IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A. No. 826 of 2015

1. Sharpudhin
2. Asha Bi ...Appellants/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram. ...Respondent/Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 06.09.2013 passed in M.C.O.P. No. 63 of 2013 by the Motor Accidents Claims Tribunal (III Addl. District Sessions Court), Kallakurichi, Villupuram.

For Appellants : Mr.A.G. Rajan

For Respondent : Mr.P. Paramasivadoss

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimants, aggrieved over the quantum of Rs. 2,51,000/- awarded as compensation by the Motor Accidents Claims Tribunal (III Additional District Sessions Court), Kallakurichi, for the death of one Abdul Rofon, son of the claimants/appellants herein, a butcher by profession, aged about 22 years, in the accident, which occurred on 11.08.2011.

2. Heard Mr.A.G. Rajan, learned counsel for the appellants and Mr.P. Paramasivadoss, learned counsel for the respondent Transport Corporation.

3. The learned counsel for the respondent Corporation would strenuously argue that there should have been some contributory negligence on the part of the deceased as the rear wheel of the

Transport Corporation bus ran over the victim. Though the said aspect is not raised as a point in the appeal, this Court is duty bound to look into the award in toto.

4. P.W.2 is an eye-witness to the occurrence, who deposed that the bus belonging to the respondent Transport Corporation was driven rashly and negligently and because of the negligence of the driver of the bus alone, the accident had occurred. However, there is rebuttal evidence by way of R.W.1,who is the driver of the bus, who spoke that the claimant himself fell down from the two-wheeler and sustained fatal injuries.

5. However, this Court is not inclined to accept the version put forward by R.W.1 for the simple reason that no such plea has been taken in the counter statement and in paragraph No.4 of the counter statement, the respondent has merely stated that the deceased was riding his motor vehicle in a rash and negligent manner; lost control and thereafter, dashed against the right side bumper of the bus resulting in the accident. The said averment would reveal that the accident had, in fact, occurred, during which time, the two-wheeler had collided with the bus on the front side and therefore, the version of R.W.1 that there was no accident and the victim himself fell down from the two-wheeler and sustained fatal injuries is unacceptable. The evidence given by R.W.1 is contrary to the defence taken in the counter statement. Therefore, R.W.1's evidence has to be ignored as he has not come out with the correct details. Moreover, the Tribunal, based on the evidence of P.W.2, eye-witness, who withstood the test of cross-examination and cogently deposed that the accident occurred because of the rash and negligent driving by the driver of the Transport Corporation bus and Ex-P1, FIR, which is also in consonance with the evidence given by P.W.2, concluded that the accident occurred because of the rash and negligent driving by the driver of the Transport Corporation bus. The said finding cannot be found fault with and the same is confirmed. After the passing of the award on 06.09.2013, there is an attempt by the Transport Corporation to file an appeal along with condone delay petition only when the claimants filed an appeal after seeing the difficulty in getting the money as per the award of the Trial Court. But, in view of the above finding, there cannot be any attempt by the Transport Corporation to file any fresh appeal and even as on date, almost, two years have elapsed from the date of the award.

6. Now, the only question to be decided is with regard to the quantum of compensation for which the present appeal has been filed by the claimants. The deceased was a butcher by profession and

the award of Rs.2,51,000/- shocks the conscience of this Court for the death of a 22 year old young man. The accident had occurred on 11.08.2011. Though there is no proper evidence available before the Tribunal, the Honourable Supreme Court in the judgment rendered in Syed Sadiq V. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), fixed the monthly income of a vegetable vendor, who sustained injuries in an accident, which took place on 14.8.2008 at Rs.6500/- and after adding 50% of the monthly income towards "Future Prospects", arrived at a sum of Rs.9750/- as total monthly income. Therefore, following the said judgment, the monthly income of the deceased in this case is fixed at Rs.6500/- and after adding 50% towards "Future Prospects", as the deceased was aged only about 22 years, the total monthly income is fixed at Rs.9,750/-.

7. As the deceased, in the case on hand, was a bachelor, 50% of his income is required to be deducted towards "Personal Expenses". Accordingly, after deducting 50% towards "Personal Expenses", "the Monthly Contribution of the deceased to his family" is calculated as follows:

Total Monthly Income	::	Rs.9,750/-
Less: 50% towards "Personal Expenses"	::	Rs.9,750/- (-) 50% (Rs.9,750/-)
Monthly Contribution of the deceased to his family	::	Rs. 4,875/-.

1. The Tribunal erred in choosing the multiplier as per the age of the mother of the deceased. The Honourable Apex Court, in the judgment rendered in Amit Bhanu Shali and others vs. National Insurance Co.Ltd. And others reported in 2012 ACJ 2002, held that the age of the victim alone should be the criterion for choice of multiplier. Following the said judgment, taking the age of the deceased, namely, 22 years as the criterion for choosing the multiplier, the appropriate multiplier, as per the judgment of the Honourable Apex Court rendered in Sarla Verma's case,(2009 (2) TN MAC 1 (SC)) would be 18. Applying the same, "Loss of Income" is calculated as follows:
2.

Loss of Income	::	Rs.4,875 x 12 x 18
	::	Rs.10,53,000/-

9. The claimants are the parents of the deceased and they lost their only son. The sum of Rs.10,600/- awarded by the Tribunal towards "Loss of love and affection" is too low and therefore, the same is enhanced to Rs.50,000/-. The sum of Rs.10,000/- awarded towards "Funeral Expenses" is also on the lower side and it is, therefore, enhanced to Rs.25,000/-, following the judgment of the

Honourable Apex Court in Rajesh and others v. Rajbir Singh and others reported in 2013 (2) TN MAC 55 (SC). No amount was awarded towards "Transportation Charges". Therefore a sum of Rs. 10,000/- is awarded. In all, a sum of Rs. 11,38,000/- rounded off to Rs. 11 lakhs is payable as compensation to the appellants/claimants herein by the respondent Transport Corporation. The rate of interest awarded by the Tribunal at 7.5 % per annum remains in tact.

10. It is submitted by Mr.P. Paramasivadoss, learned counsel for the respondent that the claim in the appeal is only for a sum of Rs. 8 lakhs and therefore, it is deemed that the claimants have restricted their claim to Rs.8 lakhs totally. However, it is well settled law that under the Motor Vehicles Act, 1988, what is required to be granted by the Court is just compensation, irrespective of the amount claimed by the claimants. The facts of the case warrant enhancement of compensation and this Court is justified in enhancing the compensation, even beyond the amount sought by the claimants.

11. The learned counsel for the Transport Corporation, today, produced a Banker's Cheque dated 11.06.2015 drawn on State Bank of India SME Branch, Villupuram, in favour of III Additional District Sessions Judge, Kallakurichi, for a sum of Rs.3,10,900/-. In view of that, the balance amount, as per the modified award passed by this Court, shall be deposited, along with proportionate interest and costs, afte deducting the amount already paid, if any, before the Tribunal on or before 27th July, 2015 failing which the Chairman cum Managing Director and Financial Advisor cum Chief Accounts Officer shall appear before this Court on 28th July, 2015. On such deposit being made, the appellants/claimants are entitled to withdraw their respective shares, as per the direction of the Tribunal, within a period of one week thereafter. The appellants shall pay additional court-fee for the enhanced compensation.

12. In the result, the Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal, to the tune of Rs.2,51,000/- is enhanced to Rs.11 lakhs. No cost.

13. For reporting compliance, call on 28.07.2015.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The MACT (III Addl. District Sessions Court),
Kallakurichi.

2.The Chairman & Managing Director and
Chief Accounts Officer,
Financial Advisor,
Tamilnadu State Transport Corporation Ltd.,
Villupuram.

3.The Section Officer,
Judicial Section,
High Court, Madras.
(Post on 28.07.2015 for Reporting Compliance)

1 CC to Mr.P.Paramasiva Dass, Advocate SR.No. 28813

C.M.A. No. 826 of 2015

TEJ (CO)
PSI (01.07.2015)