

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2017

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

C.M.A.No.2306 of 2016
and
C.M.P.No.16264 of 2016

The Managing Director,
State Express Transport Corporation Ltd.,
Tamil Nadu,
Thiruvalluvar House, Pallavasalai,
Chennai-600 002. ... Appellant/2nd Respondent

Vs.

1.Tmt.Thangamani
2.Mathiyalagan
3.Tmt.Aramamal
4.K.Arumugam ... Respondents/Petitioners/
Respondents 1, 3 & 4

Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.03.2014 in M.C.O.P.No.308 of 2013 passed by the Motor Accidents Claims Tribunal, Erode (Special District Court) Erode.

For Appellant : Mr.P.Paramasiva Doss

For Respondents : Mr.R.Nalliyappan (For R1)

JUDGMENT

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

This appeal has been filed by the Transport Corporation challenging the award dated 14.03.2014 in M.C.O.P.No.308 of 2013 passed by the Motor Accidents Claims Tribunal (Special District Court), Erode.

2.The 1st respondent herein is the wife and the respondents 3 & 4 herein are the parents of the deceased Mohankumar, who died in motor-accident that had occurred on 22.09.2012 involving the bus belonging to the appellant/Transport Corporation.

3.The claim petition was filed by the 1st respondent herein/wife before the Tribunal, citing the parents of the deceased as respondents 3 & 4. The case of the claimant/wife is that on 22.09.2012 at about 10.30 pm, while the said

Mohankumar was standing in front of a bus bearing Reg.No.TN-38-N-1737, at KSRTC Sports Club BTS Road, Bangalore City, the 2st respondent herein, who is a driver by avocation, moved another bus bearing Reg.No.TN-01-AN-0335 towards reverse direction in a rash and negligent manner and in that process, the said bus hit the said Mohankumar, who was standing in front of another bus, as a result of which, the said Mohankumar sustained multiple injuries. Immediately, he was taken to Victoriya Hospital at Bangalore City, but he died in the hospital. Hence, the 1st respondent herein/wife filed the claim petition seeking for compensation of Rs.30,00,000/-.

4.Before the Tribunal, the claim of the claimant/1st respondent herein was resisted by the Transport Corporation by filing counter, contending that only the deceased Mohankumar was responsible for the accident. Further, though the accident is said to have occurred on 22.09.2012, First Information Report was registered only on 22.11.2012 ie., with a delay of two months, which would show that the accident had not occurred involving the bus belonging the appellant/Transport Corporation. Thus, they sought for dismissal of the claim petition.

5.In order to prove the claim, on the side of the claimant, she examined herself as P.W.1, besides examining an eye-witness to the occurrence viz., one Balasubramanian as P.W.2 and the Senior Assistant in the office of the Transport Corporation viz., one Krishnakumar as P.W.3, and eighteen documents were marked as Ex.P.1 to Ex.P.18. On the side of the Transport Corporation, the driver of the bus viz. Mathiyalagan (2nd respondent herein) was examined as R.W.1 and no documentary evidence was marked.

6.The Tribunal, after analysing the entire evidence on record, has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the bus. By coming to such a conclusion, the Tribunal has calculated the compensation amount under different heads and passed an award for a total sum of Rs.24,21,752/-. 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 in order to prove the rash and negligence on the part of the driver of the bus, on the side of the claimant, one Balasubramanian, who is said to be an eye-witness to the accident, was examined as P.W.2 and the said Balasubramanian was a lorry driver from Thairpalayam, Erode District and his presence in the place of accident is highly doubtful. Under such circumstances, the Tribunal ought to have rejected the evidence of P.W.2.

8.The learned counsel for the appellant/Transport Corporation would further submit that before the Tribunal, on the side of the Transport Corporation, the driver of the bus was examined as R.W.1, who had deposed that he was acquitted by the Criminal Court from the criminal case filed against him under

Sections 297 & 304(a) of IPC and Section 134(a & b) r/w 187 of Motor Vehicles Act; but, the said fact was not properly considered by the Tribunal.

9. That apart, the learned counsel for the appellant/Transport Corporation submitted that though the accident had taken place on 22.09.2012, FIR was registered only on 22.11.2012, with a delay of two months. The delay was not properly explained by the claimant. Therefore, the claim petition ought to have been rejected by the Tribunal.

10. With regard to the quantum of compensation, it is contended by the learned counsel for the appellant/Transport Corporation that the Tribunal has awarded an exorbitant amount as compensation, therefore the same needs a proper reduction.

11. Countering the submission made by the learned counsel for the appellant/Transport Corporation, it is contended by the learned counsel for the 1st respondent herein/claimant that P.W.2 is a lorry driver from Erode District and he came to Bangalore along with his lorry to load the goods. In his evidence, P.W.2 had stated that he had come to the place of occurrence to load goods in lorry, hence, the Tribunal by placing reliance on the evidence of P.W.2 has come to the conclusion that the accident had occurred only to the rash and negligent act of the driver of the bus.

12. With regard to the delay in registering the FIR, it is submitted by the learned counsel for the 1st respondent/claimant that on the very day of accident, a case was registered under Section 176 of Cr.P.C. and thereafter, the FIR was altered for the offence under Sections 297 & 304(a) of IPC and Section 134 (a & b) r/w 187 of Motor Vehicles Act. Therefore, there is no delay in registering the FIR as alleged by the learned counsel for the appellant/Transport Corporation.

13. With regard to the quantum of compensation, it is submitted by the learned counsel for the 1st respondent herein/claimant that the Tribunal has calculated the compensation amount only in accordance with the principles laid down by the Hon'ble Supreme Court in various decisions. Therefore, absolute there is no need for reduction of the compensation amount. Thus, the learned counsel for the 1st respondent/claimant sought for dismissal of the appeal.

14. We have carefully heard the submissions made on either side and perused the materials available on record.

15. It is the main submission of the learned counsel for the appellant/Transport Corporation that P.W.2 is a lorry driver from Erode District and his presence in the occurrence place at the relevant point of time is highly doubtful. But, on perusal of the materials available on record, it is seen that P.W.2 had stated in his evidence that he came to the place of occurrence along with his lorry only to load old bus tires and at that time, he had witnessed the accident. Therefore, We are not

inclined to accept the submission made by the learned counsel for the appellant in this regard.

16. So far as the delay in registering the FIR is concerned, We find from the materials available on record that on very day of accident, a case was registered under Section 176 of Cr.P.C. Thereafter, after enquiry, the FIR was altered on 22.11.2012 for the offences under Sections 297 & 304(a) of IPC and Section 134 (a & b) r/w 187 of Motor Vehicles Act. In the backdrop of this case, the delay of 2 months in registering the FIR as alleged by the learned counsel for the appellant, cannot be fatal to the case of the claimant.

17. Further, We find that on the side of the Transport Corporation, except the bus driver, no other independent witness was examined before the Tribunal. So far as the evidence of the driver of the bus (R.W.1), he is an interested witness and in the absence of any corroborating evidence to the evidence of R.W.1, no reliance could be placed in the evidence of R.W.1. Moreover, the order of acquittal made by the criminal Court will not have any bearing to the motor-accident case. The claim petition has to be decided independently based on the evidence available on record. Therefore, We find no substance in the submission made by the learned counsel for the appellant/Transport Corporation to exonerate them from their liability to pay the compensation amount.

18. So far as the quantum of compensation is concerned, in order to prove the income earned by the deceased, on the side of the claimant, the Senior Assistant of the State Transport Corporation was examined as P.W.3 and Ex.P.10-Salary Certificate was marked. In Ex.P.10-Salary Certificate, the gross-salary of the deceased was mentioned as Rs.12,791/- per month. Based on Ex.P.10, the Tribunal has taken a sum of Rs.12,791/- as monthly salary of the deceased. Thereafter, the Tribunal has added 50% of the amount towards future prospects, which comes to Rs.19,186/- (12,791 + 6,395/-). Then, the annual income of the deceased comes to Rs.2,30,232/-. Thereafter, after deducting Income Tax, Educational Cess and profession Tax and 1/3rd towards personal expenses, the Tribunal has arrived at a sum of Rs.1,49,172/- as annual contribution to the family. The deceased was aged 35 years at the time of accident. Hence, the Tribunal by applying multiplier of 16, has awarded a total sum of Rs.23,86,752/- under the head of Loss of Dependency. We do not find any infirmity in the calculation made by the Tribunal at arrive at a sum of Rs.23,86,752/- as loss of dependency. That apart, the Tribunal has awarded a sum of Rs.10,000/- each under the heads of Loss of Estate, Loss of Consortium and Funeral Expenditure. The Tribunal has awarded a sum of Rs.5,000/- for transportation. Thus, the Tribunal has passed an award for a total compensation amount of Rs.24,21,752/-. Considering the facts and circumstances of the case, We are of the opinion that the compensation amount awarded by the Tribunal cannot be said to be on the higher side. The calculation made by the Tribunal in awarding the compensation is well within the principles laid down by the Hon'ble Supreme Court in various decisions. We do

not find any merit in the case of the appellant either on the liability or on the quantum of compensation. Hence, the appeal is liable to be dismissed.

19.In fine, the Civil Miscellaneous Appeal is dismissed, confirming the impugned award passed by the Tribunal. The appellant/Transport Corporation is directed to deposit the entire award amount, with proportionate interest at the rate of 7.5% per annum from the date of petition till the date of deposit, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent 1, 3 & 4 are entitled to withdraw their share with interest, as apportioned by the Tribunal, by making necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
(Special District Court),
Erode.

+1cc to Mr.P.Paramasiva Doss, Advocate, S.R.No.51741
+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.51463

C.M.A.No.2306 of 2016
and
C.M.P.No.16264 of 2016

RJ(CO)
CA(04/09/2017)

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