

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2015

CORAM:

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

C.M.A.No.2358 of 2015
and
M.P.No.1 of 2015

The Managing Director,
Tamilnadu State Transport Corporation Limited,
Villupuram Division,
Kancheepuram District. ... Appellant/Respondent

versus

1.MJaya
2.Helan Jeeva
3.John Solman ... Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.3345 of 2009, dated 07.10.2014, on the file of the Motor Accident Claims Tribunal, [IV Judge, Court of Small Causes], Chennai.

For Appellant : Mr.P.Paramasiva Doss

JUDGMENT

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

Being aggrieved by the judgment and decree in MCOP No.3345 of 2009 dated 07.10.2014 on the file of the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes), Chennai, by which a sum of Rs.11,57,000/-, has been awarded as compensation, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation, to the legal representatives of the deceased, Tamilnadu State Transport Corporation, Villupuram, has preferred the present appeal.

2. Facts as deduced from the material on record and the impugned judgment are that on 04.05.2009, about 4.30 hours, when the deceased was travelling as a passenger in a private bus K.P. Travels bearing Regn.No.TN 60 C 3299, on Trichy to Madras Main Road, near Erungalore Mullai Nagar Bus Stop, a Tamilnadu State Transport Corporation bus bearing Regn.No.TN 21 N 1013, when came in the opposite direction from Chennai towards Trichy, driven by its driver in a rash and negligent manner, hit the K.P Travels bus in which the deceased was travelling as a passenger and in the result, he sustained crush injuries and died on the spot. A case in Cr.No.179 of 2009 on the file of Inspector of Police, Samayapuram, Trichy, has been registered and charge sheet has been laid against the driver of the State Transport Corporation bus. At the time of accident, the deceased was aged 33 years and was working as a Conductor in Metropolitan Transport Corporation Limited, Tondiarpet Depot, Chennai. Legal representatives of the deceased viz., parents aged about 58 and 49 years respectively and sister aged 28 years, have claimed compensation of Rs.15,00,000/- under various heads.

3. Before the claims tribunal, appellant-Tamilnadu State Transport Corporation, has filed a counter affidavit and denied, the manner of accident. They further submitted that their driver is in no way responsible for the accident and that the accident occurred only due to rash and negligent act on the part of the driver of the omni bus. Without prejudice to the above, they have also disputed the age, avocation and income of the deceased, and the quantum of compensation claimed under various heads.

4. Before the Claims Tribunal, mother of the deceased examined herself as PW.1., and reiterated the averments made in the claim petition. One Mr.Selvakumar, eye witness has been examined as PW2. Mr.K.Manavalan, examined as PW3, is the Assistant of Metropolitan Transport Corporation. Documents viz., Ex.P1 - Legal Heir Certificate, Ex.P2, Legal Heir certificate of the deceased Madhadiyan, Ex.P3, Copy of Postmortem certificate, Ex.P4, Death Certificate, Ex.P5, Original Appointment Order, Ex.P6, Original Identity Card, Ex.P7, Bank Pass Book, Ex.P8, Copy of FIR, Ex.P9, Copy of Sketch, Ex.P10, Copy of Charge Sheet, Ex.P11, Copies of the transfer certificate & Mark sheets and Ex.P12, Copy of voter identity card of PW2, have been marked on the side of the respondents/claimants. Driver of the Transport Corporation Bus has been examined as RW1 and no documentary evidence has been adduced, on behalf of the appellant-Transport Corporation.

5. On evaluation of pleadings and evidence, the Claims Tribunal, held that the driver of the State Transport Corporation Bus bearing Regn.No.TN-21-N-1013, was negligent in causing the accident. Considering the age, avocation, income and other parameters, required to be taken into consideration, the Claims Tribunal, by applying multiplier, and after deducting 1/3 towards personal and living expenses, computed the loss of dependency as Rs.8,32,000/-. Apart from that, the claims tribunal has awarded compensation of Rs.3,00,000/- to the mother of the deceased, towards loss of love, happiness, paternal care and mental shock and also a sum of Rs.25,000/- under the head, funeral expenses. In all, the claims tribunal has quantified the compensation at Rs.11,57,000/-, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

6. Assailing the findings of the Claims Tribunal, fixing negligence on the driver of the State Transport Corporation Bus bearing Regn.No.TN-21-N-1013, Mr.P.Paramasiva Dass, learned counsel for the appellant submitted that the Claims Tribunal ought not to have fixed negligence on the driver of the appellant-transport corporation, solely on the basis of the criminal case registered against its driver.

7. On the quantum of compensation, learned counsel for the appellant submitted that the Claims Tribunal has erred in awarding huge compensation of Rs.11,57,000/-, by fixing the monthly income of the deceased at Rs.6,500/-, when there is no substantive proof. He further submitted that the sum of Rs.3,00,000/- awarded under the head loss of love and happiness, parental care, etc., is excessive.

8. It is also the contention of the learned counsel for the appellant-transport corporation that the tribunal has erred in fixing the age of the deceased as 33 years, solely on the basis of the certificate issued by the school authorities and failed to apply proper multiplier, which has resulted in awarding higher compensation. Learned counsel also submitted that the deceased was a bachelor and therefore, 50% deduction ought to have been made instead of 1/3 from the income, towards personal and living expenses,

9. Heard the learned counsel for the appellant-transport corporation and perused the materials available on record.

10. As regards the manner of accident, though, mother of the deceased, examined as PW1, has reiterated the manner of accident, she was not an occurrence witness. One Selvakumar, PW2, is stated to be the eyewitness and during his chief examination, he has clearly deposed that the transport corporation bus which came in a high speed, dashed against the Travels Bus. Even though PW2, has been cross examined by the transport Corporation, nothing is culled out, discrediting the case of the claimants. A criminal case in Cr.No.179 of 2009 has been registered by the Inspector of Police, Samayapuram, against the driver of the transport Corporation bus. Though, the transport corporation has denied the manner of accident, no independent witness has been examined, other than RW1, driver of the transport Corporation. Therefore, on an overall analysis of the evidence adduced on the side of the claimants and upon perusal of documents viz., Ex.P8, FIR, Ex.P9, Sketch and Ex.P10, Charge sheet, the claims tribunal has arrived at a conclusion that the accident occurred only due to the rash and negligent driving of the driver of the transport corporation bus and accordingly, fastened liability. Going through the impugned judgment, we do not find any perversity or illegality, warranting interference.

11. On the aspect of quantum of compensation, the claims tribunal, based on Ex.P11, Multimedia Certificate, has fixed the age of the deceased as 33 and following the principles laid down by the Hon'ble Apex Court in Smt.Sarla Varma and Others vs. Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1 (SC), adopted '16' multiplier.

12. Upon perusal of Ex.P5, appointment order, Ex.P6, Identity Card and Ex.P7, Bank Pass Book showing the salary entires and the evidence of PW1, mother of the deceased and PW3, Assistant of Metropolitan Transport Corporation, who has deposed that the deceased was a daily wage employee in Metropolitan Transport Corporation and received a sum of Rs.229/- per day, the claims tribunal has fixed the monthly income of the deceased at Rs.6,500/- and also recorded that there is no necessity to deduct income tax, as the annual income is within Rs.1,00,000/-.

13. Following Sarla Varma's case [cited supra] and taking note of the fact that the deceased had to support the family with the income of Rs.6,500/- per month, has deducted 1/3, instead of 50% towards the personal and living expenses and

arrived at the loss of dependency at Rs.8,32,000/-. If 50% is deducted, the monthly income would be just Rs.3,250/- and it is hardly sufficient to meet the expenditure towards basic amenities of food, shelter and clothing, besides, expenditure towards electricity, water charges and transportation. With just Rs.100/- per day, one cannot maintain a family.

14. Though, Mr.P.Paramasiva Doss, learned counsel for the appellant transport corporation, contended that the tribunal has erred in deducting 1/3 instead of 50% from the income of the deceased towards the personal and living expenses, from the judgment, it could be deduced that the deceased was aged just 33 years, at the time of accident and considering the avocation claimed, had he been alive, he would have gained future prospects in earning and therefore, we are of the view that the Tribunal has failed to add 50% of his income, towards future prospects, for computation of loss of dependency, as done in Sarla Verma's case (cited supra). Though the deceased was a daily wage employee in Metropolitan Transport Corporation, there is every possibility of revision in wages in future and there is also a likelihood of getting conferment of permanent status, if he was continuously engaged in Metropolitan Transport Corporation. The tribunal has failed to consider the abovesaid aspects. Had 50% of his income, been added, the quantum of compensation awarded to the mother of the deceased, would be more. Even taking it for granted that the argument of the appellant is acceptable, then by adding another 50% to the said income, towards future prospects and consequently, if computation is made, the loss of dependency, would be more.

15. Perusal of the award shows that since, the deceased was a bachelor, only his parents are 1st class legal heirs and in the legal heir certificate, the names of the brother and sister of the deceased are not shown. Father of deceased, died during the pendency of the claim petition and though, the claims tribunal has concluded that the mother alone is entitled for compensation, has apportioned Rs.1,00,000/- each to the sister and brother of the deceased from Rs.3,00,000/- awarded under the head loss of love, happiness, paternal care and mental shock, and the same cannot be found fault with. Loss of dependency is a pecuniary damage assessed with reference to the income fixed by the tribunal, whereas, compensation awarded under the head love and affection, is non pecuniary. The same requires to be considered while awarding compensation to the bereaved family. Contentions to the contra, cannot be accepted.

16. Reading of the judgment shows that the Claims Tribunal has failed to award any compensation towards the conventional damages. No compensation has been awarded for transportation. Just compensation is the requirement to be considered. In the case on hand, the compensation of Rs.11,57,000/- awarded for a death of a person aged about 33 years, cannot be said to be a bonanza or on the higher side, warranting interference.

17. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Transport Corporation is directed to deposit the entire award amount, if not already deposited, with proportionate accrued interest and costs less the amount already deposited to the credit of M.C.O.P.No.3345 of 2009, on the file of the Motor Accidents Claims Tribunal (IV Judge, Small Causes Court), 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 their share, as apportioned by the tribunal, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

True Copy

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
(IV Judge, Court of Small Causes), Chennai.

+1cc to Mr.P.Paramasivadosh, Advocate, Sr.56083

C.M.A.No.2358 of 2015

gj[col]
srg 16/11/2015

WEB COPY