

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

CIVIL MISCELLANEOUS APPEAL No.2673 of 2014

The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan Salai, Chennai 600 002. ... Appellant/Respondent

vs.

1. K.Manjula
2. M.Kolanchi
3. Narmadha (Minor)
rep by her mother, K.Manjula
(the 1st Petitioner) ... Respondents/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.04.2014 passed by the Motor Accidents Claims Tribunal (V Court of Small Causes, Chennai), in M.C.O.P.No.4747 of 2010.

For Appellant : Mr.P.Paramasiva Doss

For Respondents : Mr.K.Suryanarayanan

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Heard the learned counsel for the appellant/Transport Corporation and the learned counsel appearing for the respondents/claimants.

2. The appellant/Transport Corporation has filed this appeal challenging the award dated 16.04.2014 made in M.C.O.P.No.4747 of 2010 by the Motor Accidents Claims Tribunal, (V Court of Small Causes), Chennai.

3. This is a case of fatal accident. On 17.10.2010, about 10.45 hours, when the deceased, viz. K.Ramesh was riding his cycle on P.H. Road, near Mettukulam Junction, Koyambedu, proceeding from east to west direction, a SETC Bus bearing

Registration No.TN-01-N-5476 driven by its driver in a rash and negligent manner came behind and dashed the cycle of the deceased, thereby, he fell down and sustained grievous multiple injuries and thereafter died during the course of treatment on 18.10.2010. The 1st and 2nd respondents herein are the parents of the deceased and the 3rd respondent is the minor sister of the deceased. Alleging that the driver of the SETC bus is responsible for the accident and that the owner of the bus is liable to pay compensation, the respondents/claimants filed a claim petition before the Tribunal seeking a sum of Rs.10,00,000/- as compensation.

4. The appellant/Transport Corporation resisted the claim petition before the Tribunal on the ground that the driver of the Bus is a well-experienced person and he drove the vehicle with due care and caution observing traffic rules and it is only the deceased cyclist who attempted to overtake the bus, lost his balance and dashed against the middle portion of the bus. Thus, the appellant/Transport Corporation contended that the deceased is responsible for the accident and prayed for dismissal of the claim petition.

5. Before the Tribunal, in support of the claim, the 1st claimant, viz. Mrs.Manjula was examined as P.W.1; one Mr.R.Arumugam, an eye-witness to the accident was examined as P.W.2 and Mr.Srinivasan, employer of the deceased was examined as P.W.3 and Exs.P1 to P8 were marked, the details of which are as follows:

Ex.P-1	Copy of FIR
Ex.P-2	AR copy
Ex.P-3	Postmortem Certificate
Ex.P-4	Death Certificate
Ex.P-5	Legal heirship Certificate
Ex.P-6	Salary Certificate
Ex.P7	Employer WAT Registration Certificate
Ex.P8	Pay slip for the month of September 2010

6. On the side of the appellant/Insurance Company, Mr.S.Shankaran, driver of the SETC Bus was examined as R.W.1, but no exhibits were marked.

7. The Tribunal, taking note of the oral evidence of P.W.1 and Ex.P1-F.I.R. and also taking note of the corroborating

evidence of P.W.2, an eye-witness to the occurrence, which has been adduced to prove that the SETC bus was driven by its driver in a rash and negligent manner and also taking note of the evidence of R.W.1-driver of the SETC Bus, held that the accident took place due to the rash and negligent driving of the driver of the SETC Bus bearing Registration No.TN-01-N-5476 and awarded a sum of Rs.25,01,500/- as compensation to the claimants with interest at 7.5% per annum, from the date of filing of the claim petition, under the following heads:

Pecuniary Loss (11,025 x 12 x 18)	Rs. 23,81,400.00
Funeral Expenses	Rs. 20,000.00
Loss of Love and Affection	Rs. 1,00,000.00
Total compensation	Rs.25,01,400. 00
Compensation rounded off	Rs.25,01,500.00

The Tribunal further held that out of the said award amount, the 1st and the 2nd claimants/parents of the deceased are entitled to get a sum of Rs.10,00,000/- each and the 3rd claimant, being the sister of the deceased is entitled to get a sum of Rs.5,01,500/- as compensation. Challenging the said award that it is on the higher side, the Transport Corporation has come up with the present appeal.

8. Learned counsel for the appellant/Transport Corporation would mainly contend that the Tribunal erred in coming to the conclusion that the deceased was earning a sum of Rs.800/- per day, when there was no material proof to support his earning. According to him, the Tribunal ought to have fixed the salary of the deceased at Rs.3000/- per month, as the victim was an independent professional. It is also his contention that the Tribunal ought to have taken the age of the deceased's mother, while fixing the multiplier, as fixation of the age of the victim is not general and applicable to all cases.

9. In reply, learned counsel appearing for the respondents/claimants would submit that the Tribunal has rightly fixed the monthly income of the deceased and has adopted the correct multiplier. He would further submit that the claimants have lost the deceased at the age of 21 years itself. According to him, as the deceased was the only earning member of his

family to support his parents and minor sister, the compensation awarded by the Tribunal is not excessive.

10. We have given careful consideration to the submissions made by the learned counsel on either side and gone through the materials available on record.

11. It is seen that the deceased was aged 21 years at the time of accident. In view of the ratio laid down by the Supreme Court in *Sarla Verma -Vs- Delhi Transport Corporation* and another [2009 (6) SCC 121], the correct multiplier to be adopted to the age of the deceased is '18' and the Tribunal has rightly adopted the same.

12. Coming to the avocation and income of the deceased, it is seen from the evidence of the claimants that the deceased was working as a Car Mechanic, earning a sum of Rs.800/- per day at the time of accident. In this regard, one Mr.Srinivasan, employer of the deceased, who was examined as P.W.3, deposed that the deceased was working under him as a Mechanic and he was paid a sum of Rs.15,000/- as monthly salary. Relying on Ex.P6-Salary Certificate of the deceased and Ex.P8-Salary slip for the month of September 2010 showing the monthly salary of the deceased as Rs.14,700/-, the Tribunal fixed the monthly income of the deceased at Rs.14,700/-. Further, as regards addition of 50% of the monthly income of the deceased towards 'future prospects' while calculating compensation towards Pecuniary Loss, the Tribunal taking note of the ratio laid down by the Supreme Court in *Santosh Devi -vs- National Insurance Co. Ltd.* (2012 (6) SCC 421), which has been subsequently followed by the Supreme decision in *Rajesh -vs- Rajbir Singh & others* (2013 (9) SCC 54), added 50% of the monthly income of the deceased i.e. Rs.7,350/- to Rs.14,700/- and after deducting 50% of the monthly income of the deceased towards his personal expenses, arrived at a sum of Rs.11,025/- $[(Rs.7,350+14,700) / 2]$ as monthly contribution to his family. Thereby, a sum of Rs.23,81,400/- was awarded by the Tribunal as compensation towards 'loss of dependency'.

13. For better understanding, relevant portion of the ratio laid down by the Supreme Court in the case of *Rajesh vs. Rajbir Singh*, 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 Verma* 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.

9. In Sarla Verma case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

14. In view of the settled law, we do not find any error on the part of the Tribunal in the fixation of salary of the deceased and the compensation awarded towards "Pecuniary Loss". Also, we find that the compensation of a sum of Rs.20,000/- awarded under the head 'Funeral expenses' and a sum of Rs.1,00,000/- under the head 'Loss of Love and Affection', are reasonable and they do not require any interference.

15. In the above factual background, this Court is of the considered opinion that there is no necessity to interfere with the order passed by the Tribunal. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal.

16. It is reported that 50% of the award amount with proportionate accrued interest has been deposited to the credit of M.C.O.P.No.4747 of 2010, as could be seen from the order dated 21.08.2015 made in M.P.No.1 of 2014 in the above appeal. As the award of the Tribunal is confirmed by this Court, the appellant/Transport Corporation is directed to deposit the entire award amount along with accrued interest to the credit of M.C.O.P.No.4747 of 2010 on the file of the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai, within a period of six (6) weeks from the date of receipt a copy of this

judgment. On such deposit being made, the respondents/claimants are permitted to withdraw the amounts, as per the award. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

aeb

To:The Motor Accidents Claims Tribunal
(V Court of Small Causes),Chennai.

+1 cc to Mr.P.paramasiva Doss, Advocate, sr.10134

+1 cc to Mr.K.Suryanarayanan, Advocate, sr.9734

C.M.A.No.2673 of 2014

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