In the High Court of Judicature at Madras

Dated : 21.07.2017

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The Honourable Mr.Justice R.SUBBIAH
and
The Hon'ble Mr.Justice A.D.JAGADISH CHANDIRA

C.M.A.No.48 of 2015
and M.P.No.1 of 2015

Metropolitan Transport Corporation Ltd.,
represented by its Managing Director,
No.2, Pallava Salai, Chennai – 600 002
..Appellant

..vs..

1.S. Jessy Marshella
2.S. Arun Prasanth
3.S. Vimalraj
4.G. Leela ..Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the fair and decreetal order dated 10.04.2014 passed in MCOP No.3413 of 2012 by the learned III Judge, Small Causes Court, Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.S.S. Swaminatan
For Respondents : Mr.S. Angamuthu

JUDGMENT

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

Aggrieved over the findings rendered by the Motor Accidents Claims Tribunal (III Judge, Small Causes Court), Chennai with regard to the rash and negligent aspect as well as the quantum of compensation fixed, the present appeal has been filed by the Metropolitan Transport Corporation Limited.

2. The respondents 1 to 4 are the claimants before the Tribunal. They are the wife, sons and mother of the deceased respectively.

3. The case of the claimants before the Tribunal is that on 17.03.2012, at about 6.20 a.m, the deceased Selvaraj was riding his Scooty, bearing Registration No.TN-05-AM-0939 from South to North on North Usman Road and as he had a green signal at Bazullah Road to proceed further, he took a right turn to Bazullah Road towards East direction, at the same time, a bus, belonging to appellant Transport Corporation, bearing Registration No.TN-01-N-5104 came from South

to North in the opposite direction and without noticing the red signal, hit the Scooty, as a result of which, the deceased was thrown away from the two wheeler and succumbed to injuries. The claimants/respondents 1 to 4 made a claim, claiming a compensation of Rs.50,00,000/- and restricted the same to Rs.35,00,000/-.

4. The claim made by the claimants was resisted by the appellant Transport Corporation stating that the accident was due to rash and negligent act of the driving of the deceased, who was driving the Scooty. According to the appellant Transport Corporation, on the date of accident, the driver of the bus, bearing Registration No.TN-01-N-5104 was proceeding from Villivakkam to Adayar. At about 6.15 hrs, when the bus was nearing T.Nagar, driver of the bus was cautiously driving the bus. When the bus reached near Bazullah Road signal, the driver of the bus saw the red signal and immediately he applied sudden brake and stopped the bus. After getting the green signal, the driver of the bus moved slowly. But, suddenly, the driver saw a motor cycle bearing Registration No.TN 05 AM 0939 was coming at a great speed in a Zigzag manner from the opposite direction without minding about the approach of other vehicles, which are coming in front of him.

When the driver of the bus saw the negligent act of the deceased, the driver of the bus applied sudden brake. Inspite of best efforts being taken by him, the two wheeler hit the front right side body of the bus, due to which, the deceased fell down and sustained fatal injuries. Thus, the deceased himself invited the accident and therefore, the Transport Corporation is not liable to pay any compensation.

5. In order to prove the claim, on the side of the claimants, the first respondent/wife examined herself as P.W.1 besides P.W.2 and P.W.3 and marked Exs.P.1 and P.10. On the side of the appellant Transport Corporation, the conductor of the bus was examined as R.W.1, but no documentary evidence was produced.

6. The Tribunal, after considering the evidence available before it, came to the conclusion that the accident was due to rash and negligent act of the driver of the appellant Transport Corporation bus and fixed the entire liability on the Transport Corporation and awarded a sum of Rs.39,40,000/-, as total compensation payable with 7.5% interest. The break up details of the compensation amount, awarded by the Tribunal are as follows:

Pecuniary loss	: Rs.35,15,000/-
Loss of Consortium to 1st respondent	: Rs. 1,00,000/-
Funeral expenses	: Rs. 25,000/-
Love and affection(Rs.25,000 x 4)	: Rs. 2,00,000/-
Loss of Estate	: Rs. 1,00,000/-
Total	Rs.39,40,000/-

Aggrieved over the same, the present appeal has been filed by the appellant Transport Corporation.

7. In order to prove that the accident was due to rash and negligent act of the deceased, the driver of the appellant Transport Corporation Bus was examined as R.W.1. He had categorically stated that at the time of accident, he was driving the bus at moderate speed and after getting green signal, he was moving the bus slowly, but suddenly, he saw the deceased, coming from the opposite direction and took a sudden right turn and hit on the right side of the bus. But the Tribunal, without analysing the evidence of R.W.1, has fixed the entire liability on the part of the appellant Transport Corporation.

8. The learned counsel for the appellant Transport Corporation submitted that the Tribunal at least ought to have fixed 50% negligence on the part of the deceased and thereby ought to have deducted 50% of the amount from the total compensation. That apart, with regard to the quantum of compensation, it is submitted by the learned counsel for the appellant that while making calculation under loss of income, the Tribunal has failed to deduct any amount towards income tax. Therefore, by deducting 10% towards income tax, the amount, arrived by the Tribunal, has to be modified.

9. Per contra, the learned counsel for the respondents/claimants made his submissions supporting the findings rendered by the Tribunal in fixing the liability on the part of the Transport Corporation to pay the compensation. Hence, there is no need to interfere with the compensation amount awarded by the Tribunal.

10. We have gone through the materials available on record.

11. In order to prove the rash and negligent aspect on the side of the appellant, one Anbu was examined as P.W.2, who was an eyewitness to the occurrence. His independent testimony was not shattered in the cross examination. Moreover, he is not an interested witness. On the other hand, on the side of the appellant Transport Corporation, only the driver of the bus was examined, whose evidence is self interested one. In the absence of any evidence to corroborate the evidence of R.W.1/the driver of the bus, the evidence adduced by R.W.1 cannot be accepted. Therefore, we find no error or infirmity in the finding rendered by the Tribunal with regard to the rash and negligent aspect.

12. So far, the quantum of compensation is concerned, we find from the materials placed on the record that the deceased was working as a Mechanic in ICF Perambur and was earning a sum of Rs.30,000/-per month. In order to prove the income, one Anandh was examined as P.W.3 and Ex.P.8 salary certificate was marked for the month of February 2012. It shows that the deceased was drawing gross salary of Rs.26,134/-per month. The Tribunal, based on the evidence of P.W.3, fixed the monthly salary as Rs.26,000/-. At the

time of accident, the deceased was 47 years old. Hence the Tribunal has correctly added 30% of the income towards future prospects and thus, arrived at Rs.33,800/-as monthly income for the purpose of calculating the pecuniary loss.

13. Thereafter, the Tribunal, by deducting 1/3 towards personal expenses, has fixed a sum of Rs.22,533/- as loss of monthly income to the respondents/claimants. Thereafter, by applying multiplier " 13" the Tribunal has arrived at Rs.35,15,148/- as total loss of income and rounded off to Rs.35,15,000/-.

14. That apart, the Tribunal awarded a sum of Rs.1,00,000/- towards loss of consortium, and Rs.25,000/- towards funeral expenses. The Tribunal has also awarded Rs.50,000/- each to all the claimants/respondents 1 to 4 under the head of love and affection, totalling to Rs.2,00,000/- and also awarded a sum of Rs.1,00,000/- towards loss of estate and thus awarded a total sum of Rs.39,40,000/-.

15. But is the submission of the counsel for the appellant, while making calculations, the Tribunal has not deducted any amount towards income tax. Therefore, the amount, awarded by the Tribunal, has to be recalculated by deducting 10% towards income tax. We find some force in the submissions made by the learned counsel for the appellant. On a perusal of the award, we find that the Tribunal has fixed the monthly income of the deceased as Rs.33,800/- and hence the total loss of annual loss of income would be Rs.4,05,600/- (33,800 x 12). If 10% is deducted towards income tax, then the annual loss of income would be Rs.3,65,040/-. Since there are four respondents, we are of the opinion, that it would be appropriate to deduct ¼ towards personal expenses. If ¼ amount is deducted towards personal expenses from Rs.3,65,040/-, then the loss of annual contribution would be Rs.2,73,780/- and if multiplier "13" is applied, the total loss of income would be Rs.35,59,140/-. Further, we find that the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium and thereafter, again a sum of Rs.50,000/- was awarded to the first respondent/wife towards loss of love and affection. When the Tribunal has awarded a sum of Rs.1,00,000/- to the 1st respondent/wife towards loss of consortium, it ought not to have awarded a sum of

Rs.50,000/- towards first respondent towards loss of love and affection. Hence the amount of Rs.50,000/- awarded by the Tribunal to the first respondent towards loss of love and affection is set aside.

16. We also find that the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of estate, which appears to be on the higher side. Hence the same is reduced to Rs.50,000/-. Thus the respondents are entitled for a compensation of Rs.38,84,140/-. The break up details of the modified/reduced compensation amount are as follows:

Pecuniary loss	: Rs.35,59,140/-
Loss of Consortium to 1st respondent	: Rs. 1,00,000/-
Funeral expenses	: Rs. 25,000/-
Love and affection(Rs.50,000 x 3)	: Rs. 1,50,000/-
Loss of Estate	: Rs. 50,000/-
Total	Rs.38,84,140/-

Consequently, the compensation award of Rs.39,40,000/-, awarded by the Tribunal is hereby reduced to Rs.38,84,140/-

17. In all other aspects, the award passed by the Tribunal remains unaltered. The Transport Corporation is directed to deposit the balance modified amount, if not already deposited with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of the above said MCOP, within a period of six weeks from the date of receipt of a copy of this order with proportionate interest and costs.

18. On such deposit being made, the first respondent/wife is entitled to get Rs.16,84,140/-; the respondents 2 and 3 are entitled to get Rs.10,00,000/- each and the fourth respondent is entitled to get compensation of Rs.2,00,000/-. On such deposit, the claimants are permitted to withdraw the same, by making necessary application before the Tribunal. With the above modification, the civil miscellaneous appeal is partly allowed. No costs. Consequently, connected MP is closed.

(R.P.S.J.,) (A.D.J.C.J.,)
21-07-2017

sr
Index:yes/no

R.SUBBIAH, J.,
and
A.D.JAGADISH CHANDIRA,J.,

Copy to

The Motor Accidents Claims Tribunal,
(The III Judge, Court of Small Causes, Chennai)

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