

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.31 of 2016

The Managing Director,
Metropolitan Transport Corporation Ltd.,
No.2, Pallavan Salai, Chennai 600 002. .. Appellant/Respondent

Versus

1.K.Rajamani
2.Minor J.Selvaraj rep. by his mother R1
3.V.Valliammal (deceased) ..Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 22.08.2014 made in M.C.O.P.No.3213/2010 on the file of the Motor Accidents Claims Tribunal, (III Judge, Small Causes Court), Chennai.

For Appellant : Mr.S.S.Swaminathan

J U D G M E N T

The Civil Miscellaneous Appeal filed by the appellant/Transport corporation is directed against the correctness of the impugned award dated 22.08.2014 made in M.C.O.P.No.3213/2010 on the file of the Motor Accidents Claims Tribunal, (III Judge, Small Causes Court), Chennai, in and by which the Tribunal has awarded a sum of Rs.8,90,000/- with 7.5% interest per annum, as against the total claim of Rs.20,00,000/-. Aggrieved by the impugned award, Transport Corporation has preferred this appeal.

2.According to claimants, on 14.08.2010 at about 7.30 a.m., while the deceased namely V.Jayaraman was waiting in the bus stop for bus in 100 feet road, Thirumangalam, near Shanthi Colony, at that time, a bus bearing Registration No.TN 01 N 4556 came in Thirumangalam 100 ft. road from North to South direction with rash and negligent manner, hit the deceased in the bus stop, by overtaking the auto in the left side. The deceased died on the spot itself. The claimants are wife, son and mother of the deceased. During Trial, mother of the deceased/third respondent herein died on 19.08.2013. They claimed a sum of Rs.20,00,000/- as compensation. The appellant/Transport Corporation resisted the claim.

3. 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 appellant-Transport Corporation and awarded a sum of Rs.8,90,000/- as compensation payable to the claimants with interest at the rate of 7.5%. Aggrieved by that award, the appellant-Transport Corporation has filed the present appeal.

4. Heard Mr.S.S.Swaminathan, learned counsel for the appellant and perused the document on record. On the side of the claimants, P.Ws.1 to 5 were examined and documents Exs.P1 to P19 were marked. On the side of the appellant/Transport Corporation, RW1-Eliyas, the driver of the bus was examined.

5. Learned counsel appearing for the appellant would submit that the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection to the claimants 1 and 2 and again awarded a sum of Rs.50,000/- towards loss of consortium to the wife of the deceased, which is on the higher side. Adding further, he would submit that in the absence of any material evidence to prove the occupation and employment of the deceased, the Tribunal has wrongly fixed notional monthly salary of the deceased at Rs.6,000/-. Learned counsel for the appellant would further submit that as the deceased was aged about 44 years at the time of accident, on the basis of the II Schedule of Motor Vehicles Act, the Tribunal has wrongly applied the multiplier '15' instead of 14 and has wrongly fixed a sum Rs.7,20,000/- towards pecuniary loss, after deducting $1/3^{\text{rd}}$ towards his personal expenses of the deceased. Since the Tribunal has not guided by the ratio laid down by the Hon'ble Apex Court in the case of Sarala Varma and others vs Delhi Transport Corporation and another reported in 2009 (2) TN MAC Volume 2 at page 1, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

6. This Court is not able to see any merits in the contention made by the learned counsel for the appellant. The reason is that while the deceased V.Jayaraman was waiting in the bus stop for a bus in the 100 feet road near Shanthi Colony in Thirumangalam, a vehicle belonging to the appellant/ Transport Corporation hit the deceased, who was merely waiting for a bus and thereafter he was thrown out and died on the spot. Therefore, the Tribunal, considering the fact that the deceased was died on the spot, has rightly come to the conclusion that the driver of the appellant Transport Corporation was responsible for the accident, that had taken away the life of the bread winner of the claimants. The Tribunal has fixed a sum of Rs.6,000/- as notional monthly income of the deceased, considering the salary certificate, which was marked as Ex.P13, showing that the deceased was working as Production Controller in Jayadevi Films and earning a sum of Rs.15,000/- per month at

the time of accident. In any event, since there is no contra evidence to disprove the salary certificate/Ex.P13, the monthly salary of the deceased was fixed at Rs.6,000/-. As the deceased was being married, aged about 44 years at the time of accident, after deducting 1/3rd amount towards his personal expenses of the deceased, the Tribunal has arrived at a sum of Rs.7,20,000/- (4000 x 12 x 15) towards pecuniary loss, applying the multiplier '15', as per II Schedule of the Motor Vehicles Act.

7.This Court is not able to see any infirmity in awarding a sum of Rs.50,000/- towards loss of consortium to the wife of the deceased. Again the Tribunal has fixed a meagre amount of Rs.50,000/- each towards loss of love and affection to the claimants and has fixed a sum of Rs.20,000/- towards funeral expenses, which seem to be reasonable. Therefore, the Tribunal awarded a sum of Rs.8,90,000/- towards total compensation for the loss of life of the bread winner of the claimants' family.

8.Thus, in my view, the same cannot be disturbed, for, had the deceased not died in the accident, he would have lived for full span of his life and would have contributed substantially to his family. Therefore, by applying the principles of just and reasonable compensation, this Court, by dismissing the C.M.A., confirms the award passed by the Tribunal. Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

9.Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimants to move a petition before the Tribunal for withdrawing the said amount.

vga

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1.Motor Accidents Claims Tribunal,
(III Judge, Small Causes Court), Chennai.

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

rsi(co)
prk23/5

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