

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 26.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.2224 of 2016 & Cross Objection No.72 of 2016

The Managing Director,
Tamil nadu State Transport Corporation (P)Ltd.,
37 Mettupalayam Road,
Coimbatore-43.

.. Appellant in
CMA.2224/16
& 1st respondent in
Cr.Obj.72/16
(2nd Respondent)

Vs

Rajeswari
A.Aruchamy

.. Respondents 1 & 2 in
CMA 2224/16
& Cross Objectors in
Cr.Obj.72/16(Petitioners)

3.A.Manikandan

... 3rd respondent in CMA
2224/16
.. 2nd respondent in
Cr.Obj.72/16(1st Respondent)

C.M.A.No.2224 of 2016 is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 04.11.2015, made in MCOP. No.2296 of 2012, on the file of the Motor Accident Claims Tribunal, Special Sub-Court, Coimbatore.

Cross Objection No.72 of 2016 is filed under Order 41 Rule 22 of the Code of Civil Procedure against the judgment and decree dated 04.11.2015, made in MCOP. No.2296 of 2012, on the file of the Motor Accident Claims Tribunal, Special Sub-Court, Coimbatore.

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CMA No.2224 of 2016

For Appellant : Mr.V.Udayakumar
For R1 & R2 : Mr.C.Veeraraghavan

Cross Obj.No.72 of 2016

For Cross Objectors : Mr.C.Veeraraghavan
For R1 : Mr.V.Udayakumar

COMMON JUDGMENT

C.M.A.No.2224 of 2016 is preferred by the appellant-Transport Corporation against the award dated 04.11.2015, made in MCOP. No.2296 of 2012, on the file of the Motor Accident Claims Tribunal, Special Sub-Court, Coimbatore.

2.Cross Objection No.72 of 2016 is filed by the claimants against the award dated 04.11.2015, made in MCOP. No.2296 of 2012, on the file of the Motor Accident Claims Tribunal, Special Sub-Court, Coimbatore.

3. On 30.08.2012 at about 19.30 hrs., while the deceased Ramesh and his relative one Mr.Mahendran were proceeding from Alandurai in a two-wheeler bearing Registration No.TN-08-F-9658, near Arulmigu Nagasakthiamman temple of Madhavarayapuram, a bus bearing Registration No.TN-38-N-1170 belonging to the appellant Transport Corporation driven by its driver in a rash and negligent manner dashed on the said bike, as a result, the deceased was thrown out and died on the spot. Immediately after the accident, a case was registered against the driver of the appellant Transport Corporation in Crime No.136/2012 under Sections 279, 337 and 338 of IPC on the file of the Alandurai Police Station. Subsequently, the claimants being the father and mother of the deceased have filed the claim petition claiming a sum of Rs.20,00,000/- as compensation.

4. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation and awarded a sum of Rs.8,56,000/- with interest at 7.5% per annum. Aggrieved by that award, the Transport Corporation as well as the claimants have filed the present appeal and cross objection respectively.

5. Learned counsel appearing for the appellant Transport Corporation submitted that the accident had occurred only due to the rash and negligent riding of the deceased as he himself hit against the bus and committed accident while the bus was stopped for alighting the passengers. Thus, he contended, the Tribunal ought to have fastened the liability on the Insurance Company of the two-wheeler. However, without doing so, the Tribunal has fastened the entire liability on the appellant Transport Corporation that too by awarding exorbitant compensation. On this basis, he sought for interference of the award passed by the Tribunal.

6. Learned counsel appearing for the respondents/claimants, who are the Cross Objectors in Cross Objection No.72 of 2016, submitted that at the time of death, the deceased was a bachelor and was aged about 29 years and was earning a sum of Rs.7,500/- per month and batta Rs.100/- per day, totalling Rs.10,500/- per month. Though the learned Tribunal has rightly deducted 50% of his income towards personal expenses as he was a bachelor, it has failed to add 50% of his income towards future prospects. It is also his further submission that while following the multiplier method for arriving loss of dependency, the Tribunal has wrongly fixed multiplier '11' by taking note of the age of the parents, instead of fixing the multiplier '17' by considering the age of the deceased as he was only 29 years at the time of death as per the judgment of the Hon'ble Apex Court in SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER reported in (2009) 4 MLJ 997. With these submissions, he prayed for enhancement of the compensation awarded by the Tribunal.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. It is the contention of the learned counsel for the appellant Transport Corporation that the accident had occurred only due to the rash and negligent riding of the deceased while riding his two-wheeler as he himself hit against the bus standing at the bus stop while alighting passengers and therefore, the Insurance Company of the two-wheeler is liable to pay the compensation. One Mr.Gnanaprakash-P.W.2 deposed before the Tribunal that the driver of the bus belonging to the appellant Transport Corporation was responsible for the accident as he drove the bus in a rash and negligent manner. Such version of the P.W.1 is also supported by the First Information Report registered against the driver of the bus in Cr.No.136/2012 under Sections 279, 337 and 338 of IPC on the file of the Alandurai Police Station. However, to discredit the said version of the P.W.1, the appellant Transport Corporation neither brought the witnesses to the witness-box nor produced

any documents before the Tribunal. Thus, the contention of the appellant Transport Corporation that the accident had occurred only due to the rash and negligent riding of the deceased cannot be sustained.

9. As regards the quantum of compensation, it is seen from the Ex.P11-driving license that the deceased was only 29 years old at the time accident. He was a bachelor. To substantiate the monthly income, one Mr.Balasubramaniam-P.W.3, employer of the deceased, was examined and he has deposed that the deceased was working under him as driver and the deceased was getting Rs.7500/- per month, along with batta of Rs.100/- per day, totally a sum of Rs.10,500/- per month. The Tribunal has also fixed the said sum as the monthly income of the deceased. However, while adopting multiplier method, it has wrongly taken consideration of the age of the parents of the deceased, instead of deceased as he was only 29 years old at the time of accident as per the judgment of the Hon'ble Apex Court in Sarla Varma's case (cited supra). Thus, by following the said judgment, this Court hereby adopts multiplier '17', instead of multiplier '11' adopted by the Tribunal.

10. The Tribunal has also committed yet another mistake as it did not add 50% of his income towards future prospects, though it has rightly deducted 50% of the income towards personal expenses while arriving compensation towards loss of dependency as per the judgment of the Hon'ble Apex Court in Rajesh and others v. Rajbir Singh and others (2013 (3) CTC 883 (SC)). At this juncture, it is more appropriate to refer to the said judgment and the relevant portion thereof is extracted below:

"8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Varma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

A mere perusal of the above said judgment shows that the Court can award 50% of the actual salary to the income of the deceased towards future prospects if the deceased was below 40 years. In the case on hand, as stated above, the deceased was 29 years old at the time accident. Therefore, this Court is of the considered view that the Tribunal ought to have added 50% of his salary towards future prospects. Finally, this Court arrives at the compensation towards loss of dependency by considering the income of the deceased at Rs.10000/- per month as stated below:

Salary of the deceased	= Rs.10000/- p.m.
50% of the salary to be added as future prospects	= Rs.10000+5000 = Rs.15000/- p.m.
50% of Rs.15000/- deducted as personal expenses	= Rs.7500/- p.m.
Loss of dependency after multiplier of 17 is applied (Rs.7500 x 12 x 17)=	Rs.15,30,000/-

11. With regard to the compensation awarded on other heads, namely, Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.5000/- towards estate, learned counsel appearing for both sides has not disputed for the same. Hence, this Court, finding that such sums awarded by the Tribunal are just and reasonable compensation, hereby confirms the same.

12. In toto, this Court hereby awards a sum of Rs.16,60,000/- as total compensation. The appellant Transport Corporation is directed to deposit the entire award amount along with interest at 7.5% per annum from the date of claim petition till the date of realization, less the amount already deposited if any, to the credit of M.C.O.P.No.2296 of 2012, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Coimbatore, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective shares as apportioned by the Tribunal by moving necessary application before the Tribunal.

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13. In fine, for the reasons stated above, the Civil Miscellaneous Appeal filed by the Transport Corporation stands dismissed and the Cross Objection filed by the claimants stands allowed to the extent mentioned above. Consequently, connected miscellaneous petitions are closed. No Costs.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

1.The Special Subordinate Judge
The Motor Accidents Claims Tribunal,
Special Sub Court, Coimbatore.

2.The Section officer,
VR Section High Court Madras

+1 cc to M/s.Udayakumar Advocate sr61393

+1 cc to M/s.C.Veeraghavan Advocate sr 61456

C.M.A.No.2224 of
2016 &

Cross Objection No.72 of 2016

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