

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.206 of 2014

1. Banumathy
D/o Chinnathambi (late)
2. Rajaathi
D/o Chinnathambi (late) ... Petitioner/Appellants

-vs-

The Managing Director
Tamil Nadu State Transport Corporation
(Villupuram) Limited Respondent/Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 30.09.2010 made in M.A.C.T.O.P.No.634 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellant :: Mr.F.Terry Chellaraja

For Respondent :: Mr.K.J.Sivakumar

JUDGMENT

It is a case of death of a passenger, who had travelled in a bus bearing Registration No.TN 21 N 0614 belonging to the Tamil Nadu State Transport Corporation (Villupuram) Limited.

2. Learned counsel for the appellants submitted that on 30.8.2006 at about 10.30 A.M., when the mother of the appellants-claimants was travelling as a passenger in the said bus, while trying to alight from the bus at Pooncheri Koot road, as the conductor of the bus gave whistle without noticing the passenger getting down from the vehicle, the driver of the bus started the vehicle rashly and negligently, as a result the passenger fell down from the bus and sustained grievous head

injury and died in the hospital. Since the accident occurred only due to the rash and negligent driving of the driver of the bus belonging to the respondent-Transport Corporation, the claimants have lost their beloved mother, aged about 47 years, who was earning a sum of Rs.200/- per day by selling fish. Therefore, when the daughters of the deceased moved a claim petition stating that the deceased was earning a sum of Rs.5,000/- per month at the rate of Rs.200/- per day for a period of 25 days, the Tribunal has wrongly fixed the notional monthly income of the deceased at Rs.3,500/-, citing a reason that there was no evidence whatsoever produced on the side of the claimants to prove the income. When the age of the deceased is 47 years, the Tribunal, it is pleaded, could have considered that without a minimum income of Rs.5,000/- per month, a family of three persons would not survive. Therefore a sum of Rs.5,000/- should be taken as the notional monthly income. Adding further, he submitted that when it has been a settled legal position that a reasonable percentage of the actual salary should be added towards future prospects, in the present case, when the deceased was aged about 47 years, 30% of the actual salary should have been added towards future prospects as per the ratio laid down by the Apex Court in the case of Sarla Verma and others v. Delhi Transport Corporation and others, 2009 (2) TN MAC 1 (SC). As the said addition has not been done by the Tribunal, the same should be added. As there were two claimants, the Tribunal has rightly made the one-third deduction. However, with regard to the compensation towards loss of love and affection, a reasonable amount should have been awarded instead of Rs.10,000/- alone to both the claimants. Again a paltry sum of Rs.6,000/- alone has been awarded towards funeral and transport expenses. Therefore he prayed this Court to award a reasonable compensation to the claimants under the relevant heads.

3. Heard the learned counsel for the respondent-Transport Corporation also.

4. It is an admitted case of both sides that the deceased was one of the passengers who had travelled in the route bus No.115 bearing Registration No.TN 21 N 0614 belonging to the respondent-Transport Corporation on 30.8.2006. At about 10.30 A.M., when the deceased was trying to alight from the bus at Pooncheri Koot road, it is at this time the conductor of the bus did not notice the deceased passenger getting down from the bus and that the driver also, without noticing the passenger alighting, started to move the bus, as a result the deceased fell down and sustained grievous head injury. Though she was immediately taken to Swardeep Hospital, Mamallapuram for

treatment, she died unfortunately. Subsequently, a First Information Report was also registered in Crime No.457 of 2006 on the file of Mamallapuram Police Station for an offence under Sections 279 and 338 of IPC against the driver of the bus and the same was marked as Ex.P1. The Tribunal, accepting the case of the claimants that the deceased fell down on the road while alighting from the route bus at the place in question coupled with the evidence of P.W.2, Mr.Arokaran, an eye-witness to the occurrence, taking support from the contents of the First Information Report, Ex.P1, post-mortem certificate, Ex.P2 and the charge sheet, Ex.P3, has come to the conclusion that when some of the passengers were alighting from the bus, the conductor of the bus failed to notice the deceased getting down from the bus and before she got down, in view of the fact that the conductor had given the whistle, the driver started the bus rashly and negligently, as a result the deceased fell down from the moving bus and succumbed to the injuries. Therefore the Tribunal has rightly held the driver of the bus responsible for the accident and has saddled the liability on the Transport Corporation.

5. While coming to the fixation of compensation, although it was pleaded before the Tribunal that the deceased was eking out her livelihood by selling fish at the age of 47 years and earning a sum of Rs.200/- per day at least for 25 days, a reasonable amount of Rs.5,000/- should have been taken as the notional monthly income. As the said vital aspect has been completely overlooked by the Tribunal, this Court is inclined to fix a sum of Rs.5,000/- as the notional monthly income of the deceased and 30% of the said sum is added towards future prospects. As there are two claimants in the family, one-third deduction is made towards the personal expenses of the deceased. Considering the fact that the deceased was aged about 47 years at the time of accident, the proper multiplier '13' is adopted. Accordingly, a sum of Rs.6,76,000/- i.e. $\text{Rs.}6500 \times 12 \times 13 \times 2/3 = \text{Rs.}6,76,000/-$ is arrived at towards the loss of dependency. In addition thereto, a sum of Rs.50,000/- each is awarded to both the claimants towards loss of love and affection and a sum of Rs.25,000/- is awarded towards funeral and transport expenses.

6. In all, the appellants/claimants are entitled to a total compensation of Rs.8,01,000/- together with interest at the rate of 7.5% per annum from the date of petition till realisation, which shall be shared equally i.e., Rs.4,00,500/- each. The respondent-Transport Corporation is directed to deposit the entire amount of compensation along with interest to the credit of the M.C.O.P.No.634 of 2007 on the file of the Motor Accident

Claims Tribunal, Chief Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, it is open to the appellants to withdraw the entire amount with accrued interest representing their share by moving appropriate applications before the Tribunal, after complying with the formalities. With this modification in the award of the Tribunal, the appeal stands allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judge,
Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai.

+1cc to Mr.M.Malar, Advocate Sr.70352
+1cc to Mr.K.J.Sivakumar, Advocate Sr.71014

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