

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2017

Coram:-

The Hon'ble Mr. Justice T.S.SIVAGNANAM
and
The Hon'ble Mr. Justice P.VELMURUGAN

C.M.A.No.824 of 2011 and
M.P.No.1 of 2011

Metropolitan Transport Corporation Ltd.
Represented by its Managing Director
No.2, Pallavan Salai
Chennai - 600 002 ... Appellant/Respondent

v.

1.S.Santhi
2.S.Saravanaperumal
3.M.Poongavanam ... Respondents/Petitioners

Civil Miscellaneous Appeal filed against the judgment and decree dated 05.02.2010 made in M.C.O.P.No.748 of 2008 on the file of the learned Subordinate Judge, Motor Accident Claims Tribunal, Poonamallee.

For Appellant : Mr.S.S.Swaminathan
For Respondents : Mr.K.Varadha Kamaraj
1 to 3

J U D G M E N T

(Judgement of the court was delivered by T.S.SIVAGNANAM, J.,)

This Civil Miscellaneous Appeal by the Metropolitan Transport Corporation, is directed against the award passed by the Sub Court-cum- Motor Accident Claims Tribunal, Poonamallee in M.C.O.P.No.748 of 2008. The respondents herein are the claimants in the said petition, who are the legal heirs of the deceased M.Srinivasan.

2. The brief case of the claimants is as follows:-

The deceased M.Srinivasan, was working as a Head Constable and was attached to J-3 Guindy Traffic Investigation Cell.

On the fateful day, it appears that the deceased was regulating the traffic at Anna Salai, Opposite to Little Mount, A.G.Church. The admitted facts of both the parties is that the bus owned by the appellant Corporation, which was coming towards Saidapet from Guindy came in contact with the barricade, which according to the appellant corporation was being moved by the deceased to the centre of the road and as a result of the impact, the deceased sustained multiple injuries and subsequently died. The amount of compensation claimed by the respondents was Rs.35,00,000/- under various heads as detailed below:-

Sl.No.	Head	Amount of Compensation awarded (Rs.)
1	Loss of bread winner	5,00,000/-
2	Loss of estate	10,00,000/-
3	Loss of Love and Affection	10,00,000/-
4	Funeral Expenses	60,000/-
	Total	35,00,000/-

3. The Tribunal, after taking into consideration the oral and documentary evidences placed before it, awarded a total compensation of Rs.18,26,450/- together with interest @ 7.5 % p.a. as detailed below:-

Sl.No.	Head	Amount of Compensation awarded (Rs.)
1	Loss of income	18,01,450/-
2	Loss of consortium	10,000/-
3	Loss of Love and Affection	10,000/-
4	Funeral Expenses	5,000/-
	Total	18,26,450/-

Aggrieved over the said compensation awarded, the appellant/Transport Corporation is before this Court.

4.1 The learned counsel for the appellant raised two contentions challenging the impugned award, firstly by contending that the income tax has not been deducted and the gross income has been taken for assessing the loss of income. In support of this contention, the learned counsel for the appellant placed reliance on the decision reported in 2010 ACJ 1968 (Shyamwati Sharma and others v. Karam Singh and others), which stipulates that minimum of 10% should be deducted towards income tax and it should be on a slab rate basis, depending upon the gross income

of the employee.

4.2 The second aspect is with regard to negligence. It is pointed out by the learned counsel for the appellant that the Tribunal had erred in coming to the conclusion that there is no negligence on the part of the deceased and that if the bus had come in contact with the barricade and if the barricade had impact on the deceased, then the deceased would have sustained only head injury but the post-mortem report shows that the deceased had sustained injuries all over the body and therefore, this finding cannot be the basis to hold that there is no contributory negligence on the part of the deceased.

5. We have heard the learned counsel appearing for the claimants on the above submissions and perused the materials available on record.

6. On a careful perusal of the oral and documentary evidences placed before the Tribunal as well as the finding recorded by the Tribunal, more particularly, paragraph No.2 of the award, it could be seen that the Tribunal has considered the evidence of P.Ws.1 and 2 and well as R.W.1 and took note of the fact that the deceased had suffered several greivous injuries through out the body and the Tribunal cannot be faulted for having come to the conclusion that the if the bus has come in contact only with the barricade, then the nature of the injury sustained could have been only head injury. We are inclined to make such an observation because, it is not the case of the appellant corporation that the bus ran over the barricade and the deceased was caught or crushed under the barricade. It is the appellant's admitted case as could be seen from the counter affidavit which was filed before the Tribunal that the collusion was on the front left side of the bus. Thus, if the bus has been proceeding from Guindy to Saidapet, obviously the barricade was being moved by the deceased, who was a Head Constable in the traffic Investigation Wing, should be to regulate the traffic in that area, which appears to be very congested area. Thus the finding rendered by the Tribunal, fixing the negligence on the apart of the driver of the appellant corporation is fully justified and we find no reason to interfere with the finding recorded by the Tribunal in this regard.

7. Coming to the next issue with regard to deduction of income tax, we are in agreement with the submission made by the learned counsel for the appellant and in the light of the decision of the Hon'ble Supreme Court referred to supra, the deduction of income tax ought to have been made and we are of the view that appropriate deduction would be 10%. Thus, after deducting 10% towards income tax from the annual income of the deceased and applying 14 multiplier, $[10723 \times 12 = 1,28,676]$

-12867.60 = 1,15,808.40 x 14), the loss of income would be Rs.16,21,317.60 (rounded off to Rs.16,21,317/-).

8. We have also considered as to whether the compensation awarded under other heads, which are non-pecuniary damages, was reasonable and fair and we find that compensation awarded is ridiculously low, since only Rs.10,000/- each has been awarded for loss of consortium and loss of love and affection. As far as the amount to be granted under the head "Loss of consortium" is concerned, it is useful to refer to the judgment of the Hon'ble Supreme Court in the case of Rajesh and others versus Rajbir Singh and others, reported in 2013 ACJ 1403, wherein, the Hon'ble Supreme Court has held as under in para 20.

"20.We may therefore, revisit the practice of awarding compensation under conventional heads, loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.2,500/- to Rs.10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma's case (supra), it was held that compensation for loss of consortium should be in the range of Rs.5,000/- to Rs.10,000/-. 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 the head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium'."

9. Thus, taking note of the above decision of the Hon'ble Supreme Court referred to supra, we deem it appropriate to increase the compensation to Rs.1,00,000/- for loss of consortium and we also deem it appropriate to increase the compensation awarded under the heading loss of love and affection to Rs.1,00,000/- and we determine to fix the amount for funeral expenses at Rs.5,133/-.

10. There is no serious objection in respect of the interest granted at 7.5% per annum.

11. Accordingly, the award of the Tribunal is modified as under:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount granted by this Court (Rs.)
1	Loss of Income [10723 x 12 =1,28,676 -12867.60 = 1,15,808.40 x 14=16,21,317.60)	18,01,450/-	16,21,317/-
2	Loss of Consortium	10,000/-	1,00,000/-
3	Loss of love and affection	10,000/-	1,00,000/-
4	Funeral t expenses	5,000/-	5,133/-
	Total	18,26,450/-	18,26,450/-

14. Since, there is no serious objection with respect to the interest granted at 7.5% per annum, the same is confirmed.

15. In the result, the Civil Miscellaneous Appeal is disposed of in the following terms:-

(i) The quantum awarded by the Tribunal stands confirmed, with the modification to the extent as indicated

above.

(ii) The interest granted at 7.5% is confirmed.

(iii) The claimants are entitled to share the compensation amount awarded by this Court as apportioned by the Tribunal.

(iv) This Court, by order dated 20.04.2011, has directed the appellant to deposit the entire award amount to the credit of M.C.O.P.No.748 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Poonamalle, within a period of eight weeks from the date of receipt of a copy of that order. In view of the same, the claimants are permitted to withdraw their share amount as apportioned by the Tribunal by filing necessary application before the Tribunal.

There will be no order as to costs in this appeal. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Subordinate Judge,
Motor Accident Claims Tribunal, Poonamallee.

Copy to: The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.S.S. Swaminathan, Advocate, S.R.No.6515
+1cc to Mr.K. Varadha Kamaraj, Advocate, S.R.No.6317

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