

IN THE HIGH COURT OF JUDICATURE AT MADRAS

10.04.2017

CORAM

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No. 1184 of 2017
and CMP No.5896 of 2016

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Villupuram Division III,
Kancheepuram - 631 502 ...Appellant/Respondent

Vs.

1. K.Pushpa
2. M.Kannan
3. K.Kavitha ...Respondents/Petitioners

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 18.04.2016 made in M.C.O.P.No.4551 of 2012 on the file of the Motor Accident Claims Tribunal [II Small Causes Court], Chennai.

For Petitioner : Mr.J.Lokesh
For Caveators/
Respondents : Mr.Amar D.Pandiya

J U D G M E N T

(Order of the Court was made by S.MANIKUMAR, J.)

Caveator is on record. With the consent of both parties, appeal is taken up for final disposal.

2. In the accident, which occurred on 19.07.2012, about 12.10 hours, involving a motorcycle bearing Regn. No.TN-05 X 4804 and a transport corporation bus bearing Regn. No.TN21N1179, pillion rider K.Appan Raj, aged about 25 years, stated to be a driver in M/s.Enrich Foods, Chennai and earned Rs.15,000/- per month, sustained grievous injuries and died on the spot. A case in Crime No.142/KM1/2012 has been registered against the driver of the Transport Corporation bus on the file of K-10 Koyambedu Traffic Investigation Police Station, Chennai.

3. Contending inter alia that the accident occurred due to rash and negligent driving of the driver of the Transport Corporation bus bearing Regn.No.TN21-N-1179 and due to the

sudden demise of K.Appan Raj, breadwinner, respondents/legal representatives, filed MCOP No.4551 of 2012 on the file of Motor Accident Claims Tribunal, [II Small Causes Court], Chennai, claiming compensation of Rs.20,00,000/- under various heads.

4. Managing Director, Tamil Nadu State Transport Corporation Ltd., Villupuram Division III, Kancheepuram, disputed the manner of accident and negligence attributed to the driver of the bus. According to the Corporation, while the bus was on Poonamallee High Road, about 12.10 hours, near Mettukulam Police Booth, a motor cycle bearing registration No.TN-05 X 4804, was coming behind the bus. The motorcyclist suddenly tried to overtake the bus and in the process, hit the center median, lost his balance, and then the handle bar of the motor cycle touched the right side of the bus. In the impact, motorcyclist lost his balance, fell down on the right side of the road. Pillion rider fell on the left side of the road. In the result, pillion rider sustained injuries. Transport corporation further submitted that the motorcyclist was not wearing helmet. Thus, they disputed the manner of the accident and consequently, liability to pay compensation. Without prejudice to the above Transport Corporation disputed the age, avocation, income and compensation claimed under various heads.

5. Before the tribunal, mother of the deceased examined herself as PW1 and reiterated the manner of accident. PW2 is stated to be the eye witness. PW3, is stated to be an employee in M/s.Enrich Foods. Ex.P1, Copy of FIR, Ex.P2, Charge Sheet, Ex.P3, Post Mortem Certificate, Ex.P4, Death Certificate, Ex.P5, Legal-heir certificate, Ex.P6, Driving Licence of Deceased, Ex.P7. Authorization Letter, Ex.P8, Employer related documents, Ex.P9, Employment of the deceased related documents, Ex.P10, Pay slip of the deceased and Ex.P11, Authorisation letter given to PW3, have been filed by the respondents/claimants.

6. RW1, is the driver of the Transport Corporation bus. No document has been filed on behalf of the transport corporation.

7. On evaluation of pleadings and evidence, the claims tribunal held that RW1, driver of the transport corporation bus was negligent in causing the accident. Accepting the avocation of the deceased, driver, based on the testimony of the PW3, Ex.P7 Authorization letter, Ex.P8, Employer related documents, Ex.P9, Documents relating to the deceased, Ex.P10, pay slip of the deceased and Ex.P11, authorization letter given to PW3, Tribunal fixed the monthly income of the deceased as Rs.12,500/-.

8. Placing reliance on the decision of the Hon'ble Supreme Court in Smt. Sarla Varma & others Vs. Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1(SC), Tribunal added 50% of the income under the head future prospects and fixed Rs.18,750/- for the purpose of computing the loss of contribution to the family. Deceased was a bachelor, therefore 50% deduction was made. He was aged 25 years and following Sarla Varma's case [cited supra], tribunal applied '18' multiplier and arrived at the loss of contribution to the family as Rs.20,25,000/- [Rs.18,250/- x $1\frac{1}{2}$ x 12 x 18]. That apart, the tribunal awarded Rs.1,00,000/- each, to the parents and Rs.50,000/- to the unmarried sister / respondent No.3 herein, towards loss of love and affection; a sum of Rs.50,000/- for loss of estate and a sum of Rs.25,000/- for funeral expenses. Altogether, the tribunal awarded Rs.23,50,000/- with interest at the rate of 7.5% per annum from the date of claim till deposit and costs as compensation and directed respondents/legal representatives to pay deficit court fee of Rs.19,500/- within a period of 15 days from the date of impugned judgment.

9. Being aggrieved by the finding, fixing negligence on the driver of the Transport Corporation bus bearing Regn.No.TN21N1179, and the quantum of compensation of Rs.23,50,000/-, with interest at the rate of 7.5% per annum, from the date of claim till deposit and costs, instant appeal is filed.

10. Though Mr.J.Lokesh, learned counsel for appellant-Transport Corporation, contended that mere registration of First Information Report against the driver of the bus alone is not sufficient to hold negligence against the driver and further contended that the tribunal failed to consider the testimony of RW1, driver in proper perspective, and for the abovesaid reasons, sought for reversal of finding, this court is not inclined to accept the said contention, for the reason that not only Ex.P1 FIR has been registered against him, but the police on investigation has also laid Ex.P2 charge sheet. Accident is stated to have been witnessed by PW2, whose evidence remains unshattered. On the contrary, testimony of RW1 is neither supported nor corroborated. Thus, after giving due consideration to the oral and documentary evidence adduced by both parties, the claims tribunal held that the driver of the bus was negligent in causing accident. Preponderance of probability, is the test in Motor Vehicle Accident cases.

(i) In N.K.V.Brother's Private Limited v. Kurmai reported in AIR 1980 SC 1354, while dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court has held that,

"Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there.

from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

(ii) In a decision in *Union of India v. Saraswathi Debnath* reported in 1995 ACJ 980, High Court of Gauhati has held in Paragraph 6 as follows:

"The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

(iii) In *Bimla Devi & Ors. Vs. Himachal RTC* reported in 2009 (13) SCC 530, the Supreme Court held as follows:

"It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

11. Testing the finding fixing negligence on the driver of the transport corporation bus, on the abovesaid principle, we are of the view that the same cannot be said to be perverse warranting interference. Hence, it is confirmed.

12. On the avocation of the deceased, as driver in M/s.Enrich Foods, PW3 has adduced evidence by marking the required documents as stated supra. Avocation and income have been substantiated. Taking note of the above, the tribunal has fixed the monthly income of the deceased as Rs.12,500/-. Addition of 50% under the head future prospects, has been done based on Sarla Varma's case [cited supra]. Deduction is also justified. Method adopted by the Tribunal in arriving at the

quantum of compensation of Rs.20,25,000/-, towards the loss of contribution to the family, cannot be said to be erroneous.

13. Age of the parents/respondent Nos.1 and 2, at the time of accident, is stated to be 52 years and 46 years, respectively. Sum of Rs.1,00,000/- each awarded under the head loss of love and affection to the parents, appears to be slightly on the higher side. Rs.50,000/- awarded under the head loss of estate also requires to be interfered with.

14. Considering the age of the parents, we deem it fit to reduce the same to Rs.75,000/- each, and loss of estate is reduced to Rs.10,000/-. A sum of Rs.50,000/- awarded to the unmarried sister, towards loss of love and affection is reasonable and hence, sustained.

15. Perusal of the award shows that the tribunal has failed to award any reasonable compensation under the head transportation. No award has been made for conventional damages. Therefore, it would be just and reasonable to award a sum of Rs.15,000/- for transportation and Rs.2,000/- for conventional damages. Thus, after reworking, compensation due and payable, works out to Rs.22,77,000/- and the same is apportioned as hereunder.

Loss of contribution to the family	: Rs.20,25,000/-
Loss of love and affection	
to parents @ Rs.75,000/- each	: Rs. 1,50,000/-
to unmarried sister	: Rs. 50,000/-
Loss of estate	: Rs. 10,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 15,000/-
Conventional Damages	: Rs. 2,000/-
Total	: Rs.22,77,000/-

16. Compensation awarded by the tribunal is Rs.23,50,000/-. On appeal, compensation determined is Rs.22,77,000/-. Therefore, there will be a reduction in compensation by Rs.73,000/-. Finding of negligence is sustained. Quantum of compensation is reduced. Reduction of Rs.73,000/- would be made in equal proportion from the share of the parents. Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, the connected Miscellaneous Petition is closed.

17. Consequent to the above, the Managing Director, Tamil Nadu State Transport Corporation, Villupuram Division III, Kanchipuram, appellant herein is directed to deposit Rs.22,77,000/- with interest at the rate of 7.5% per annum, from the date of claim till deposit and costs, awarded by the tribunal, less the statutory deposit, to the credit of MCOP No.4551 of 2012 on the file of Motor Accident Claims Tribunal (II Small Causes Court), Chennai, within a period of four weeks from the date of receipt of a copy of this order.

18. On such deposit, respondents/legal representatives are permitted to withdraw their share as apportioned by the tribunal, by making necessary applications. Respondents/claimants are directed to work out the deficit court fee and pay the same to Motor Accident Claims Tribunal (II Small Causes Court), Chennai.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ars/dsa

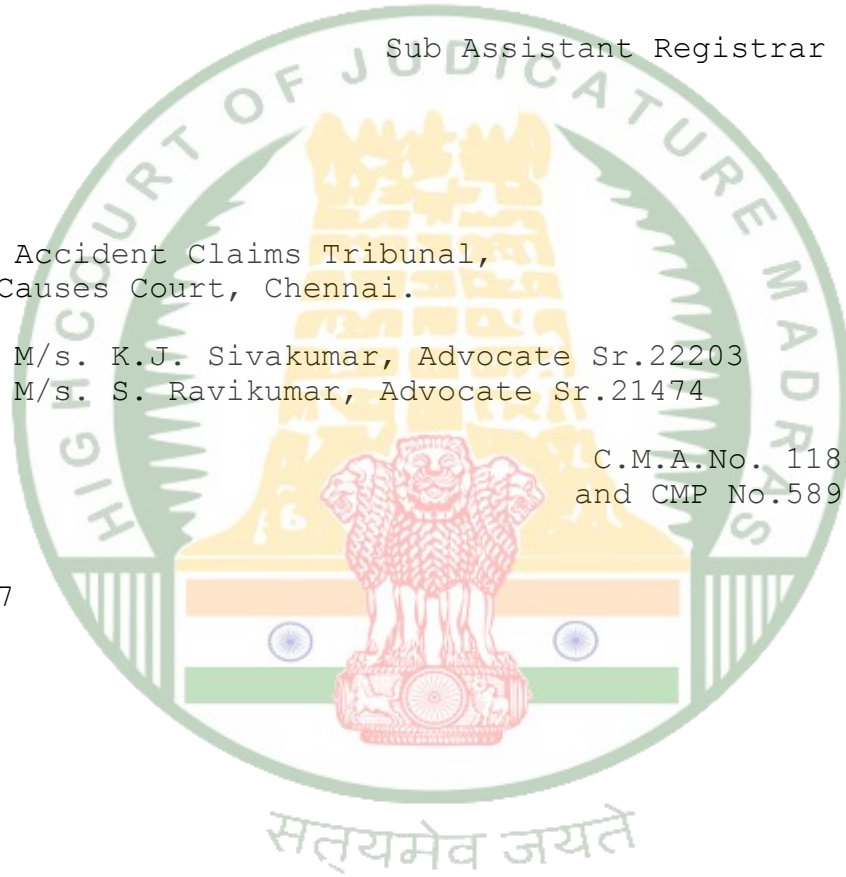
To

The Motor Accident Claims Tribunal,
II Small Causes Court, Chennai.

+ 1 cc to M/s. K.J. Sivakumar, Advocate Sr.22203
+ 1 cc to M/s. S. Ravikumar, Advocate Sr.21474

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