IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.12.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A. NOS. 489 OF 2014 & 2471 OF 2015
AND
M.P. NOS. 1 OF 2015 (2 NOS.)

1. Harika Bathula
2. R.Sasikala
3. M.Ramesh Chand .. Appellants in CMA 489/2014
Respondents in CMA.2471/15

vs.

The Managing Director
Metropolitan Transport
Corporation Ltd.
Anna Salai, Chennai 600 002. .. Respondents in CMA.489/14
Appellant in CMA 2471/2015

Civil Miscellaneous Appeals filed u/s 173 of the Motor Vehicles Act against the judgment and decree dated 27.08.2013 passed by the Motor Accident Claims Tribunal (II Addl. District Court), Tiruvallur @ Poonamallee made in MCOP No.961 of 2010.

For Appellant : Mr.Suryanarayanan
CMA.489/14 & Respondent/
in CMA.2471/15

For Respondent : Mr. S.S.Swaminathan
for Appellant in CMA.2471/15,
Respondent in CMA.2471/15

COMMON JUDGMENT

(Judgment of the Court was made by S. VIMALA, J.)

Challenging the award dated 27.08.2013, passed in MCOP No.961/2010, while CMA No.2471 of 2015 has been filed by the Transport Corporation challenging the finding relating to the involvement of the vehicle belonging to the Transport Corporation and also on the ground of negligence and quantum of compensation awarded, the other appeal, CMA No.489/2014 has been filed by the claimants challenging the inadequacy of the compensation awarded.

2. While the 1st claimant is the wife, the 2nd and 3rd claimants are the mother and father of the deceased. The claim petition has been filed claiming a sum of Rs.50 Lakhs in respect of the death of the son of claimants 2 and 3 and the husband of the 1st claimant.

3. The deceased, aged 28 years, working as a graphic designer and earning a sum of Rs.21,038/= per month, met with a fatal accident on 8.5.2010 for which the claimants filed the above claim petition claiming a compensation of Rs.50 Lakhs. The claim was resisted by the Transport Corporation mainly on the ground that the alleged vehicle was not at all involved in the accident.

4. The case of the claimant is that the deceased, on the fateful day of the accident, i.e., 8.5.10, was riding his motorcycle bearing Regn. No.TN-02-U-5466 in south to north direction at MKN Road, Guindy junction in a very careful manner. At that time, the vehicle, belonging to the Transport Corporation, bearing Regn. No.TN-01-N-8926, coming from behind, driven in a rash and negligent manner, hit the deceased. The deceased was thrown down and sustained grievous injuries and succumbed to the injuries on the way to the hospital. In respect of the said accident, a FIR was laid and registered as Crime No.621/2010. The police authorities, after visiting the place of occurrence, after examining the witnesses, drew rough sketch. After obtaining the post-mortem report of the deceased, the final report was filed stating that the accident was caused due to rash and negligent driving by the driver of the Transport Corporation.

5. The Tribunal, considering the materials placed before it, came to a conclusion that the accident was caused on account of the rash and negligent driving by the driver of the bus belonging to the Transport Corporation. So far as the quantum of compensation is concerned, the Tribunal quantified the same under various heads, totalling to Rs.27,71,655/=, the breakup of which is as hereunder :-

Loss of income	:	Rs.27,26,655/-
Loss of consortium to wife	:	Rs. 25,000/-
Loss of love and affection (parents)	:	Rs. 10,000/-
Funeral expenses	:	Rs. 5,000/-
Transport Expense	:	Rs. 5,000/-

6. The main grievance of the Transport Corporation relates to the finding of negligence and fixing the vehicle belonging to the Transport Corporation as responsible for the accident, more so when the Transport Corporation has questioned the involvement of the vehicle itself in the accident. It is the contention of the Transport Corporation that without any basic records and

without any acceptable evidence, the Tribunal has fixed the negligence on the driver of the bus belonging to the Transport Corporation, which is per se impermissible and, therefore, prayed that the award has to be set aside as the Transport Corporation was not responsible for the accident.

7. Per contra, it is the contention of the learned counsel appearing for the claimants that the Tribunal committed a mistake in not taking into account the future prospective increase in income of the deceased and that when the deceased aged below 50 years, an increase of 50% should have been added towards future prospective increase in income of the deceased. It is further submitted that the award passed under the other heads are also extremely low and, therefore, the same requires proportionate enhancement.

8. Heard the learned counsel appearing for the Transport Corporation and the claimants and perused the materials available on record as also the judgment passed by the Tribunal.

9. In order to appreciate the contentions raised, it is, but necessary to first consider the finding on negligence as rendered by the Tribunal.

10. Learned counsel for the Transport Corporation pointed out that inspite of the stand of the Transport Corporation that they dispute the involvement of the vehicle in the accident, Tribunal has held that the Transport Corporation alone is liable for negligence and the aspect of contributory negligence on the part of the deceased in the accident has not been gone into by the Tribunal. It is the contention of the learned counsel for the Transport Corporation that when the involvement of the alleged vehicle in the accident is doubtful, the question of fixing negligence on the driver of the alleged vehicle is unsustainable.

11. Though such a stand is taken by the Transport Corporation before the Tribunal as well as before this Court, this Court is of the considered view that just because the reasoning is not happily worded, it cannot be concluded that the vehicle belonging to the Transport Corporation was not at all involved in the accident. There are several circumstances, as is evident from the documentary evidence, which conclusively proves the involvement of the alleged vehicle in the accident.

12. The FIR has been registered at the earliest point of time against the vehicle belonging to the Transport Corporation bearing Regn. No.TN-01-N-8926 with route number and fleet number and the registration particulars of the vehicle. The complaint has been lodged by the friend of the deceased. From the FIR it is evident that the deceased and his friend Ganesh, were travelling in two separate motor cycles and when they were nearing MKN bus stand, the vehicle belonging to the Transport

Corporation came from behind in a rash and negligent manner and while attempted to overtake the motorcycle in which the deceased was riding, hit the deceased. The way and the manner in which the accident is stated to have taken place would go to show that the first informant is an eye witness to the occurrence. Further, the FIR has been laid without any undue delay and, therefore, the necessary inference is that the complaint, in all probability, must have been true. The evidence of P.W.3, corroborates the averment made in the FIR. Apart from that, the vehicle has been sent for inspection by the Motor Vehicle Inspector. The police have made a complete and thorough investigation and after investigation have chosen to file the final report only as against the driver of the bus.

13. It is not in dispute that the particular vehicle was put on the road, on the day of the accident, which is evident from the trip sheet. It is the admitted evidence of the driver of the bus as well. The trip sheet has been relied upon by the claimants, who had filed the trip sheet as claimants' document, which clearly show that the vehicle had been operated on the said route alleged in the complaint itself. The documentary evidence, coupled with the other attendant circumstances should normally have been relied upon by the Transport Corporation, if really the alleged vehicle was not at all involved in the accident. The trip sheet and the other documents having relied upon by the claimants only bolster the claimants' case and, thereby, dents the case of the Transport Corporation. The reasoning given by the Tribunal may be not an appropriate reasoning, but the finding arrived at fixing the liability on the Transport Corporation cannot be found fault with. Considering the totality of the facts and circumstances, the evidence on record goes to show that the alleged vehicle, viz., the bus belonging to the Transport Corporation, was the one which caused the accident, which stands proved by the claimants with reliable oral and documentary evidence. Therefore, the finding as to the involvement of the alleged vehicle belonging to the Transport Corporation and the negligence on the part of the driver of the bus deserve to be upheld for the reasons shown above and, accordingly, the same is upheld.

14. Insofar as the contention raised by the learned counsel appearing for the claimants that future prospects should have been considered at 50%, especially when the employer of the deceased has been examined and documents have been marked showing the salary received by the deceased, there is proof to show that there is a standard income and the deceased being in a regular employment, in all probability, there is every chance of the deceased to earn higher income had he survived. Therefore, necessarily, the Tribunal ought to have considered the future prospects of the deceased to earn higher income in fixing the loss of earning to the family. In this regard, reliance was placed on the decision of the Supreme Court in Rajesh & Ors. - Vs - Rajbir Singh & Ors. (2013 (9) SCC 54). Further, no

compensation has been awarded under other conventional heads, as per the ratio laid down by the Supreme Court in a catena of decisions and, therefore, this Court should award compensation under the other conventional heads as well.

15. Learned counsel appearing for the Transport Corporation pointed out that the appropriate multiplier to be adopted is 17 and not 18 as has been done by the Tribunal, as the deceased was aged 28 years. In respect of persons in the age group of 25 to 30, the proper multiplier to be adopted is only 17 and not 18.

16. In Rajesh's case (supra), the Supreme Court, considering the necessity for awarding future prospects and the quantum to be awarded in case of employed and self-employed individuals, held as under :-

> "8. Since, the Court in Santosh Devi case [Santosh Devi - v. - National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

17. In view of the above proposition of laid down by the Supreme Court, the claimants would be entitled for compensation under the head "future prospects" and would also be entitled for compensation under the other conventional heads, which has not been awarded by the Tribunal.

18. Accordingly, considering future prospects in income @ 50%, the monthly income of the deceased is arrived at Rs.31,557/- (Rs.21,038 + Rs.10,519). Deducting 10% towards income tax, the monthly income of the deceased is quantified at Rs. 28,401/= (Rs.31,557 - Rs.3,156). Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.18,934/- per month. Adopting the proper multiplier of 17, the loss is quantified at Rs.38,62,536/- (Rs.18,934 X 12 X 17). a sum of Rs.40,000/- is awarded towards loss of consortium; Rs.50,000/- towards loss of love and

affection to the parents (Rs.25,000/- each); Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Accordingly, this Court makes the modification in the compensation payable over and above the compensation awarded by the Tribunal as under :-

S.No.	Head	Amt. granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs.27,26,655/-	Rs.38,62,536/-
2	Loss of consortium to wife	Rs.25,000/-	Rs.40,000/-
3	Loss of love and affection (parents)	Rs.10,000/-	Rs. 50,000/- (Rs.25,000/- each)
4	Funeral expenses	Rs.5,000/-	Rs.15,000/-
5	Loss of Estate	-	Rs.15,000/-
6	Transport Expense	Rs.5,000/-	-
	Total	Rs.27,71,655/-	Rs.39,82,536/-

Accordingly, the compensation is enhanced from Rs.27,71,655/- to Rs.39,82,536/-, rounded off to Rs.39,83,000/=.

19. In the result, the appeal filed by the claimants, i.e., C.M.A. No.489 of 2014, filed by the claimants is allowed in part and the appeal in CMA No.2471 of 2015, filed by the Transport Corporation is dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

20. The Transport Corporation is directed to deposit the compensation as enhanced by this Court, less the amount, if any, deposited, to the credit of MCOP No.961 of 2010 on the file of Motor Accident Claims Tribunal (II Addl. District Court), Tiruvallur @ Poonamallee, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimants through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

GLN

To

(II Addl. District Judge)
Motor Accident Claims Tribunal
Tiruvallur @ Poonamallee.

+ 2 ccs to M/s. S.S. Swaminathan, Advocate Sr.85695, 85694
+ 2 ccs to M/s. P. Satarajan, Advocate SR.86222

C.M.A. NO.489 OF 2014
AND
C.M.A. NO. 2471 OF 2015

RSI(CO)
EU 04/04/2018