

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.2666 of 2014
and M.P.No.1 of 2014

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

vs.

1. M. Selvi

2. A. Mani

Both residing at D-Block,
10-A Parson Nagar
36, V.G.P Road, Saidapet
Chennai - 600 015. ... Respondents/ Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the fair and decreetal order dated 23.09.2013 passed in M.C.O.P. No. 4773 of 2011 on the file of the Motor Accidents Claims Tribunal, (VI Judge of Small Causes Court), Chennai.

For Appellant : Mr. S. S. Swaminathan

For Respondents: Mr. N. M. Muthurajan for R1 & R2

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

This Civil Miscellaneous Appeal has been preferred by the Transport Corporation, challenging the fair and decreetal order dated 23.09.2013 passed in M.C.O.P. No. 4773 of 2011 on the file of the Motor Accidents Claims Tribunal, (VI Judge of Small Causes Court), Chennai whereby, the Tribunal has awarded a compensation of Rs.56,00,000/-, together with interest at 7.5% p.a. from the date of the petition till such deposit is made.

2. This is a case of fatal accident. On 19.07.2011, at about 8.40 a.m., while the deceased M. Praveen Kumar, aged about 28 years was riding his motorcycle bearing Registration No.TN 09 AF 1324, proceeding from Saidapet to Kanthanchavadi, along Saidapet Taluk Road, the bus bearing Registration No. TN 01 N 5698, belonging to the appellant/ Transport Corporation, driven in a rash and negligent manner, dashed against the motor cycle and the rider of the motor cycle fell down and suffered serious head injuries and died on the spot. The parents of the deceased, claimed a sum of Rs. 50 lakhs as compensation stating that the deceased was earning as sum of Rs.15,00,000/- per annum, by running a firm.

3. In support of the claim, the mother of the deceased was examined as P.W.1 and one Thiru Govindaraja Prabhu, an eye witness was examined as P.W.2. Exs.P-1 to Ex.P.19 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of FIR in Cr. No.311/S3/11
P2	Driving License of the deceased
P3	Postmortem Certificate
P4	Death Report
P5	Legal heirs Certificate
P6	Copy of B.E. Degree Certificate
P7	Copy of MBA Degree Certificate
P8	Extra Curricular activities issued by Oracle Workforce development program of the deceased
P9	Personal Profile of the deceased
P10	Company Profile of the deceased
P11	Receipt book of M/s.Creative Loop Technologies, Chennai
P12	Pan Card of the deceased
P13	Form ST 3 of M/s.Creative Loop Technologies, Chennai
P14	Bank statement for the period from 01.09.2010 to 02.08.2011
P15	Bank Passbook of the deceased issued by Andhra Bank
P16	Bank Statement of the deceased issued by Axis Bank for the period from 01.08.2010 to 19.07.2011

Ex.No.	Details
P17	Copy of the Agreement for business process outsourcing of the deceased
P18	Copy of the Passport with USA visa of the deceased
P19	School Transfer Certificate of the first petitioner

On behalf of the Transport Corporation, the driver, who drove the bus at the time of accident was examined as R.W.1, however, no documents were marked on their side before the Tribunal.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the deceased was having valid driving licence to drive the two wheeler came to the conclusion that the driver of the bus was rash and negligent and was responsible for the accident and consequently liability was fixed on the Transport Corporation. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived at by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No	Head	Amount granted by the Tribunal
1	Loss of Estate	Rs. 10,000/-
2	Loss of dependency	Rs. 54,99,000/-
3	Loss of love and affection & mental agony	Rs. 50,000/-
4	Funeral Expenses	Rs. 25,000/-
5	Transportation expenses	Rs. 16,000/-
	Total	Rs. 56,00,000/-

6. Learned counsel for the appellant / Transport Corporation has filed this Appeal questioning the negligence and the quantum. It is submitted that the respondents/ claimants have not produced the rough sketch, explaining about the manner of the accident, to prove that the negligence is on the part of the driver of the appellant Corporation bus and so the Tribunal ought to have considered that the deceased is also equally

liable for contributory negligence. He further submitted that in the absence of proof of evidence for running a firm by the deceased, the award of compensation under the heading "loss of dependency" assuming an income of Rs.50,000/- p.m, is very excessive. The compensation granted under the heading "funeral expenses", is excessive, while the Tribunal has also granted higher compensation towards Transportation expenses, since the place of accident, the postmortem and the funeral, were conducted within Chennai. Hence, pleaded to reduce the quantum of compensation and also to fix 50% of contributory negligence on the respondents/ claimants.

7. On the other hand, the learned counsel for the respondents/claimants submitted that the deceased was running a firm and the documentary evidences such as Ex.P12 Pan Card of the deceased, Ex.P11 receipt book, Ex.P13 payment of service tax, Ex.P16 Bank statement of the firm etc., have been produced before the Tribunal and hence the Tribunal has rightly fixed the income of the deceased as Rs.50,000/-. The Tribunal, on considering the age of the deceased and the fact that respondents/ claimants are the sole dependents of the deceased, being the only son, has granted a reasonable compensation, though the Tribunal has granted a very meagre amount towards love and affection.

8. This Court considered the submissions made on the learned counsel on either side and perused the materials available on record.

9. The factum that the deceased, who was the only son of the respondents/claimants, met with the accident at the age of 28 years, due to which there is a heavy loss of dependency to the respondents/ claimants, is not in dispute. It is clear from the manner of the accident that the driver of the appellant Transport Corporation bus is solely responsible for the accident. Hence, the negligence is entirely on the part of the appellant Transport Corporation. The compensation of Rs.50,000/- granted by the Tribunal under the heading " loss of love and affection and mental agony" is low and the same could be increased to Rs.1,00,000/-, for each of the respondents/ claimants. Considering the facts and circumstances and the evidences adduced before the trial Court with regard to the income of the deceased, this Court is of the view that the income of the deceased should be reduced to Rs.25,000/- per month. However, considering the age of the deceased and the age of the parents, as per the Apex Court's decision in Sarla Verma - vs. - Delhi Transport Corporation, 2009(2) TNMAC 1 (SC), the Tribunal ought to have adopted " 17 " multiplier. Accepting the plea of the learned counsel for the appellant Transport Corporation, this Court is of the view that the amount granted under the heading "funeral expenses" would be inclusive of

"transportation charges" also. The compensation awarded under the other heads, remain unchanged.

10. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of Estate	Rs. 10,000/-	Rs. 10,000/-
2	Loss of dependency	Rs. 54,99,000/- (Rs.50,000/-+50% x12x13-50%)	Rs. 38,25,000/- (Rs.25,000/-+50% x12x17-50%)
3	Loss of love and affection & mental agony	Rs. 50,000/-	Rs. 2,00,000/-
4	Funeral Expenses & Transportation expenses	Rs. 25,000/-	Rs. 25,000/-
5	Transportation expenses	Rs. 16,000/-	--
	Total	Rs. 56,00,000/-	Rs. 40,60,000/-

There is no serious objection in respect of the interest granted at 7.5% per annum.

11. Accordingly, the Civil Miscellaneous Appeal is modified as follows:-

- (i) The award of the Tribunal is reduced to Rs.40,60,000/- from Rs.56,00,000/-.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The appellant Transport Corporation is directed to deposit the entire award amount, with interest and costs, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit, the respondents/ claimants are permitted to withdraw the entire award amount, on filing necessary applications before the Tribunal.

(vi) Consequently, the connected Miscellaneous Petition is closed. There will be no order as to costs in this appeal.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

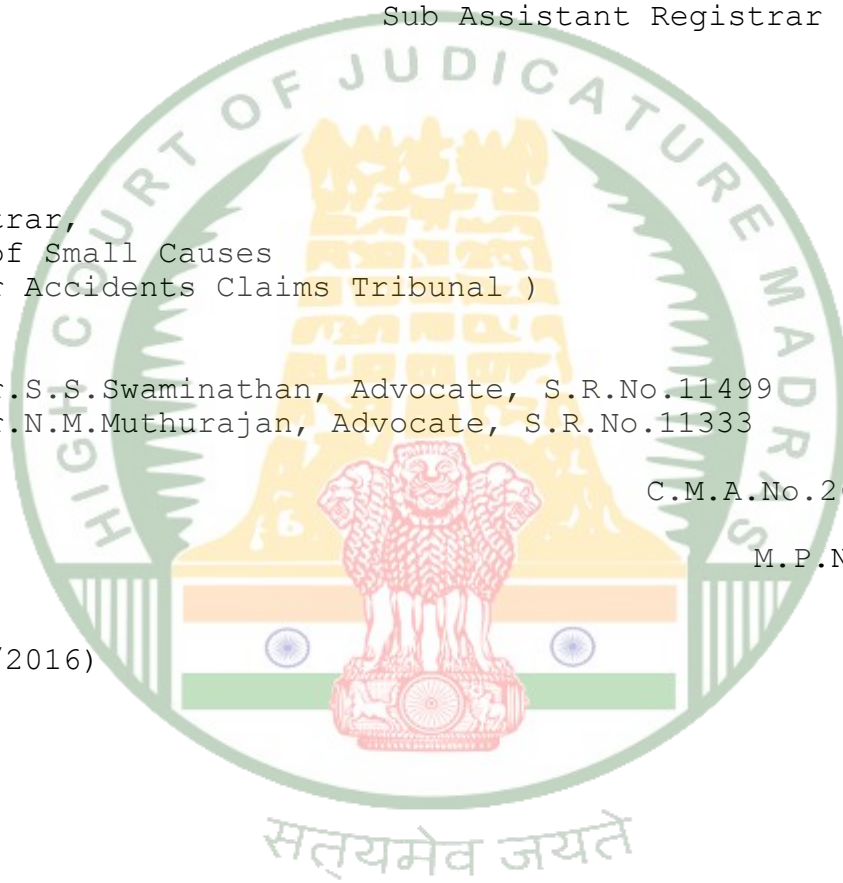
To

The Registrar,
VI Court of Small Causes
(The Motor Accidents Claims Tribunal)
Chennai.

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.11499
+2cc to Mr.N.M.Muthurajan, Advocate, S.R.No.11333

C.M.A.No.2666 of 2014
and
M.P.No.1 of 2014

ev (CO)
srg (30/03/2016)



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