

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05/06/2017

CORAM

The Honourable **Mr.JUSTICE S. MANIKUMAR**
and
The Honourable **Mr.JUSTICE M. GOVINDARAJ**

Civil Miscellaneous Appeal Nos.1127 of 2016

The Managing Director
Tamil Nadu State Transport Corporation
No.3/37, Salamedu, Villupuram. ... Appellant

vs

1.Tmt. Rahamathunnisa
2.Minor Jasmine
3.Minor Nazeema Banu
4.Minor Jessima Banu
5.Minor Yasar Arabath
6.Minor Chithikjamal
Tmt.Habeetha Bivi (died)
Minors 2 to 6 represented by their
mother 1st respondent ... Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree passed by the Motor Accident Claims Tribunal (Additional District Judge), Kancheepuram District in M.C.O.P.No.248 of 2006 dated 26.04.2013.

For Appellant : Mr.K.J.Sivakumar

JUDGMENT(Made by **S.Manikumar, J.**)

Being aggrieved by the award made in M.C.O.P.No.248 of 2006, dated 26.04.2013, on the file of the Motor Accidents Claims Tribunal, (Additional District Judge), Kancheepuram District at Chengalpattu, the present appeal has been filed.

2. On 15.01.2006, about 4.00 p.m, when the husband of the 1st respondent/claimant, namely Liyagath Ali, was travelling as a pillion rider in a two wheeler, bearing Registration No.TN 21 P 0389, driven by one Nithyanandam, on ECR road, near Ellaianman Koil Check post at Cheyyur, a bus bearing Registration No.TN-32 N-2180 belonging to the appellant transport corporation, driven by its driver from Cuddalore to Chennai, at a high speed and in a rash and negligent manner, dashed against the two wheeler, both the pillion rider and motorcyclist sustained grievous injuries. Both of them were admitted in Chengalpattu Medical College Hospital, Chengalpattu. Since the condition of the pillion rider was critical, he was shifted to Government General Hospital, Chennai. In spite of treatment, he died on 23.01.2016 at 12.45 a.m. Initially, a case in Cr.No.20 of 2006, has been registered against the driver of the bus, for offences, under Sections 279, 337 and that the same has been subsequently altered into 304-A IPC on the file of Cheyyur Police Station.

3. According to the legal representatives, prior to death, he was a Distributor for Sudarmani Garments and Essa Garments, Tiruppur, in Kancheepuram District, and was also running, a ready made shop in the name and style as National Garments, at Chengalpattu and earned a sum of Rs.12,000/- per month. He was also an income tax assessee. Legal representatives have claimed compensation of Rs.20,00,000/-, under various heads.

4. The appellant-Transport Corporation denied the manner of accident and contended that a false case has been registered against the driver of the bus. According to the Corporation, on the said date, there was no accident, as pleaded by the respondents/claimants. That apart, it was also contended that the motorcyclist had no valid driving licence. The accident has occurred only due to the rash and negligence of the motorcyclist. Without prejudice to the above, the Corporation disputed the age, avocation and income of the deceased and the compensation claimed under various heads.

5. Before the Tribunal, first respondent/first claimant examined herself as PW.1. and reiterated the averments made in the claim petition. PW2 is an independent witness. PW3 is an employee, in the garment shop, owned by the deceased in Chengalpattu. Ex.P1 - FIR, Ex.P2 - Drug Card, Ex.P3 - Postmortem certificate, Ex.P4 - Legalheirship certificate, Ex.P5 - Certificate issued by Sudarmani Knittings, Ex.P6 - Certificate issued by ESSA garments, Ex.P7 - Receipts, Ex.P8 - Bill Books and Ex.P9 - PAN Card, have been marked on the side of the respondents/claimants. On the side of the appellant/Insurance Company, driver of the bus has been examined as RW1 and no document has been marked.

6. On evaluation of pleadings and evidence, the Tribunal held that the driver of the bus, bearing Registration No.TN-32 N-2180, owned by the appellant-Transport Corporation, was negligent in causing the accident and quantified the compensation as Rs.14,50,000/-with interest at the rate of 7.5% per annum and costs.

7. Being aggrieved by the finding, fixing negligence on the driver of the bus and quantum of compensation, the appellant-Transport Corporation has preferred the present appeal, on the following grounds,

"(i) The Tribunal failed to consider that the accident has occurred due to rash and negligent act of the two wheeler bearing Registration No.TN-21 P-0389, who had suddenly crossed the road.

(ii) The Tribunal ought to have considered the evidence of RW1 driver of the bus, who has deposed that the accident occurred due to the carelessness on the part of the motorcyclist.

(iii) The Tribunal ought not to have taken the income of the deceased as Rs.10,000/- per month, without any proof."

Heard the learned counsel for the parties and perused the materials available on record.

8. As regards manner of accident, PW.1, first respondent/first claimant has adduced evidence, reiterating the averments made in the claim petition. Though PW.1 has not witnessed the accident, her version is supported by an independent eye-witness to the accident, PW.2, and duly corroborated by EX.P1- FIR, registered in Cr.No.20 of 2016, against the driver of the bus, for the offences, under Sections 279 and 304 - A IPC, on the file of Cheyyur Police Station. Though the appellant-Transport Corporation has taken a stand, in the counter affidavit that, at the time of accident, the motorcyclist does not possess a valid and effective driving licence, perusal of the impugned judgment shows that, no evidence has been adduced by the

appellant- Transport Corporation, to prove the same. Further, it has nothing to do with the manner of accident.

9. Though it is the contention of the appellant-Transport Corporation that RW1, driver of the bus, has deposed that at the time of accident, he drove the bus carefully and cautiously and that it was the motorcyclist, who suddenly crossed the road, without noticing the bus and dashed against the bus, it is seen from his evidence that, a departmental enquiry has been ordered against him and that increment for six months period has been postponed. Further, PW2, an independent witness, has deposed that, he had parked his car and standing in the check post, near Elliamman Koil, Cheyyur and at that time, the driver of the bus bearing Registration No.TN-32 N-2180, drove the same from Pondicherry to Chennai, rashly and negligently, and hit the motorcycle, coming in the opposite direction. Appellant-Transport Corporation, has not elicited any material to discredit the evidence of PW2. RW1 version is not supported by any material or corroboration.

10. 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. Save in plaint cases, culpability must be inferred 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. "

11. 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."

12. 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. "

13. It is the well settled law that proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is

any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required.

14. After considering the cumulative evidence adduced by the parties, the Tribunal has arrived at the conclusion that the bus, bearing Registration NO.TN 32 N 2180, owned by the appellant-Transport Corporation, was involved in the accident, and due to negligent driving of the bus, caused the death of the breadwinner of the respondents/claimants. In the light of the above discussion and decisions, this court is of the considered view that the approach of the Tribunal, in fixing negligence, on the bus driver, cannot be said to be manifestly illegal, or perverse warranting interference. Hence, finding regarding negligence, is confirmed.

15. As regards the monthly income of the deceased, PW1 has produced Ex.P5-certificate issued by Sudarmani Garments and EX.P5 from Essa Garments to substantiate the contention that her husband was the Distributor of the said companies in 1993, and 1994 respectively and that, he used to purchase garments and earned Rs.5,000/- to 7,000/- from Essa Garments and Rs.7,000/- to Rs.9,000/- per month, from Sudarmani Knittings, respectively. PW1, has also produced EX.P7 (series) purchase receipts and EX.P8 (series) - Bill Books to prove that the deceased was the Distributor of Sudarmani Garments and Essa Garments, for purchase and sale of ready made clothes. PW1 has also produced the PAN card of the deceased, EX.P9 to show that the deceased was an income tax assessee. In addition to the evidence of above, PW3 has deposed that he had worked as an Assistant in the garment shop owned by the deceased, in Chengalpattu.

Going through the oral and documentary evidence, the Tribunal has fixed the monthly income as Rs.10,000/-. There is error in fixing the monthly income of the deceased as Rs.10,000/-.

16. As per the statement in the claim petition, at the time of accident, he was aged about 42 years, whereas, in the postmortem certificate (Ex.P3), age of the deceased has been mentioned as 45. Tribunal has fixed the latter. As per **SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER** reported in **(2009) 6 SCC 121**, '15' multiplier would be the appropriate multiplier and thus the Tribunal adopted correct multiplier. The deceased is survived by wife, four female children, one male child and mother. As per Sarla Verma case, 1/4th of the income has been deducted towards personal and living expenses of the deceased. Loss of income to the family, computed by the Tribunal, is Rs.13,50,000/- (Rs.90,000/- x 15).

17. In addition to the above, the Tribunal has awarded the following amounts as compensation to the legal representatives:

Funeral Expenses	: Rs.10,000/-
Transportation	: Rs.10,000/-
Loss of consortium	: Rs.30,000/-
Loss of love and affection to respondents	: Rs.20,000/-

(If the above amounts are added, the same would come to Rs.70,000/- but the Tribunal has made a mistake in the total)

Thus, the Tribunal has awarded an overall compensation of RS.14,50,000/- with interest at the rate of 7.5% per annum.

18. In our considered view, the compensation awarded under the heads, loss of consortium, loss of love and affection and funeral expenses is very less. If the guidelines of the Hon'ble Apex Court in **Sarla Verma's case** are strictly followed, compensation, under the above heads, would be much more. Further, the Tribunal has not awarded any amount towards loss of estate and damages to clothes and articles. So far, the claimants/respondents have not come with any appeal. In the light of the above, the judgment of the Tribunal, is confirmed. Appellant/Transport Corporation is directed to deposit, if not deposited, the entire award amount with accrued interest and cost to the credit of M.C.O.P. No.248 of 2006, on the file of the Motor Accident Claims Tribunal (Additional District Judge), Kancheepuram District, within a period of four weeks from the date of receipt of a copy of this Judgment.

In the result, the Civil Miscellaneous Appeal is dismissed. It is made clear that dismissal of the appeal shall not foreclose the right of the claimants/respondents, to file appeal. The appellant-Transport Corporation is directed to deposit the entire award amount, with proportionate accrued interest and costs, if not already deposited, to the credit of M.C.O.P.No.248 of 2006, on the file of the Motor Accident Claims Tribunal (Additional District Judge), Kancheepuram District, within a period of four weeks from the date of receipt of a copy of this Judgment. The respondents/claimants are

permitted to withdraw the same, by making necessary applications before the Tribunal. No costs.

Post the matter for compliance on 28.07.2017.

(S.M.K., J.) (M.G.R., J.)
05.06.2017

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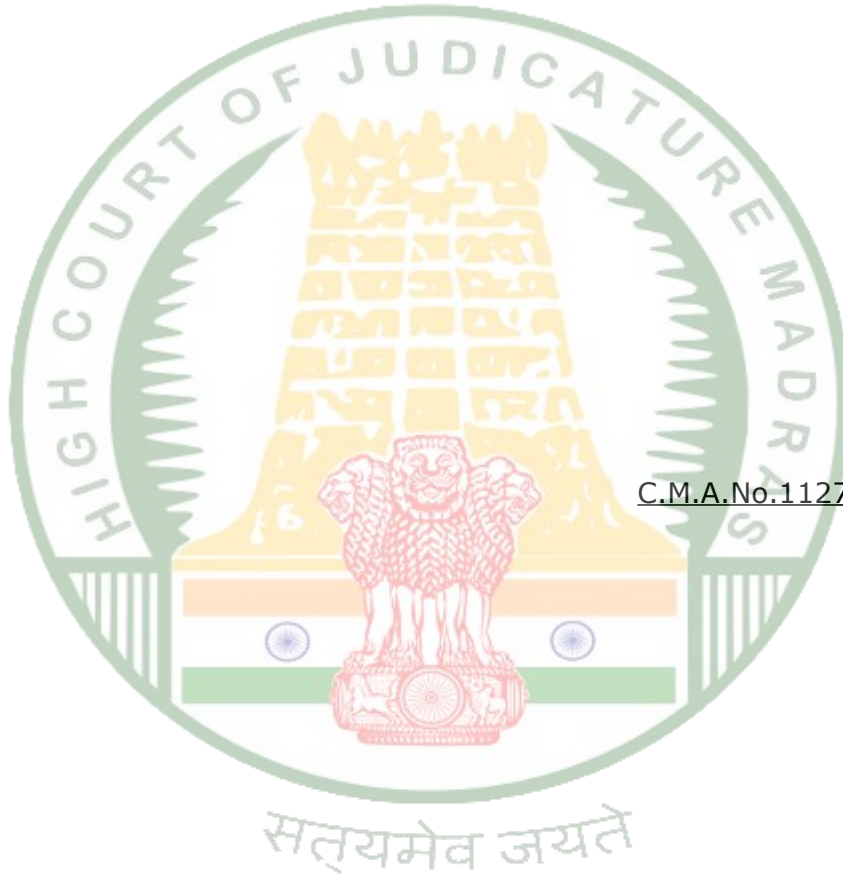
The Motor Accident Claims Tribunal,
(Additional District Judge)
Kancheepuram District.



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AND
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