

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.3.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.3524 of 2014

Metropolitan Transport Corporation
Ltd., rep. By its Managing Director,
Annasalai,
Chennai-2.

...Appellant/Respondent

Versus

1.P.Kalaiselvi
2.P.Karthik

...Respondents/Petitioners

This civil Miscellaneous appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the order passed by the Motor Accidents Claims Tribunal/FTC.No.III, Chennai made in M.C.O.P.No.3416 of 2008 dated 9th February, 2012.

For Appellant : Mr.K.S.Suresh

For Respondents : Mr.S.Ramalingam for RR 1 & 2

J U D G E M E N T

The appeal has been preferred by the Transport Corporation against the fastening of liability and the award of Rs.6,16,000/- for the death of one K.Panchatcharam, 60 years, in the accident occurred on 17.10.2007.

2. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents.

3. It is argued by the learned counsel appearing for the appellant that while the two wheeler and the Transport Corporation bus were going in the same direction and the deceased tried to overtake the bus and in that process, he hit the bus, fell down and

died. However, the learned counsel appearing for the respondents-claimants would submit that the claimant was coming from South to North in the motor cycle and the same was hit by the bus, coming from North to South driven rash and negligently. The contention of the learned counsel appearing for the respondents is in consonance with the Ex.P1 F.I.R. and also the evidence of PW2 Eye witness. Therefore, the tribunal rightly rejected the evidence of RW1 that both the vehicles were coming from the same direction and accepted the evidence of PW2 Eye witness, who gave the Ex.P1 complaint.

4. The Tribunal believed the version of the claimants that the deceased and the Transport Corporation bus were coming in the opposite direction and the bus hit the motor cycle. The Tribunal rejected the evidence of RW1 and believed the evidence of PW2. Therefore, the finding that the accident occurred because of the rash and negligent driving of the bus cannot be found fault with.

5. Learned counsel appearing for the appellant would submit that Rs.8,000/- was wrongly determined as monthly income of the deceased in the absence of material evidence. A perusal of the record would show that as per Exs.P7 and P8, it is proved that the victim was running a provisional store. Though Rs.10,000/- was claimed as monthly income, the Tribunal determined the monthly income of the deceased at Rs.8,000/- per month, which is in consonance with the judgement of the Hon'ble Supreme Court in Syed Sadiq v. Divisional Manager, United India Insurance Co.Ltd. reported in 2014 (1) TN MAC 459 (SC) wherein, for an injured, vegetable vendor in the accident occurred in 2008, the monthly income was determined at Rs.6500/- and along with future prospects Rs.9750/- was determined. Therefore, Rs.8000/- per month determined by the Tribunal cannot be stated to be on the higher side. However, this court determines the income of the deceased at Rs.9000/- per month and after deduction 1/3 towards personal expenses, the loss of income would be $\text{Rs.9000/-} - \frac{1}{3} = \text{Rs.6000/-}$ per month. As per Ex.P2, the Postmortem Certificate, the age of the deceased was determined as 59 and the appropriate multiplier- 8 was taken. Therefore, the loss of income would be $\text{Rs.9000} - \frac{1}{3} \times 12 \times 8 = \text{Rs.5,76,000/-}$.

6. Rs.5000/- awarded towards funeral expenses is confirmed. Rs.10,000/- awarded towards loss of consortium, though is very low, taking into consideration of total compensation amount, the same is confirmed. Rs.25,000/- awarded towards loss of love and affection is confirmed. Therefore, Rs.6,16,000/- awarded by the Tribunal along with interest at 7.5% is confirmed. The appellant is directed to deposit the entire award amount along with interest and costs within

six weeks from the date of the receipt of a copy of the order and on such deposit, the claimants are permitted to withdraw the entire award amount as per the ratio fixed by the Tribunal. The appeal is dismissed. No costs. Consequently the connected M.P.No.1 of 2014 is also dismissed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal/
FTC.No.III, Chennai.

2. The Section Officer,
V.R.Section, High Court,
Chennai - 600 104.

1 CC to Mr.S.Ramalingam, Advocate SR.No. 13810

1 CC to Mr.K.S.Suresh, Advocate SR.No. 13650

C.M.A.No.3524 of 2014

GGK (CO)
PSI (09.04.2015)

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