

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-12-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

CIVIL MISCELLANEOUS APPEAL No.2681 of 2015
and
M.P.No.1 of 2015

The Managing Director
Tamil Nadu State Transport
Corporation Limited
Thiruvannamalai Division ... Appellant/ Respondent

vs

1.Athilakshmi
2.Abirami
3.Minor Neelagandan
4.Minor Siva Moorthy
minors represented by Guardian
and Next Friend Mother R1 ... Respondents/ Petitioners

Civil miscellaneous appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree passed by the Motor Accident Claims Tribunal, Subordinate Judge, Cheyyar, made in MCOP No.248 of 2009 dated 29.8.2013.

For Appellant : Mr.P.Paramasivadoss

JUDGMENT

(Judgment of the Court was delivered by M.SATHYANARAYANAN, J.)

Tamil Nadu State Transport Corporation is the appellant and aggrieved by the higher quantum of compensation awarded by the Tribunal to the respondents 1 to 4/claimants, has filed this appeal.

2.The facts of the case would disclose that on 14.1.2009, at about 3.45 A.M., a bus bearing Registration No.TN21 N 0940 and belonging to the appellant-Corporation, was proceeding in Salem to Arni Main Road and near Main Irulapatti Village, it's driver lost his control as a result of rash and negligent driving, and dashed the vehicle against a tamarind tree and the Conductor of the above said bus died at the spot itself and hence, the claimants, who are the wife, daughter and two minor sons respectively, came forward to file MCOP No.248/2009, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Cheyyar, claiming a compensation of Rs.15 lakhs.

3.The Tribunal, on a consideration of oral and documentary evidence, thought it fit to award a compensation of Rs.12,08,500/- with interest at 7.5% from the date of the filing of the petition till realisation vide award and decree dated 29.8.2013, and aggrieved by the quantum of compensation awarded to the claimants, the present appeal is filed.

4.Mr.P.Paramasivadoss, learned Counsel appearing for the appellant-Transport Corporation, would submit that no doubt, the deceased was the conductor of the offending vehicle viz. bus; but, the fact remains, the Tribunal without properly appreciating the oral and documentary evidence, has awarded a higher compensation and especially, attacks the compensation awarded under non-conventional head.

5.This Court has carefully considered the submissions made by the learned Counsel appearing for the appellant, and also perused the materials placed before it in the form of typed-set of documents.

6.The negligence on the part of the Driver of the bus belonging to the appellant-Transport Corporation, is not put into issue.

7.The primordial question that arises for consideration before this Court, is whether the quantum of compensation awarded by the Tribunal in favour of the claimants, is on the higher side or not?

8.No doubt, the Driver of the bus was examined as R.W.1 and however, the fact remains, the bus dashed against the tamarind tree on the early morning hours of 14.1.2009, and therefore, the rash and negligent driving on the part of the driver, cannot be ruled out.

9.Insofar as the quantum of compensation awarded, is concerned, admittedly, the deceased was employed as a Conductor in the services of the appellant-Transport Corporation itself and he was in the offending bus. At the time of accident, he was earning a sum of Rs.11,908/- per month, towards salary as evident from Ex.P7 payslip of the deceased. It is also pertinent to point out at this juncture, that the second respondent herein was unmarried and the first respondent-wife, apart from conducting her daughter's (2nd respondent) marriage, has to educate and bring up the respondents 3 and 4, who are also minor children at the relevant point of time. The deceased was aged about 53 years and the first respondent-wife was aged about 39 years and on account of the sudden tragedy, the family of the claimants had lost the sole breadwinner of the family. The Tribunal has taken into consideration that the fixed monthly income of the deceased was Rs.11,500/-, and after deducting 1/4th amount towards personal expenses, calculated the pecuniary loss at Rs.11,38,500/-.

10.The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses, and a sum of Rs.20,000/- for loss of consortium in favour of the first respondent.

11.As far as the respondents 2 to 4 are concerned, the Tribunal has taken into consideration that they lost the love and affection of their father and awarded a sum of Rs.10,000/- each, aggregating to a sum of Rs.40,000/-, and calculated the total compensation at Rs.12,08,500/-, out of which, the first claimant is entitled to get a sum of Rs.3,08,500/- and the other claimants are entitled to get a sum of Rs.3 lakhs each, for the reason that the second respondent is in the state of being married and the other respondents are minor children and are to be educated.

12.This Court, taking into consideration the over all facts and circumstances, is of the view that the compensation awarded by the Tribunal, is a just and equitable compensation and therefore, the award and decree passed by the Tribunal, warrant no interference.

13.In the result, the civil miscellaneous appeal is dismissed at the admission stage itself. The appellant-Transport Corporation shall deposit the compensation amount after deducting the compensation already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

nsv

To:

The Subordinate Judge
Motor Accidents Claims Tribunal
Sub Court, Cheyyar.

1 cc to Mr.P. Paramasivadosh, Sr. 67358

C.M.A.No.2681 of 2015

TEJ (CO)
kk 12/1