

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2015

CORAM

THE HON'BLE MR.JUSTICE C.S.KARNAN

C.M.A.No.483 of 2012
and
Cross Obj.No.56 of 2012
and
M.P.No.1 of 2012

C.M.A.No.483 of 2012
The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Chennimalai Road, Erode Taluk,
Erode. ... Appellant

vs

1.A.Rajammal
2.G.Thamarai Selvi
3.A.Ramesh
4.Minor Kalamani
(Rep. By his friend/mother 1st respondent)
5.Kamachi
6.Venguttusamy @ Venkatesan
...1 to 6 Respondent/1 to 6 Petitioners

7.G.Kannian ...7th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Award made in M.C.O.P. No.309 of 2009, dated 21.01.2011, on the file of the Motor Accident Claims Tribunal, Sub Court, Bavani.

For Appellant : Mr.S.V.Vasanthakumar
for B.Vijayalakshmi

For Respondents: Mr.Ma.Pa.Thangavel

Cross Objection No.56 of 2012

1.A.Rajammal
2.G.Thamarai Selvi

3.A.Ramesh
4.Minor Kalamani
(Rep. By his friend/mother 1st respondent)
5.Kamachi
6.Venguttusamy @ Venkatesan

... Cross Objector

Vs

1.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Chennimalai Road, Erode Taluk,
Erode.

2.G.Kannian

... Respondents

(The 2nd respondent had already set exparte before the Tribunal,
hence notice may be dispensed with in this cross objection)

Cross Objection filed under Order 41 Rule 22 C.P.C., against
C.M.A.No.483 of 2012 against decree and judgment dated
21.01.2011 made in M.C.O.P.No.309 of 2009, on the file of Motor
Accident Claims Tribunal (Sub Court), Bhavani.

For Cross Objector : Mr.Ma.Pa.Thangavel

For Respondents : Mr.S.V.Vasanthakumar
for B.Vijayalakshmi

JUDGMENT

On 19.03.2008 at about 12.15 p.m., when the (deceased)
Arumugam was riding his T.V.S.50 moped bearing registration
No.TN-38C-3779, on the Andhiyur Main Road, the respondent's bus
bearing registration No.TN-33N-1126, coming in the opposite
direction and driven by its driver in a negligent manner, dashed
against him. As a result, he had expired. Hence, the legal
heirs of the deceased had filed the claim against the Transport
Corporation and claimed a sum of Rs.8,10,000/-.

2. The State Transport Corporation had filed a counter
statement and submits that the driver of the bus had driven it
in a cautious manner but the deceased had ridden his TVS-50 in a
drunken mood and dashed against the stationed bus. As a result,
he had expired. The driver of the bus had been acquitted by the
Criminal Court. The respondent had denied the contentions
regarding age, income and occupation of the deceased.

3. On considering the averments of both parties, the Tribunal had framed three issues and recorded the evidence of the claimants and evidence of respondents and after perusal of documents marked by both parties, the Tribunal granted a sum of Rs.6,20,000/- as compensation with interest at the rate of 7.5% per annum. Aggrieved by the said award, the State Transport Corporation has filed the above appeal. Not being satisfied with the quantum of compensation, the claimants had filed Cross objection and seeking additional compensation of a sum of Rs.1,90,000/-.

4. The highly competent counsel, Mr.S.V.Vasanthakumar, appearing for the corporation submits that the Tribunal had fixed the income of the deceased at Rs.4,500/- without obtaining proof. Besides the Tribunal had adopted a multiplier of 15 and calculated the compensation amount, for which no age proof was relied upon. Further, the deceased had driven his motorcycle in a negligent manner and dashed against the bus. As such, contributory negligence has to be fastened but the Tribunal had not discussed the same and not given any findings on this issue.

5. The learned counsel Mr.Ma.Pa.Thangavel, appearing for the claimants submits that the deceased's age was 45 years and he was working in the Brick Chamber and was earning Rs.7,000/- per month. Further, the deceased was the breadwinner of the family. The claimants are a young widow, minor child, aged parents and all are depending upon the income of the deceased.

6. Further, the Tribunal had not granted adequate compensation under the head of Transport, funeral expenses, loss of earning etc. Further, the claimants are 6 in numbers and as such only 1/4th of the income of the deceased should be deducted for his personal expenses instead of 1/3rd.

7. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsel on either side and on perusing the typed set of papers, this Court reassesses the compensation as follows:

loss of earning towards $(Rs.4,500 \times 3/4 \times 15 \times 12) = 6,07,500/-$
loss of love and affection towards Rs.1,50,000/-
Consortium to the 1st claimant towards Rs.20,000/-
Funeral expenses towards Rs.20,000/-
Transport towards Rs.12,500/-.

In total this Court grants a sum of Rs.8,10,000/- as compensation. After deduction of initial compensation of a sum

of Rs.6,20,000/-. This Court grants a sum of Rs.1,90,000/- as additional compensation, which is also the cross appeal value. The additional compensation amount will carry interest at the rate of 7.5% per annum from the date of filing the claim till date of payment of compensation. This Court directs the Transport Corporation to deposit the additional compensation amount with interest, as per this Court's findings within a period of eight weeks from the date of receipt of this order.

8. After such deposit being made, it is open to the claimants to share the deposited amount, with interest, equally among themselves, after filing a memo along with a copy of this order, before the Trial Court. In the result, the above appeal in CMA No.483 of 2012 filed by the Transport Corporation is dismissed and the cross objection No.56 of 2012 filed by the claimants is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ub

To

1. The Motor Accident Claims Tribunal,
Sub Court, Bavani.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.V.Vasanth Kumar, Advocate, S.R.No.46656
+1cc to M/s.Ma.Pa.Thangavel, Advocate, S.R.No.46725

C.M.A.No.483 of 2012
and
Cross Obj.No.56 of 2012
and
M.P.No.1 of 2012

PUR(CO)
CA(20/10/2015)

WEB COPY