

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.1827 of 2016

and

C.M.P.No.13435 of 2016

The Managing Director,
Andhra Pradesh State
Road Transport Corporation Ltd.,
Bus Bhavan, Musheerabad,
Hyderabad-500 020,
Andhra Pradesh.Appellant/ Respondent

vs.

1. J.Kathayee
2. N.Jothilingam Respondents/ Petitioners

Prayer: Civil Miscellaneous Appeal is filed Under Section 173 of Motor Vehicles Act, against the Award dated 03.07.2015 and made in M.C.O.P. No.4802 of 2013 on the file of the Motor Accident Claims Tribunal (Court of Small Causes) Special Sub Judge No.I, Chennai.

For Appellant : Mrs.G.V.Shoba

For Respondents : Mr.C.Munusamy

JUDGMENT

Questioning the liability, the appellant/Transport Corporation has filed this appeal under Section 173 of Motor Vehicles Act, 1988.

2. The respondents 1 and 2 herein had moved the Motor Accident Claims Tribunal (Special Subordinate Judge No.I), Chennai with the claim petition in M.C.O.P.No.4802 of 2013 claiming totally a sum of Rs.20,00,000/- for the death of their son one J.Senthil @ Senthil Kumar in a road traffic accident said to have been taken place on 28.05.2006, near Narayanadas Hotel at Vadumalpet, Chittoor, Andhra Pradesh involving a passenger bus bearing Registration No.AP-11-Z-2083 belonging to the appellant/Transport Corporation.

3. This claim was contested by the appellants by filing their counter statement on the ground that the accident was not taken place due to the rash and negligent act on the part of the driver of the bus. But, it was occurred only on the wrongful act of the deceased himself. The claims Tribunal on appreciation of evidences both oral and documentary had proceeded to pass an award to the extent of Rs.7,65,000/- under the following heads:-

1) Loss of dependency of the family of the deceased	:	Rs.5,40,000/-
2) Loss of Love and Affection to the Respondents/claimants 1 and 2 each Rs.1,00,000/-	:	Rs.2,00,000/-
3) Funeral Expenses	:	Rs. 25,000/-
Total		Rs.7,65,000/-

and directed the appellant/Transport Corporation to pay this amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation. Having been aggrieved by the award passed by the Tribunal dated 03.07.2015, the appellant stands before this Court.

4. Heard Mrs.G.V.Shoba, learned counsel for the appellant and Mr.C.Munusamy, learned counsel for the respondents.

5. Mrs.G.V.Shoba, while advancing her argument has made stress on the point that the claims Tribunal had miserably failed to appreciate the evidence of PW1 and PW2 as well as Ex.P1 F.I.R., and also committed a serious error to hold that the driver of the appellant alone was responsible for the accident. On the other hand, Mr.C.Munusamy, while countering the arguments advanced by Mrs.G.V.Shoba has submitted that on the crucial date the deceased Senthil @ Senthil Kumar was travelling in the bus belonging to the appellant/Transport Corporation as a passenger from Chennai-Tirupathi. While the bus was nearing Narayanadas hotel at vadumalpet, the driver had driven the said vehicle in a rash and negligent manner and on account of this reason, the bus had turned turtle. Due to the Accident, the deceased had sustained severe head injury as well as injury over the spinal cord and thereafter, he was taken to Government General Hospital, Chennai. Then, he succumbed to injuries while he was on treatment in the above said Hospital. He would further state that the evidence, given by PW2, one N.Sakthivel, who happened to be an eye witness would be sufficient to substantiate the case of the claimants. The said sakthivel was a friend of the deceased. He had also accompanied the deceased in the bus. His evidence would go to show the manner in which the accident was taken place as well as the rash and negligent act on the part of the driver. Ex.P2 also would go to show that the

deceased had sustained multiple injuries over his head and spinal region.

6. The Tribunal while penning down the award had made reference to the counter statement filed on behalf of the appellant/Transport Corporation wherein it is stated as under:-

'The driver of the bus had applied break and swerved towards right side of the road and due to loose soil the bus had slowly capsized.'

7. Having been admitted the nature of the accident, which was due to the negligent act of the driver of the bus, it is not open to the appellant/Transport Corporation to contend that the accident was not taken place due to rash and negligent act of the driver of the bus.

8. With reference to the quantum of compensation, this Court is able to find that the deceased at the time of accident was aged about 24 years as determined by the Tribunal. Exs.P2 to P4 are the post mortem certificate and report along with the request for conducting post mortem and the death certificate. These documents suggest that the deceased was aged about 24 years. At the time of accident, it is revealed from the records that, the deceased was working as an electrician and earned a sum of Rs.10,000/- per month. The Tribunal, after following the principle laid down in M.Mansoor and another vs. United India Insurance Co. Ltd., and another (2013 (2) IN MAG 481 (SC) had concluded that the selection of multiplier must be on the basis of the age of the deceased and not on the age of the claimants. The Tribunal had also concluded that the age of the claimants who are the dependents of the deceased had no nexus with computation of compensation. Since he was a bachelor, the Tribunal, after following the decision of the Apex Court in Amrit Bhanu Shall and others vs. National Insurance Company Ltd., and others (2012 ACJ (S.C.) had given deduction of 50% towards his personal and living expenses. After following Reshma Kumari and others vs. Madan Mohan and another (2013 ACJ 1253 (S.C.)), the Tribunal had proceeded to add 50% towards future prospects with the actual monthly salary.

9. Keeping in view of the above fact and on the basis of his age, the Tribunal had also selected the multiplier '18' and accordingly, the Tribunal had quantified the dependency of the family at Rs.5,40,000/- and towards loss of love and affection, the Tribunal had granted Rs.2,00,000/- (Rs.1,00,000/- each) to the claimants and apart from this amount another sum of Rs.25,000/- was granted towards funeral expenses. The Tribunal had totally granted Rs.7,65,000/- to the claimants, directing the appellant/Transport Corporation to pay this amount with interest at 7.5% per annum from the date of claim petition till date of the deposit within six weeks with the accrued interest

and costs. The Tribunal had also directed that out of the total award amount, the 1st respondent/claimant namely Mrs.J.Kathayee is entitled to receive Rs.6,00,000/- and the 2nd respondent/claimant Mr.N.Jothilingam is entitled to receive Rs.1,65,000/-.

10. This direction, according to this Court is concerned does not require any change or modification.

11. Accordingly, this Court finds that the appeal filed by the Appellant/Transport Corporation is devoid of any merits and therefore, this appeal is liable to be dismissed. Accordingly, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed.

12. The Appellant/Transport Corporation is directed to deposit the entire award amount along with accrued interest and costs within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are entitled to withdraw the amount in accordance with the ratio allocated by the Tribunal without filing any formal application seeking permission. However, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

ssn

To

1.The Special Subordinate Judge, No.I,
(Court of Small Causes (MACT)),
Chennai.

2. The Managing Director,
Andhra Pradesh State
Road Transport Corporation Ltd.,
Bus Bhavan, Musheerabad,
Hyderabad-500 020,
Andhra Pradesh.

1 cc to Mr.C. Munusamy, Advocate, Sr. 48395

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NMI (CO)

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