

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA No.712 of 2015

and

M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division III Ltd.,
Kancheepuram District.Appellant/Respondent

vs.

1.Harani (minor)
2.Hariharan (minor)
both are represented by their
grandmother & Natural Guardian
M.RajamRespondents/Petitioners

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act against the judgment and decree passed by the
Motor Accident Claims Tribunal, IV Small Causes Court, Chennai made
in MCOP No.740 of 2011 dated 20.08.2013.

For Appellant : Mr.P.Paramasivadoss

For Respondents : Mrs.Ramya Rao
for Mr.Viswanathan

J U D G M E N T

God has been very cruel to the children who are the
respondents/claimants before this Court. Otherwise, He would not
have deprived off the father's guidance and mother's love & affection
as they become orphan without father and mother.

2. The appeal has been preferred by the Transport Corporation against the award of Rs.10,78,000/- as compensation awarded by the tribunal for the death of one K.Thangam, aged about 30 years, claimed to have been doing saree business and earning a sum of Rs.10,000/- per month, who died in the accident occurred on 12.05.2008.

2. Heard Mr.P.Paramasivaodss, learned counsel appearing for the appellant and Mrs.Ramya Rao, learned counsel appearing for the respondents/claimants.

3. The deceased namely Thangam was travelling in the bus belonging to the appellant/transport corporation from Koyambedu to Kalpakkam and when she was getting down from the bus at ECR Road, the driver, without noticing the passenger getting down, suddenly started the bus resulting in falling of the victim and sustaining fatal injuries. Therefore, the claim petition has been filed.

4. The tribunal, based on evidence of PW2, eye-witness, rightly came to the conclusion that the accident occurred because of the negligent driving of the bus. Therefore the said finding cannot be found fault with. Even though FIR was registered against the deceased, it is to be seen that the complaint was given by the conductor of the bus who cannot be expected by anybody to file complaint against his own driver. Therefore, the conductor of the Transport Corporation filed the complaint alleging the negligence on the part of the deceased. Therefore, the said fact cannot be taken into consideration. RW1 stated that only two passengers were there and the deceased was standing at the steps of the backside of the bus and fell down even before the bus stop was reached. When a passenger wanted to get down in a bus stop, definitely she would wait for the bus stop as she intended to get down at that particular stopping. Moreover, as rightly pointed out by the tribunal, when two passengers were alone left in the bus, both the conductor as well as the driver should have been careful enough to stop the bus. There was no necessity for the deceased to get down even before the bus stop. RW1 himself admitted that the conductor blew the whistle and that itself would prove that only at the instruction of the deceased the conductor blew the whistle compelling the driver of the bus to stop the vehicle at the bus stop. The very fact that she fell down from the bus would show that the bus was stopped and while getting down from the bus, the driver started the bus even before she could get down and therefore she fell down and sustained fatal injuries.

5. Even if the passenger tried to stand on the foot board

and try to get down from the moving bus, taking into consideration that there were only two passengers, the conductor should have been vigilant enough to stop the passenger to stand on the foot board and also get down from the bus. Therefore, it is very clear that there was negligence on the part of the crew of the bus. Therefore the tribunal rightly observed that hurriedness and carelessness of the crew of the bus alone caused the life of the passenger.

6. Mr.P.Paramasivadosh, learned counsel appearing for the appellant very strenuously argued that the evidence of RW1 was not taken into consideration in view of the eye-witness PW2 who spoke about the manner of accident. Moreover, the driver is not the right person to speak about the accident and only the conductor who lodged Ex.P1 - FIR is the right person because he should have witnessed the accident as the victim fell down through back entrance. However, for the reasons best known to the appellant/transport corporation, the conductor was not examined and the said fact is also one of the factor to be considered to come to the conclusion that the driver was negligent. Therefore, re-appreciating the evidence on record, this Court independently comes to the conclusion that the accident occurred because of the rash and negligent driving of the bus. The findings reached by the tribunal is based on the evidence as well as the real circumstances and therefore the said finding reached by the tribunal cannot be set aside and the same is confirmed.

7. The deceased was said to be doing saree business earning about Rs.10,000/- per month. However, in the absence of any proof regarding income, the tribunal rightly took notional income of Rs.6,000/- per month which is in consonance with the judgment of the Hon'ble Supreme Court, in Syed Sadiq Etc vs Divisional Manager, United India Ins. Co., reported in 2014 (1) TN MAC 459 (SC) wherein for a vegetable vendor who sustained injury in the accident occurred in the year 2008, monthly income was determined at Rs.6,500/- in the absence of any proof regarding the income. Therefore, following the said judgment, this Court, confirms the monthly income at Rs.6000/- determined by the tribunal. However, no future prospects was added by the tribunal. Since the claimant was aged about 30 years, 50% is required to be added towards future prospects following the judgment of the Hon'ble Supreme Court in Sarla Verma Vs. Delhi Transport Corporation & Anr. reported in 2009 (2) TN MAC 1 (SC) and Santosh Devi vs National Insurance Co.Ltd.& Ors. reported in 2012 6 SCC 421 . Thus, the monthly income would be Rs.9000 (Rs.6000 + 50%).

8. As stated earlier, the claimants are the minor children of the deceased and they were made orphans by the accident as the father of the children already pre-deceased. Taking into

consideration the above pathetic position, the tribunal, instead of deducting 1/3rd towards personal expenses, deducted only 1/4th as the deceased mother would have spent lesser amount for her personal expenses in the interest of her children. Therefore, 1/4th deduction made by the tribunal towards personal expenses is confirmed. Thus, the loss of income to the family would be Rs.6750/- (Rs.6000 + 50% = Rs.9000 less ¼). As per the age of the deceased, appropriate multiplier is 17 which was rightly adopted by the tribunal and thus the loss of income would be Rs.13,77,000/- (Rs.6750 x 12 x 17).

9. The tribunal, considering the loss of father and mother, very justifiably awarded Rs.75,000/- each to the respondents/claimants totalling to Rs.1,50,000/- towards loss of love & affection which is confirmed. Similarly Rs.10,000/- awarded towards funeral expenses is also very reasonable and the same is also confirmed. Since no amount was awarded towards transportation, a sum of Rs.10,000/- is hereby awarded. Thus, the amount of Rs.10,78,000/- awarded by the tribunal is hereby enhanced to Rs.15,47,000/-, rounded off to Rs.15,50,000/- suo motu by this Court, in the appeal filed by the transport corporation, in favour of the claimants, invoking Order XLI Rule 33, by re-appreciating the evidence on record and break-up is as follows -

(1) Loss of income .	Rs.13,77,000/-
(2) Loss of love & affection	Rs. 1,50,000/-
(3) Funeral expenses	Rs. 10,000/-
(4) Transportation	Rs. 10,000/-

Total	Rs.15,47,000/-
	=====

Rounded off to Rs.15,50,000/-

10. Even though a point was raised with regard to the awarding of amount in excess of the amount of Rs.8,00,000/ claimed by the claimants, this court, as well as the tribunal is not bound by the amount claimed by the claimants. What is required to be awarded is only a just compensation based on evidence and therefore the said contention is not sustainable and there is no prohibition for this Court to award more compensation than sought for. The rate of interest awarded by the tribunal @ 7.5% is very reasonable and the same is confirmed.

11. Both the respondents/claimants are entitled to equal share in the compensation award, namely Rs.7,75,000/- alongwith proportionate interest and costs. The appellant Transport Corporation

is directed to deposit the entire amount awarded by this Court, alongwith interest and costs, on or before 26.07.2015. The tribunal is directed to deposit the share of the respondents/claimants in Indian Bank, Harbour Branch, Chennai, in an interest bearing fixed deposit, till they attain majority. In the event of failure on the part of the appellant/Transport Corporation to deposit the entire award amount alongwith interest and costs, on the aforesaid date, the Chairman cum Managing Director, the Financial Advisor and Chief Accounts Officer shall appear before this Court on that day.

12. In the result, this Civil Miscellaneous Appeal is dismissed enhancing the compensation to Rs.15,50,000/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit. No costs. Consequently, connected Miscellaneous Petition is closed.

13. The learned counsel for the appellants/claimants is directed to pay the requisite court fee for the enhanced compensation within a period of ten days from the date of receipt of a copy of this order.

14. Call the matter on 27.07.2015 for reporting compliance. Registry is directed to forward a copy of this order directly to the respondents/claimants, free of cost.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The IV Judge,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

2.The Section Officer,
Judicial Section,
High Court,
Madras.

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3.Ms.M.Rajam,
Guardian for R1 & R2
No.21, Mill Colony,
Polepetti, Tuticorin.

4.The Managing Director,
Tamilnadu State Transport Corporation,
Villupuram Division III Ltd,
Kancheepuram.

CMA No.712 of 2015

PSI (18.06.2015)



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