IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2015

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE G.CHOCKALINGAM

C.M.A. No.2231 of 2014
M.P.Nos.1 of 2014 and 1 of 2015

The Manager Director,
TNSTC Ltd., Salem
Ramakrishna Road. .. Appellant/Respondent

vs

1.Malar
2.Minor Jeeva
3.Minor Muralidharan .. Respondents/Clainmants
(respondents 2 & 3 is represented by
next friend, 1st respondent-Mother)

Appeal against the fair and decretal order dated 27.09.2013 passed in M.C.O.P.No.608 of 2013, on the file of the Motor Accidents Claims Tribunal (District Judge Special district Court for Motor Accidents Claim cases (MACT), Krishnagiri.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.Mukund R.Pandiyan

JUDGMENT
(Judgment of the Court was delivered by S.MANIKUMAR, J.)

The Managing Director, Tamil Nadu State Transport Corporation, Salem, has questioned the finding of the Claims Tribunal in M.C.O.P.No.608 of 2013, on the file of the Motor Accidents Claims Tribunal (District Judge and Special Court for MACT), Krishnagiri, fixing negligence on the driver of the State Transport Corporation bus, bearing Registration No.TN 30 N 0343 and the quantum of compensation of Rs.14,04,000/-, with interest at the rate of 7.5% per annum, from the date of claim, till the date of realisation, awarded to the legal representatives of the deceased.

2. Facts deduced from the impugned judgment are that on 16.05.2011, about 03.30 P.M., while the husband of the 1st respondent/claimant, Singaram, was travelling in a bus, bearing registration No.TN 30 N 0343, owned by the appellant-Transport

Corporation, near Venkateswara Kalyana Mandapam, Krishnapuram, Ethapur Post, Athur Taluk, the driver drove the vehicle in a rash and negligent manner, due to which, the said Singaram, who was sitting on the seat, opposite of the door side, fell down from the bus, sustained head injuries. Immediately, he was taken to Salem Government Hospital. Despite treatment, he died. Claiming that the deceased was a Cooking Master and earned Rs.6,000/- per month, the respondents have sought for compensation.

3. The appellant-Transport Corporation, opposed the claim petition, on the grounds that it was the passenger, who suddenly came to the front door in the moving bus, for vomiting. They further contended that the passenger has failed to inform the crew of the bus, to stop the bus. Without asking for any help, he suddenly moved to the front foot board in the moving bus, invited the accident. Without prejudice to the above, the appellant-Transport Corporation has disputed the age, income and avocation of the deceased and the quantum of compensation claimed under various heads.

4. Before the Claims Tribunal, wife of the deceased examined herself as PW.1 and reiterated the manner of accident. But she has not witnessed the same. However, PW.2, stated to have been witnessed the same, has supported the version of PW.1. Documents, Ex.P1 - FIR, Ex.P2 - Alteration Report, Ex.P3 - Death Certificate, Ex.P4 - Post-mortem Certificate, Ex.P5 - R.C.Book of the offending vehicle, TNSTC Bus, Ex.P6 - Driving Licence of the TNSTC Bus driver and Ex.P7 - Legal Heir Certificate, have been marked on the side of the respondents/claimants. On the side of the appellant-Transport Corporation, the driver of the bus has been examined as RW.1. But no document has been marked.

5. On evaluation of pleadings and evidence, the Claims Tribunal found that RW.1, driver of the bus, bearing Registraton No.TN 30 N 0343, owned by the appellant-Transport Corporation, was negligent in causing the accident and accordingly, compensation of Rs.14.04,000/- has been awarded with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

6. Assailing the correctness of the finding, fixing negligence on the driver of the bus, Mr.D.Venkatachalam, learned counsel for the appellant-Transport Corporation submitted that the Claims Tribunal has erred in arriving at the said conclusion, solely on the basis of Ex.P1 - FIR, registered against the driver of the bus. He further submitted that the Claims Tribunal has also erred in not considering the testimony of RW.1, driver of the bus, while arriving at such conclusion.

7. Mr.Mukund R.Pandiyan, learned counsel for the respondents/claimants made submissions to sustain the award.

Heard the learned counsel for the parties and perused the materials available on record.

8. Upon perusal of the impugned judgment, it could be seen that PW.1, wife of the deceased, adduced evidence. PW.2, eye-witness has denied the suggestion of the Transport Corporation that the said witness had not witnessed the accident and registered Ex.P1 – FIR. He also denied the suggestion of the Transport Corporation that the accident had occurred, due to the negligence of the deceased. The Tribunal has recorded that nothing was elicited in support of the appellant-Transport Corporation from the evidence of Pws.1 and 2 respectively.

9. RW.1, driver of the bus, has deposed that when the bus was passing through Krishnapuram in Salem District, near Venkateswara Marriage Hall, a passenger was standing on the foot board of the bus and vomited. According to RW.1, he lost balance and fell down from the moving bus. Thereafter, he was taken to Primary Health Centre, Ethapur and referred to Salem Government Hospital.

10. Perusal of the judgment shows that to a pointed question, as to whether, the bus was stopped to enable the passenger to vomit, when he was stated to be sitting on the Foot Board, RW.1, driver of the bus, answered in the negative that he did not sop the bus. He also admitted the suggestion that only when the passengers inside the bus shouted, he stopped the bus.

11. Therefore, from the evidence of RW.1, it is clear that though he had seen that the deceased sitting on the foot board and vomitting, he had not stopped the bus. The case of the Transport Corporation was that the passenger did not ask the bus to stop. Even taking it for granted that the passengers did not want the bus to be stopped, it is the responsibility of the crew of the bus to see that the passengers reach their destination safely.

12. Having averred the fact that the deceased had moved to the door side and seated on the foot board, RW.1, driver of the bus, ought to have stopped the bus, immediately. Thus, by driving the bus, in a rash and negligent manner, it is the driver of the bus, who had caused the accident. Had the vehicle been stopped, accident could have been averted. In this context, it is useful to extract few judgments,

13. In Venkataswami Motor Service v. C.K.Chinnaswamy and others [1998 ACJ 371], this Court held that, it is the fundamental duty of the crew viz., driver and conductor to see whether any passenger is getting into the bus or getting down from the bus before moving the bus.

14. In Beni Bai and others v. A.Salim and another [1998 ACJ 1348], a Division Bench of the Madhya Pradesh High court held that, it is the duty of the driver and conductor to see whether the passengers have got down from the bus or not and then only the driver should start the bus.

15. In M.Jagannathan v. Pallavan Transport Corporation Ltd., [1999 ACJ 366], a Division Bench of this Court held that it is the duty of the driver and conductor to caution the passengers when they attempt to get down, irrespective of the fact whether that place is a bus stop or not. The said decision is followed in Tamil Nadu State Transport Corporation (Madurai Division III) Ltd. v. Saraswathi and four others [2000 (1) LW 318].

16. Yet another aspect considered is that the testimony of RW.1, driver of the bus, is not supported by any independent witness or even the conductor of the bus. For the abovesaid reasons and decisions, this Court is of the view that the finding, regarding negligence, is in order and does not warrant interference. Hence, the same is confirmed.

17. On the quantum of compensation, it is the case of the 1st respondent/claimant that the deceased, aged 28 years, engaged as a cooking master in a hotel, earned Rs.10,000/- per month. But there is no supporting document. Having regard to the oral testimony of PW.1, wife of the deceased and taking note of the surviving dependants, wife and two minor children, the Claims Tribunal has fixed the monthly income of the deceased as Rs.9,000/- (Rs.300/- x 30).

18. Though no document has been filed to prove employment, to provide food, shelter, clothing, education and to meet out the regular expenditure, such as payment of electricity charges and other incidental expenses, and to provide amenities to the dependant, it could be reasonably presumed that the deceased would have engaged in some avocation. In Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Ltd., reported in 2011 (2) TNMAC 190 SC, the Hon'ble Supreme Court having considered the wages, which prevailed during the year of accident (2004), fixed the monthly income at Rs.4,500/-.

19. In Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459, the Hon'ble Apex Court determined a sum of Rs.6,500/- as monthly income for a vegetable vendor, who sustained injury in the accident occurred on 14.02.2008. Therefore, in the present case, determination of Rs.9,000/- per month, in the year 2011, for computing the loss of income, cannot be said to be without any basis.

20. After determining the monthly income of the deceased, the Claims Tribunal has deducted 1/3rd towards personal and living expenses of the deceased and having regard to the age of the deceased as 30 years, as per entry made in Ex.P4 – Post-Mortem Certificate, applying 12 multiplier and arrived at a sum of Rs.12,24,000/- towards dependency compensation. In addition to the above, the Claims Tribunal has awarded Rs.1,00,000/- towards loss of consortium, Rs.50,000/- (Rs.25,000/- each) towards loss of love and affection, Rs.20,000/- for funeral expenses and Rs.10,000/- towards transportation.

21. Though the quantum of compensation has been assailed on the ground that it is on the higher side, perusal of the judgment shows that the Claims Tribunal has failed to add up 50% of income, towards future prospects, as per the decision made in Santhosh Devi v. National Insurance Co. Ltd., reported in 2012 (6) SCC 421, wherein, a question has been considered, as to whether future prospects can be taken into consideration, in the case of persons working in unorganised sectors, at Paragraph 14, the Apex Court held as follows:

> "We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma v. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC), that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this Rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades

ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma v. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC), judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

22. In the light of the discussion and the decisions, stated supra, this Court is of the view that the quantum of compensation awarded to the respondents/claimants, viz., wife and two children, who have lost their breadwinner, cannot be said to be a bonanza, warranting interference.

23. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Transport Corporation is directed to deposit the award amount, with accrued interest and costs, to the credit of M.C.O.P.No.608 of 2013, on the file of the Motor Accidents Claims Tribunal (District Judge and Special Court for MACT), Krishnagiri. within a period of three weeks from the date of receipt of a copy of this order. The share of the minors shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three

years. The interest accruing on the share of the minors shall be paid to the guardian once in three months, till they attain majority. On such deposit being made, except the minors, the respondent/claimant is permitted to withdraw the same, by making necessary application before the Tribunal.

No costs. Consequently, connected Miscellaneous Petition is also closed.

-Sd/-
Assistant Registrar(cs-III)

//True copy//

Sub Assistant Registrar

skm

To

1. The Motor Accidents Claims Tribunal
   (District Judge and Special Court for MACT),
   Krishnagiri.

2. The Section Officer,
   V.R.Section,
   High Court,Madras.

+1 cc to Mr.D.Venkatachalam,Advocate(sr.45884)
+1 cc to Mr.R.Pandian,Advocate(sr.45886)

C.M.A.No.2231 of 2014

ALA(co)
cp 06/10/2015