

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27/3/2017

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Civil Miscellaneous Appeal No.2756 of 2016

The Managing Director
Tamil Nadu State Transport Corporation
(Villupuram) Ltd
Villupuram 605 602. Appellant/Respondent

Vs

1. Jasmine Begum
2. Asifa Firdhouse (Minor)
3. Athifa Banu (Minor)
4. Seraji Begum
5. Adham Respondents/Petitioners
(R2 & 3 minor, rep.by their mother &
natural guardian Jasmine Begum)

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed by the Motor Accident Claims Tribunal, (IV Court of Small Causes), Chennai, in M.C.O.P.No.3841 of 2012, dated 1/7/2015.

For Appellant : Mr.P.Paramasiva Doss

For Respondents : Mr.S.Muthuvisagan

J U D G M E N T

(Judgment of the Court was delivered by M.Govindaraj,J)

Compensation awarded by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai, in M.C.O.P.No.3841 of 2012, dated 1/7/2015, the Tamil Nadu State Transport Corporation (Villupuram) Limited, Villupuram, prefers an appeal, on the grounds of negligence and quantum.

2. The deceased was working as a Conductor in the Transport Corporation. On 27/6/2012, at about 9.30 hours, while he was discharging his duties as Conductor, in a bus bearing Registration No.TN25N-0068, at Karanai Mandapam Village Main

Road, Kanchipuram District, he was thrown out from the back side entrance of the bus, due to rash and negligent application of brake by the driver. The deceased suffered head injuries and was hospitalised and thereafter, he succumbed to death. Claiming compensation of Rs.40 lakhs, wife, two minor children and parents have filed a claim petition before the Tribunal. On the basis of the evidences of P.Ws.1 and 2 and on the basis of Exs.P.1 to P.13, the Tribunal has come to the conclusion that the deceased died due to the injuries sustained in the accident.

3. The respondent Corporation though raised the question of negligence, the Transport Corporation has not let in any evidence nor marked any documents. The victim was working as a Conductor in the bus belonging to the Corporation. There was no third party vehicle involved. Whether the accidental fall of the victim from the bus was due to his own negligence or on account of the sudden brake applied by the bus driver is the issue to be decided at the first instance. The appellant Corporation though denied negligence, failed to examine the driver or any other independent witness in support of its plea. In the absence of any evidence from Transport Corporation and from the cogent evidence through P.Ws.1 and 2 supported by the documents marked before the Tribunal, on the side of the claimants, the Tribunal has rightly held that the Transport Corporation is liable to pay the compensation for the rash and negligent driving of the bus driver.

4. So far as the quantum is concerned, the Tribunal has relied on Ex.P.7 pay slips. According to the pay slips, gross monthly salary of the deceased was taken as Rs.12,374/-. After deduction, the Tribunal has fixed the income of the deceased as Rs.10,000/- p.m. and applied 50% towards future prospects, as the deceased was 35 years of age, at the time of death. Accordingly, the annual income was arrived at Rs.1,80,000/- and after deducting 1/5 towards personal and living expenses, the total income was arrived at Rs.1,44,000/-. Out of this 10% was deducted towards Income Tax (14,400/- x 10/100). Thus, a sum of Rs.1,29,600/- (1,44,000 - 14,400/-) was arrived, as the annual contribution to the family. Since the deceased was aged about 36 years, multiplier 15 was applied, as per the judgment of Sarla Verma & Others Vs. Delhi Transport Corporation & Another {(2009) (2) TN MAC 1 (SC)}. Thus, a sum of Rs.19,44,000/- (Rs.1,29,600/- x 15) was computed towards loss of dependency. Tribunal has also awarded a sum of Rs.2 lakhs to the wife/first petitioner towards loss of consortium; Rs.6 lakhs towards loss of love & affection to the respondents 2 to 5; Rs.1,57,727/- towards medical expenses and Rs.25,000/- towards funeral expenses. Thus a total compensation of Rs.29,26,727/- was arrived. Rounded off to Rs.29,27,000/-.

5. Transport Corporation has appealed on the grounds of negligence and quantum. As discussed above, the appellant Corporation has not let in any evidence nor marked any documents, to prove that the driver was not negligent. Therefore, we are not inclined to interfere with the finding of the Tribunal, on this aspect, as it is based on the documents and oral evidence of the claimants. Hence the finding is sustained.

6. In so far as the quantum is concerned, learned counsel appearing for the Transport Corporation would submit that loss of consortium awarded to the wife and the dependents is highly excessive and deduction towards personal and living expenses should be $1/4$, whereas the Tribunal has deducted $1/5$. Therefore, the quantum of compensation has to be reworked. The argument of the learned counsel has valid force. The monthly income is Rs.12,374/- as found in Ex.P.7 pay slips. After perusing the deductions that can be allowed, the Tribunal has arrived at Rs.10,000/- p.m. The finding of the Tribunal is acceptable and Rs.10,000/- is fixed as monthly income. As the deceased was 35 years, as per the judgment of the Supreme Court, 50% added to the income towards future prospects. Adding 50% towards future prospects, the annual income is computed as Rs.1,80,000/-. $3/4$ of the income is contributed towards family and applying 15 multiplier, the total contribution to the family is arrived at Rs.20,25,000/- ($1,80,000 \times 12 \times 15 \times 3/4$).

7. The Tribunal has awarded a sum of Rs.2,00,000/- as consortium to wife. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owed by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Apex Court, held as follows:

"In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort,

solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

In view of the above judgment, compensation of Rs.2,00,000/- awarded under the head loss of consortium is reduced to Rs.1,00,000/-

8. Legal representatives of the deceased, particularly, the minor child has lost the love and affection of the deceased. In *Rajesh v. Rajbir Singh* reported in 2013 (2) TNMAC 55, the Hon'ble Apex Court has awarded Rs.1,00,000/- each to the legal representatives of the deceased, towards loss of love and affection. Accordingly, minor children are entitled to Rs.1 lakh, each towards loss of love and affection and the parents are entitled to Rs.50,000/- each (2 x Rs.50,000/-). Thus, a sum of Rs.3 lakhs awarded towards loss of love and affection, as stated above. In so far as the medical expenses at the rate of Rs.1,57,727, as per Ex.P.4 and for funeral expenses Rs.25,000/- awarded by the Tribunal are not interfered with. Besides this we consider a sum of Rs.10,000/- be awarded towards loss of estate and Rs.2,000/- towards conventional damages. There is no award for transportation. Hence a sum of Rs.10,000/- can be awarded.

9. After reworking, compensation to which the claimants/legal representatives of the deceased, entitled to is as under:-

Loss of contribution to the family	...	Rs.20,25,000/-
Loss of consortium	...	Rs. 1,00,000/-
Loss of love and affection to the children	...	Rs. 2,00,000/-
Loss of love and affection to the parents	...	Rs. 1,00,000/-
Medical expenses	...	Rs. 1,57,727/-
Funeral expenses	...	Rs. 25,000/-
Transportation	...	Rs. 10,000/-
Conventional damages	...	Rs. 2,000/-
Loss of Estate	...	Rs. 10,000/-

		Rs.26,29,727/-

Thus a total sum of Rs. 26,29,727/- is awarded, towards the total compensation to the respondents/claimants. The Tribunal has awarded a sum of Rs.29,24,727/-. The award of compensation is reduced by Rs.2,97,000/-, after reworking.

Award of compensation granted by the Tribunal	... Rs.29,26,727/-
After reworking	... Rs.26,29,727/-

	Rs. 2,97,000/-

10. Learned counsel appearing for the Transport Corporation had submitted that they have already deposited a sum of Rs.10 lakhs, to the credit of M.C.O.P.No.3841 of 2012, on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai.

11. The appellant Corporation is directed to deposit the balance amount, less the statutory deposit, to the credit of M.C.O.P.No.3841 of 2012, on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai, with proportionate interest, at the rate of 7.5% p.a., within a period of six weeks, from the date of receipt of a copy of this order. Share of the minors shall be deposited in a Nationalised Bank, proximate to the residence of the first respondent, under reinvestment scheme, initially for a period of three years. Interest accrued can be withdrawn by the first petitioner/wife/mother of the minor children, once in three months, for the welfare of the minors. Apportionment in other respects is confirmed as given by the Tribunal below. Reduction of Rs.2,97,000/- shall be reduced from the share apportioned to the first petitioner/wife.

12. In view of the above modification, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

13. Post on 5/6/2017, for reporting compliance.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mvs.

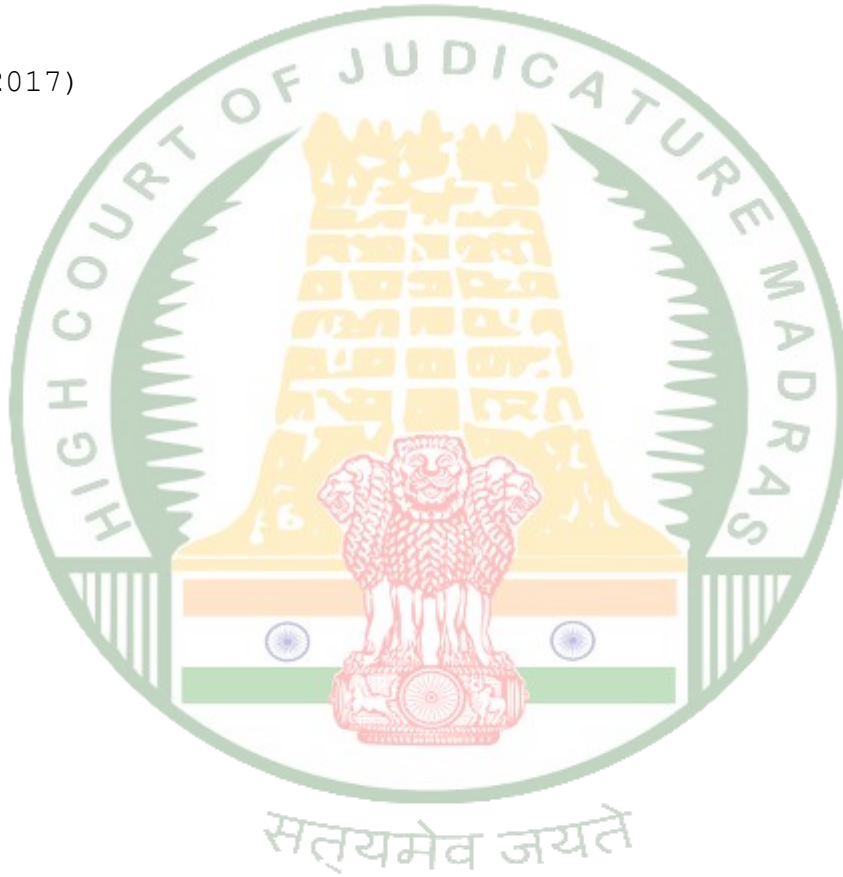
To

The Motor Accident Claims Tribunal,
(IV Court of Small Causes),
Chennai.

+1cc to Mr.P.Paramasiva Doss, Advocate, S.R.No.19738
+1cc to Mr.S.Muthuvisagan, Advocate, S.R.No.19263

Civil Miscellaneous Appeal No.2756 of 2016

PA(CO)
CA(02/06/2017)



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