



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.03.2016

CORAM

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

C.M.A. NO. 81/2013 & MP.No.1/2013 & CMP.No.882/2016

The Managing Director
Tamil Nadu State Transport Corporation
Limited, 3/137, Salamedu,
Vazhutha Reddy Post,
Villupuram.

.. Appellant/
Respondent

- Vs -

1.Pachayammal
2.Divya
3.G.Kalaivani
4.Padmavathi [Died]

.. Respondents/
Petitioner

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed by the Motor Accidents Claims Tribunal, Principal Sub Court, Vridhachalam, in MCOP No.194/2010 dated 20.02.2012.

For Appellant : Mr.S.V.Vasanthakumar

For Respondents: Mr.P.Tamilavel for R1 to R3
R4-died

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 3/claimants.

2. The appellant/Transport Corporation filed the appeal challenging the award dated 20.02.2012, passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Vridhachalam, made in MCOP No.194/2010.



3. It is a case of fatal accident. On 08.02.2010, when the deceased Gunalan, a Fireman by profession, was walking along with his daughter, on the left side of the Cuddalore - Vridhachalam road and coming opposite to the Cashewnuts Research Office towards east direction, the bus bearing Registration No.TN-32-B-3197, driven by the driver in a rash and negligent manner, dashed against Gunalan, causing his instantaneous death. A case was registered against the driver of bus in Cr.No.73/2010 u/s.279 and 304-A IPC.

4. The claimants, viz., the wife, two children and the mother of the deceased, have filed the claim petition before the Court below, claiming a sum of Rs.15,00,000/= as compensation. Pending disposal of the claim petition, the 4th petitioner / mother of the deceased Gunalan passed away, leaving behind the petitioners 1 to 3 as her legal heirs.

5. In support of the claim, the wife of the deceased was examined as P.W.1 and one Tmt.Thivya was examined as P.W.2 and Exs.P-1 to P-13 were marked, the details of which are as follows:-

Ex.P-1	-	08.02.2010 dated copy of the FIR
Ex.P-2	-	08.02.2010 dated copy of the MVI Report
Ex.P-3	-	08.02.2010 dated copy of the Postmortem Certificate
Ex.P-4	-	12.02.2010 copy of the death certificate
Ex.P-5	-	15.03.2010 date of pay certificate
Ex.P-6	-	03.10.2010 dated copy of the R.C.
Ex.P-7	-	25.02.2010 dated copy of the driving license
Ex.P-8	-	Copy of the Family Card
Ex.P-10	-	11.03.2010 dated Legal Heir Certificate
Ex.P-11	-	Copy of the Transfer certificate of Gunalan
Ex.P-12	-	28.01.2012 dated copy of the Bonafide Certificate for 2 nd petitioner
Ex.P-13	-	30.01.2012 dated copy of the Bona fide Certificate of the 3 rd petitioner

6. On the side of the respondent, one Senthilkumar was examined as R.W.1 and no exhibits were marked.



7. The Tribunal based on the oral evidence of the P.W.1 & 2, the F.I.R. and also taking note of the corroborating evidence in the form of the evidence of P.W.2, eye witnesses to the occurrence, which has been adduced to prove that the bus was driven in a rash and negligent manner and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant to refute the eye witness testimony as to the rash and negligent driving of the bus, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the bus and, therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads :-

Loss of Dependency	-	Rs.14,10,057/-
Loss of Consortium	-	Rs. 10,000/-
Loss of Estate	-	Rs. 5,000/-
Ambulance	-	Rs. 5,000/-
Funeral expenses	-	Rs. 5,000/-
Total Compensation	-	Rs.14,35,057/-

8. In all the Tribunal awarded a compensation of Rs.14,35,057/- with interest at the rate of 7.5% to be paid by the Transport Corporation from the date of claim petition till date of payment/deposit and with further direction that the 1st claimant/wife of the deceased is entitled to withdraw a sum of Rs.6,35,057/- and petitioners 2 and 3 are entitled to a sum of Rs.4 lakhs each and the same has to be deposited in a Nationalised Bank for three years. Aggrieved by the said award, the Transport Corporation is before this Court by filing this appeal.

9. The only point raised by the learned counsel appearing for the appellant is that the amount of compensation awarded is highly excessive and that the multiplier adopted by the Tribunal as "11" instead of "3" is wrong and that the amount awarded under the head "Loss of Dependency" is higher. Hence, he prays for modification of the Award.

10. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials placed on record. Admittedly, the respondents/claimants have not filed any appeal claiming



enhancement. Though it is trite law that the income should be arrived at keeping in mind the avocation of the deceased, it is seen that the multiplier adopted considering the age of the deceased, is correct and that the deceased is the sole breadwinner of the family and hence, the same needs no modification and the Tribunal has correctly adopted the same and arrived at the loss of dependency at Rs.14,10,057/-. Further, this Court finds no error apparent on the fact of it, warranting interference in the Award passed by the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed.

[i] The award of the Tribunal is confirmed.

[ii] The interest granted by the Tribunal at 7.5% per annum is also confirmed.

[iii] As per order dated 23.01.2013 made in MP No.1/2013, this Court while granting stay, directed the appellant to deposit entire award amount within six weeks.

[iv] Therefore, claimants are permitted to withdraw the award amount as ordered by the Tribunal.

[v] There will be no order as to costs in this appeal.

[vi] Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

rg/AP

To

The Principal Sub Judge
(Motor Accident Claims Tribunal)
Vridhachalam.

1 cc to M/s.S. V. Vasanthakumar, Advocate, Sr. 14460

+ 1 cc to Mr.P.Tamilavel, Advocate Sr 14742 (6/4/16)

C.M.A. NO.81/2013

UG(CO)
kk 24/3