

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.2186 of 2016
C.M.P.No.15655 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
(Villupuram Division II),
Rangapuram, Vellore. ... Appellant / Respondents

versus

1. Kuyil
2. Prema
3. Minor Sasikala @ Sugi
4. Minor Dinesh
5. Parvathy ... Respondents/Petitioner
(Minors are represented by their
mother, 1st respondent)

Civil Miscellaneous Appeal filed under Section 173 Motor
Vehicles Act, 1988 against the Judgement and decree, dated
23.02.2016 made in M.C.O.P.No.22 of 2014, on the file of the
Motor Accidents Claims Tribunal, (I Additional District and
Sessions Judge), Vellore.

For Appellant : Mr.P.Paramasiva Doss

J U D G M E N T

(Judgement of this Court was made by S.MANIKUMAR, J.)

Appeal is directed against the judgment and decree, dated
23.02.2016 made in M.C.O.P.No.22 of 2014, on the file of the
Motor Accidents Claims Tribunal, (I Additional District and
Sessions Judge), Vellore, by which, after fixing negligence on
the driver of the bus, bearing Registration No.TN 23 N 1795,
owned by the appellant-Transport Corporation, the Tribunal has
awarded compensation of Rs.13,39,700/-, with interest, at the
rate of 7.5% per annum, from the date of claim, till realisation.

2. Short facts leading to the appeal are as follows:

On 02.09.2013, about 7.30 P.M., when Mr.Siva was riding
a Bajaj Palatina Motorcycle, bearing Registration No.TN 23 AH

6876, from Latheri to Gudiyatham Road, near LNK Mandapam, a Transport Corporation bus, bearing Registration No.TN 23 N 1795, driven by its driver, in a rash and negligent manner, dashed against the motorcycle, due to which, the motorcyclist fell down and sustained grievous injuries. Immediately, he was taken to Government Hospital, Vellore and after examining, the doctor has declared him as dead. In this regard, a case in Cr.No.728 of 2013, has been registered against the driver of the appellant-Transport Corporation bus, for the offences, under Sections 279, 337, 304(A) IPC.

3. The 1st respondent herein, wife of the deceased, along with her son and daughters, filed a claim petition in M.C.O.P.No.22 of 2014, claiming compensation of Rs.45,00,000/-, under various heads and submitted that, at the time of accident, the deceased, aged about 42 years, was engaged, as a Broker in Real Estate business and earned Rs.35,000/- per month. According to the claimants, survival of the family was miserable.

4. Opposing the plea of negligence and the quantum of compensation claimed under various heads, appellant-Transport Corporation has contended that the accident occurred, due to the negligence of the motorcyclist, who did not follow the Traffic rules and therefore, the concerned Insurance Company of the motorcycle alone, is liable to pay compensation to the claimants. The Transport Corporation has further contended that, at the time of accident, the deceased did not have a valid driving licence. Without prejudice to the above, they have also questioned the quantum of compensation, claimed under various heads.

5. Before the Claims Tribunal, wife of the deceased examined herself as PW.1 and PW.2 is the eye-witness to the accident. Ex.P1 - FIR, Ex.P2 - Post-Mortem Certificate, Ex.P3 - Motor Vehicles Inspector's Report, Ex.P4 - Charge Sheet and Ex.P5 - Legal Heirship Certificate, have been marked on the side of the respondents/claimants. On the side of the appellant-Transport Corporation, driver of the bus has been examined as RW.1 and no document has been marked.

6. On evaluation of pleadings and evidence, the Claims Tribunal held that the driver of the appellant-Transport Corporation bus was negligent in causing the accident and having regard to the age of the deceased, avocation pleaded, income and the compensation claimed under various heads, awarded Rs.13,39,700/-, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation, as hereunder:

For loss of income - by applying '14' multiplier and 30% addition towards future prospects and after deducting 1/4th	: Rs.10,64,700/- (Rs.76,050/- x 14)
Funeral Expenses	: Rs. 25,000/-
Loss of Love and Affection	: Rs. 1,00,000/-
Loss of Consortium	: Rs. 1,00,000/-
Loss of Estate	: Rs. 50,000/-

Total	: Rs. 13,39,700/- -----

7. Assailing the correctness of the award, Mr.P.Paramasiva Doss, learned counsel for the appellant-Transport Corporation submitted that the Tribunal has failed to see that there is no independent evidence for fixing negligence on the driver of the bus. He further submitted that PW.2, eye-witness, is a relative to the deceased and therefore, he is an interested witness.

8. On the quantum of compensation, he submitted that the claims Tribunal has failed to consider that no document has been filed to prove that the deceased was a real estate broker. According to him, the Tribunal ought to have fixed the income of the deceased as Rs.3,000/- per month, instead of Rs.6,500/-, on the basis of a decision of the Hon'ble Apex Court in Syed Sadiq and others v. Divisional Manager, United India Insurance Co., Ltd., reported in 2014 ACJ 64.

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

9. As regards manner of accident, PW.1, respondent/claimant has adduced evidence, reiterating the averments made in the claim petition. Though PW.1 has not witnessed the accident, her version is supported by an eye-witness to the accident, PW.2, relative of the deceased and duly corroborated by Ex.P1 - FIR, registered in Cr.No.728 of 2013 against the driver of the bus, for offences under Sections 279, 337, 304(A) IPC., on the file of Latheri Police Station. Though the appellant-Transport Corporation has taken a stand, in the counter affidavit that at the time of accident, the deceased was not having a valid driving licence, perusal of the impugned judgment shows that, absolutely, no evidence has been let in by the appellant-Transport Corporation to prove the same.

10. Though it is the contention of the appellant-Transport Corporation that PW.2, relative of the deceased, is an interested witness and that therefore, no credence should be

given to his oral testimony, this Court finds no reason to accept the said contention, for the reason that PW.2, in his evidence, has clearly deposed that while he was standing, in front of LNK Marriage Hall, along with his friend, the driver of the Transport Corporation bus, who had driven the bus, in a rash and negligent manner, dashed against the motorcycle. Merely because, an eye-witness, happened to be related to the deceased, has adduced evidence, narrating the manner of accident, credence of the same, cannot be discarded by the Tribunal or the Court, as the case may be. Anybody, who had witnessed the accident, can adduce evidence. It is always open to the Insurance Company or the owner of the vehicle, involved in the accident, to elicit materials to discredit his evidence. On the facts and circumstances of this case, we are of the view that nothing adverse to the interest of the claimants, has been elicited. The defence of the appellant-Transport Corporation, in the counter affidavit, is wholly unacceptable.

11. Though the learned counsel for the appellant-Transport Corporation has submitted that the Claims Tribunal has erred in fixing negligence, on the driver of the transport corporation bus, on the sole ground that Ex.P1 - FIR has been registered, this Court is not inclined to subscribe to the same, for the reason that, no contra evidence has been let in to disprove the same. Though RW.1, driver of the bus, has stated that he drove the bus in a show and careful manner, adhering to all the traffic rules and that the deceased, without following traffic rules, came in a rash and negligent manner, dashed against the bus and caused the accident, in his cross-examination, he has stated that he was placed under suspension for 15 days for causing the accident. Oral testimony of RW.1, as regards the manner of accident, has not been corroborated by any independent evidence. Whereas, the evidence of PW.1, first respondent/claimant is supported by PW.2, eye-witness, and corroborated by Ex.P1 - FIR, Ex.P3 - Motor Vehicles Inspector's Report and Ex.P4 - Charge Sheet, laid against the driver of the bus.

12. Needless to say that it is a settled law that disposal of a Claim petition is summary in nature, and finding of negligence, is arrived at, on the principles of preponderance of probability. In the case on hand, the manner of accident is duly corroborated by Ex.P1 - FIR and Ex.P4 - Charge Sheet and supported by a witness. Merely because the occurrence witness, happened to be a close relative, his evidence cannot be discarded. In the light of the above discussion, the finding fixing negligence on the driver of the appellant-Transport Corporation bus, cannot be said to be perverse, warranting interference.

13. On the quantum of compensation, in the case of the respondents/claimants that at the time of accident, the deceased, aged 42 years, real estate broker and earned Rs.35,000/- per month. Though the claimants have not produced any document to prove avocation, considering the fact that the deceased was the sole breadwinner of the family, consisting of five members, the Claims Tribunal, taking note of the decision of the Hon'ble Apex Court in Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 ACJ 627, has fixed the monthly income of the deceased at Rs.6,500/-.

14. 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, 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 in 2004, fixed the monthly income as Rs.4,500/-.

15. 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. In the present case, the accident has occurred on 02.09.2013. Considering the escalation in price, determination of Rs.6,500/- as monthly income is less.

16. After determining the monthly income of the deceased, the Claims Tribunal has deducted 1/4th towards personal and living expenses of the deceased and having regard to the age of the deceased as 42 years, as per entry made in Ex.P2 - Post-Mortem Certificate, applied 14 multiplier and arrived at a sum of Rs.10,64,700/- towards loss of contribution to the family. In addition to the above, the Claims Tribunal has awarded Rs.1,00,000/- for loss of consortium, Rs.1,00,000/- (lumpsum) for loss of love and affection, Rs.25,000/- for funeral expenses and Rs.50,000/- towards loss of estate.

17. 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 three children, who have lost their breadwinner, cannot be said to be a bonanza, warranting interference.

18. 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.22 of 2014, on the file of the Motor

Accidents Claims Tribunal, (I Additional District and Sessions Judge), Vellore, 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 respondents/claimants are permitted to withdraw the same, by making necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.The Motor Accidents Claims Tribunal,
(I Additional District and Sessions Judge), Vellore.

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

+1 cc to M/s.P.paramasivadoss, advocate,sr.57313.

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krd 21/11

C.M.A.No.2186 of 2016

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