

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.07.2017

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.1360 of 2017
and
C.M.P.No.7156 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.3/137, Salamedu,
Villupuram-605 602.

... Appellant

Vs.

1.M.Dhanalakshmi
2.M.Gurunathan
3.M.Rohini
4.M.Sankaran

... Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 08.06.2016 in M.C.O.P.No.817 of 2014 passed by the Motor Accident Claims Tribunal, (IV Court of Small Causes), Chennai.

For Appellant : Mr.S.Sairaman

For Respondents : Mr.R.Nalliyappan

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JUDGMENT

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

This appeal has been filed by the Transport Corporation challenging the award dated 08.06.2016 in M.C.O.P.No.817 of 2014 passed by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai, in favour of the respondents herein.

2.The respondents herein are the claimants before the Tribunal. The 1st respondent is the wife, respondents 2 & 4 are the sons and 3rd respondent is the daughter of the deceased Meganathan, who had died in the motor accident that had occurred on 05.01.2014 at 15.45 hours, involving the bus bearing Reg.No.TN 32 N 3714 belonging to the appellant/Transport Corporation.

3.The case of the claimants before the Tribunal is that on 05.01.2014 at 15.45 hours, while the said Meganathan was alighting from the bus bearing Reg.No.TN 32 N 3714 belonging to the appellant/Transport Corporation, at Perungalathur bus stop, the driver of the bus moved the bus at a hectic speed in a rash and negligent manner without noticing the passengers, who were alighting from the bus, due to which the said Meganathan lost his balance and fell down and sustained serious head injury. He was taken to hospital; but, inspite of the treatment given, he died on 16.01.2014. Hence, the claimants filed a claim petition before the Tribunal claiming a sum of Rs.36 lakhs as compensation.

4.The case of the claimants was resisted by the Transport Corporation by taking a defence that the accident had occurred only due to the negligent act of the deceased Meganathan. According to the Transport Corporation, when the bus was moving slowly, inspite of the warning given by the conductor and the other passengers, the said Meganathan made an attempt to get down from the moving bus and in the said process, he lost his balance and fell down and sustained injury; hence, the driver of the bus is not responsible for the said accident. Thus, they sought for dismissal of the claim

petition.

5. Before the Tribunal, in order to prove the claim, on the side of the claimants, wife of the deceased examined herself as P.W.1 and marked seven documents as Ex.P.1 to Ex.P.7. On the side of the Transport Corporation, the driver of the bus was examined as R.W.1 and no documentary evidence was adduced.

6. The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the bus. By coming to such a conclusion, the Tribunal calculated the compensation under different heads and passed an award for a total sum of Rs.37,55,000/-. Aggrieved over the same, the present appeal has been filed by the Transport Corporation.

7. The learned counsel for the appellant/Transport Corporation submitted that before the Tribunal, on the side of the claim, only the wife of the deceased was examined as P.W.1 and no other independent witness was examined. On the side of the Transport Corporation, the driver of the bus was examined as R.W.1. But, inspite of examination of the driver of the bus as R.W.1, the Tribunal has fixed the entire liability on the shoulder of the Transport Corporation holding that only the driver of the bus is responsible for the accident. In this regard, the learned counsel for the Transport Corporation submitted that the Tribunal has failed to consider the evidence of R.W.1 and without making any discussion with regard to the evidence of R.W.1, the Tribunal has fixed the entire liability on the part of the Transport

Corporation. Hence, by setting aside the findings rendered by the Tribunal, the claim petition has to be dismissed or at least, by fixing contributory negligence on the part of the deceased at 50%, the compensation amount has to be reduced.

8. Further, the learned counsel for the Transport Corporation submitted that the Tribunal has awarded a sum of Rs.34,51,596.30 under the head of Loss of Income alone, which is extremely on the higher side; therefore, proper reduction has to be made by recalculation.

9. On the other hand, the learned counsel for the respondents/claimants made his submissions supporting the award passed by the Tribunal.

10. Keeping in view the submissions made on either side, We have carefully gone through the entire materials available on record. We find that the Police has registered the FIR only as against the driver of the bus. Further more, it is the specific defence of the Transport Corporation that in spite of the warning given by the conductor and the other passengers, the deceased Meganathan made an attempt to get down from the moving bus and thus, he himself got involved in the accident. When that being the defence, the Transport Corporation ought to have examined the conductor of the bus or any one of the passengers, who had travelled in the bus at the time of accident. Instead of examining the conductor of the bus or any one of the passengers, the Transport Corporation has examined the driver of the bus. So far as the driver of the bus is concerned, there is no occasion for

him to witness the accident. Hence, in the absence of corroborative evidence in support of the evidence of the driver of the bus, his evidence cannot be accepted. Considering the fact that the FIR was registered only as against the driver of the bus, We are of the opinion that the findings rendered by the Tribunal cannot be said to be erroneous. Hence, We are not inclined to interfere with the findings rendered by the Tribunal.

11. So far as the quantum of compensation is concerned, it is the case of the claimants that the deceased Meganathan was working as a Senior Technician at Chemical Engineering Department, IIT, Adayar, Chennai and earning a sum of Rs.47,347/- per month. In order to prove the income, Pay Slip was marked as Ex.P.7 and Identity Card was marked as EX.P.6. On the basis of the said documents, the Tribunal has fixed the gross income of the deceased as Rs.47,347/- per month and annual income of the deceased as Rs.5,68,164/-. Thereafter, the Tribunal has deducted 10% towards income tax and arrived at a sum of Rs.5,11,347.60. Thereafter, the Tribunal has deducted 1/4th amount towards personal expenses and thus, arrived at a sum of Rs.3,85,510.70 ($5,11,347.60 - 1,27,836.90 = 3,85,510.70$) as loss of annual contribution to the family. Thereafter, the Tribunal by applying multiplier 9, based on the age of the deceased who was 59 years old at the time of accident, has awarded a sum of Rs.34,51,596.30 under the head of Loss of Dependency. We are of the opinion that calculation made by the Tribunal to arrive at a sum of Rs.34,51,596.30 for the Loss of Dependency is well within the principles laid down by the Hon'ble Supreme Court in various decisions. That apart, the Tribunal has awarded a sum of Rs.1,50,000/- for the loss of love and affection to the children and a sum of Rs.1,00,000/- for

the loss of consortium to the wife and another sum of Rs.25,000/- towards Funeral Expenses and a sum of Rs.28,333/- for Medical Expenses, which is supported by medical bills. Thus, the Tribunal has passed the award for a total compensation amount of Rs.37,54,929.30, rounded off to Rs.37,55,000/-. We are of the opinion that compensation awarded by the Tribunal cannot be said to be on the higher side. Hence, We are not inclined to interfere with the quantum of compensation awarded by the Tribunal. There is no merit in the appeal and the same is liable to be dismissed.

12. In fine, the appeal is dismissed. The Transport Corporation is directed to deposit the entire compensation amount awarded by the Tribunal, after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the same as per the apportionment made by the Tribunal, by making necessary application before the Tribunal.

Consequently, connected Miscellaneous Petition is closed.

No costs.

(R.P.S.J.,) (A.D.J.C.J.,)

28.07.2017

Internet : Yes / No

Index : Yes / No

To,

The Motor Accident Claims Tribunal,

<http://www.judis.nic.in> (IV Court of Small Causes), Chennai.

R.SUBBIAH, J.,

and

A.D.JAGADISH CHANDIRA, J.,

(SSV)



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