

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.3.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.388 of 2015

1. The Superintendent of Police,
Vellore,
S.P.Office, Sathuvachari, Vellore-9,
Vellore District.
 2. The Collector of Vellore District,
Having Office at Collect orate Buildings,
Sathuvachari, Vellore-9,
Vellore District. ... Appellants/Respondents
- Versus
- 1.Najma
 - 2.Nayemullah ... Respondents/Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the judgement and decree dated 31.07.2012 passed by the Motor Accidents Claims Tribunal (Ist Additional District and Sessions Court) Vellore, made in M.C.O.P.No.107 of 2011.

For Appellant : Mr.M.Venugopal
Special Govt. Pleader (CS)
For Respondents : Mr.M.Sivakumar for RR 1 & 2

सत्यमेव जयते
JUDGMENT

The appeal has been preferred by the Superintendent of Police, Vellore and the Collector of Vellore District against the fastening of liability on the driver of the police bus and directing the police to pay a sum of Rs.3,27,000/- for the death of one minor Rahimullha in the accident occurred on 7.5.2010.

2. Heard Mr.M.Venogopal, learned Special Government Pleader (C.S.), appearing for the appellants and Mr.M.Sivakumar, learned counsel appearing for the respondents/claimants. Mr.M.Venugopal, learned Special Govt. Pleader, would submit that the accident occurred because of the negligence on the part of the rider of the two wheeler and the minor invited the accident. The two wheeler was

driven in jig jag manner and dashed against the bus. Secondly, he would submit that for the death of a minor aged about 15 years, the award of Rs.3,27,000/- is on the higher side. On the other hand, learned counsel appearing for the respondents/claimants would support the award.

3. A perusal of the records would show that the minor daughter was travelling as a pillion rider along with his father, who drove the two wheeler. The police bus belonging to the appellant was driven rash and negligently and hit the two wheeler. PW.1, eye witness, the father of the minor, categorically stated that the police bus was driven rash and negligently and dashed against the two wheeler and due to the impact, the two wheeler fell down on the road side and his son was crushed by the police bus. F.I.R. was also filed against the driver of the appellant bus. So, based on categorical PW1's evidence and other circumstances, the Tribunal rightly came to the conclusion that the accident occurred because of the rash and negligent driving of the bus.

4. The Tribunal awarded a sum of Rs.3,27,000/- taking Rs.15,000/- as notional income and applying multiplier as per the second schedule of the Motor Vehicles Act. However, as rightly pointed out by the learned counsel appearing for the respondent relying upon the Kishan Gopal and another vs. Lala & others reported in 2013 (2) TN MAC 358 (SC) for the death of 10 year old boy, Rs.5,00,000/- was awarded taking the notional income of the minor at Rs.30,000/- and 15 multiplier was adopted as per the age of the mother. Rs.50,000/- was awarded towards conventional headings. Following the said judgement a sum of Rs.30,000/- is taken as notional income and applying 16-multiplier as per the age of the mother, namely 32 years and as per the Sarla Verma v. Delhi Transport Corporation reported in 2009 (2) TN MAC 1 (SC), the pecuniary loss is determined as follows: $\text{Rs.30,000/-} \times 16 = \text{Rs.4,80,000/-}$. Rs.50,000/- is awarded towards loss of love and affection, funeral expenses, last Rites etc. Totally a sum of Rs.5,30,000/- is awarded. The rate of interest awarded at 7.5% per annum by the Tribunal is confirmed.

5. Though the appeal has been preferred by the Superintendent of Police and the Collector of Vellore District against the award of Rs.3,27,000/-, this Court suo motu enhances the compensation to Rs.5,30,000/- by invoking order 41 Rule 33 C.P.C. even in the absence of appeal/cross appeal as per the judgement of the Hon'ble Supreme Court in the case of Kishan Gopal and another vs. Lala & others reported in 2013 (2) TN MAC 358 (SC). More over, the appeal is a continuation of original proceedings and this court has got power and jurisdiction to re appreciate the facts and evidence and award just and reasonable compensation. In an endeavour to order just and reasonable compensation, the above exercise has been done. The appellants are directed to deposit the entire award amount along with interest and costs as per the order of this Court on or before 28th

April, 2015, failing which the Superintendent of Police and the Collector of Vellore District shall appear before this Court on 29.4.2015. On such deposit, the respondents are at liberty to withdraw the award amount within one week thereafter. The claimants/respondents are directed to pay additional court fee before the Tribunal. The appeal is dismissed. No costs. Consequently the connected M.P.No.1 of 2015 is also dismissed. Post the case for compliance on 29.4.2015.

vk

-s/d-
Deputy Registrar(J)
Dt:31/3/2015

True Copy

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal
(1st Additional District and Sessions Court)
Vellore.
2. The Superintendent of Police,
Vellore SP Office,
Sathuvachari, Vellore 9.
Vellore District.
3. The Collector of Vellore District,
Collectorate Building,
Sathuvachari, Vellore 9.
4. The Sub Assistant Register,
Judicial Department,
High Court, Madras.

+ 1 cc to Spl.Govt.Pleader SR 12711

+ 1 cc to Mr.C.Prabhakaran (CS) SR 12454

tej(co)
prk1/4

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