : 18/11/2015



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