

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.03.2017

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice M.Govindaraj

Civil Miscellaneous Appeal No.926 of 2017
and
C.M.P.No.4589 of 2017

Tamil Nadu State Transport Corporation
Villupuram ... Appellant/Respondent

Vs

1.Tmt.G.Kuttythai
2.K.V.Gunasekaran
3.Selvi G.Shanmugapriya ... Respondents/Petitioners

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.04.2016, passed in M.C.O.P.No.183 of 2013, by the Motor Accident Claims Tribunal (Special Sub Court No.2, Court of Small Causes), Chennai.

For Appellant : Mr.K.J.Sivakumar

J U D G M E N T
(Made by S.Manikumar,J)

In the accident, which occurred on 16.10.2012, son of the respondents 1 and 2 and brother of the third respondent, died, on the spot. At the time of accident, he was a 4th year student in B.E. Civil Engineering. Claim made in the year 2013, has culminated into an award on 29.04.2016 in MCOP No.183 of 2013 on the file of Motor Accident Claims Tribunal (Special Sub Court No.2, Court of Small Causes), Chennai, directing payment of compensation of Rs.25,72,000/-, with interest @ 7.5% per annum till realisation. The Tribunal has quantified the said sum, as hereunder:

Loss of contribution to the family	: Rs. 24,12,000/-
Loss of love and affection	: Rs. 1,50,000/-
Funeral Expenses	: Rs. 10,000/-

	: Rs.25,72,000/-

2. Being aggrieved by the finding fixing negligence on the driver of the Corporation bus bearing Registration No.TN-21 N-0784 and the quantum of compensation of Rs.25,72,000/- with interest, at the rate of 7.5% per annum from the date of claim till realisation and costs, awarded to the legal representatives of the deceased, Tamil Nadu State Transport Corporation Limited, Villupuram, has filed this appeal.

3. Mr.K.J.Sivakumar, learned counsel for the appellant, submitted that the Tribunal has failed to note that the deceased overtook the bus on its left side, instead of right side, dashed against the bus and thus caused the accident. He has further contended that the deceased has violated traffic rules, while overtaking the bus. He has also made an alternative plea of contributory negligence to be fixed against the deceased.

4. It is the further contention of the learned counsel for the appellant/transport corporation that the Tribunal, has erred in fixing the monthly income of the deceased as Rs.15,000/- and compensation of Rs.1,50,000/- awarded under the head loss of love and affection.

5. Heard the learned counsel for the appellant/transport corporation and perused the materials available on record.

6. According to the claimants that, on 16.10.2012 at 1.45 hours, when the deceased was riding his motorcycle from south to north direction on the left side of the road, slowly and cautiously on Tiruvallur - Tiruttani National Highways, opposite to Venkateshwara Timber Depot, a bus bearing Registration No.TN-21 N-0784, belonging to the appellant/transport corporation, driven by its driver, in a rash and negligent manner, hit the motorcyclist from behind, on the right side and due to the said impact, the rider sustained grievous injuries and died on the spot.

7. J.Ganesan, eyewitness, examined as PW2, has deposed that, at the time of accident, after collecting cash from his customer, he was riding his motorcycle on C.V.Naidu road from North to South and the deceased was riding his motorcycle bearing Registration No.TN-20 CZ-4020 very slowly and cautiously

on the left hand side of the road from South to North, and at that time, a bus bearing Registration No.TN-21 N-0784 belonging to the appellant/transport corporation, driven by its driver in a rash and negligent manner, hit the motor bike bearing Registration No.TN-20 CZ-4020, from behind and in the said impact, the rider sustained grievous injuries. PW2 stopped his vehicle, went to the place of occurrence and saw the injured in a pool of blood. Ex.P1 is the FIR. ExP5 is the rough sketch and Ex.P6 is the Charge sheet.

8. Driver of the bus has been examined as RW1. He has deposed that it was the motorcyclist/deceased, who, in order to overtake the bus, rode the motorcycle in a rash and negligent manner, on its left side and dashed against the bus. There was no gap between the two vehicles and thus he only caused the accident. Observing that RW1-driver is an interested witness, and considering the evidence of PW2 and Exs.P1 - FIR, P5-rough sketch and P6-charge sheet, the Tribunal held that the driver of the appellant/transport corporation bus had driven the vehicle in a rash and negligent manner and caused the accident. Evidence of RW1 is not supported by any independent witness or corroborated. Testing the finding of negligence on the principles of preponderance of probability, we do not find any perversity. Consequently, the Tribunal fastened liability on the appellant/transport corporation to pay compensation to the claimants/legal heirs of the deceased.

9. Award discloses that, at the time of accident, the deceased was a 4th year B.E. Civil Engineering Student. By observing that after completion of the course, an Engineering Graduate, would at least be in a position to earn Rs.15,000/- per month, the Tribunal has fixed the monthly income of the deceased as Rs.15,000/-. The deceased was born on 14.06.1992. Date of accident was on 16.10.2012. At the time of accident, he was aged 20 years 4 months. Following the judgment of Rajesh vs. Rajbir Singh reported in 2013 (3) CTC 383, the Tribunal considered future prospects of the deceased and added 50% of the income and thus added Rs.7,500/- towards future prospects. For the purpose of calculating loss of contribution to the family, the Tribunal arrived at the monthly income of the deceased as Rs.22,500/-. Deducting a sum, the Tribunal arrived at the loss of contribution per annum as Rs.2.68 Lakhs.

10. The deceased was a bachelor. Following the judgment of the Hon'ble Apex Court in Sarla Verma and others vs. Delhi Transport Corporation and Anr. reported in (2009) 4 MLJ (SC) 997, the Tribunal deducted 50% of the income, towards the personal and living expenses of the deceased. Following the same judgment, the Tribunal has chosen multiplier '18' and arrived at the compensation as follows:

(Rs.2,68,000/- x 50/100 x 18 = Rs.24,12,000/-)

We are of the considered view that the Tribunal has properly and correctly assessed the income, age and applied multiplier. Compensation arrived at, under the above head, does not warrant any interference and hence confirmed.

11. The Respondents 1 and 2 have lost their beloved son, his love and affection and the third respondent has lost her brother. To compensate under the head loss of love and affection, the Tribunal has awarded Rs.50,000/- each, to the parents and sister under the said head, which, we deem it fit just and reasonable and does not require any interference.

12. In Rajesh vs. Rajbir Singh reported in 2013 (3) CTC 383, the Hon'ble Apex Court has held that under the head 'funeral expenses' a sum of Rs.25,000/- can be awarded. In the instant case, the Tribunal, has awarded Rs.10,000/- only, under the head funeral expenses. Since it is an appeal, by the insurance company, we are not inclined to enhance the same and hence the same is confirmed.

13. In the light of the above discussion, we are of the view that the quantum of compensation of Rs.25,72,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till realisation and costs, awarded to the respondents herein/claimants, cannot be said to be a bonanza or windfall, warranting any reduction. Civil Miscellaneous Appeal is dismissed.

14. The appellant/Transport Corporation, is directed to deposit the award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.183 of 2013, on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2, Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents/claimants are permitted to withdraw the same, by making necessary applications, before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

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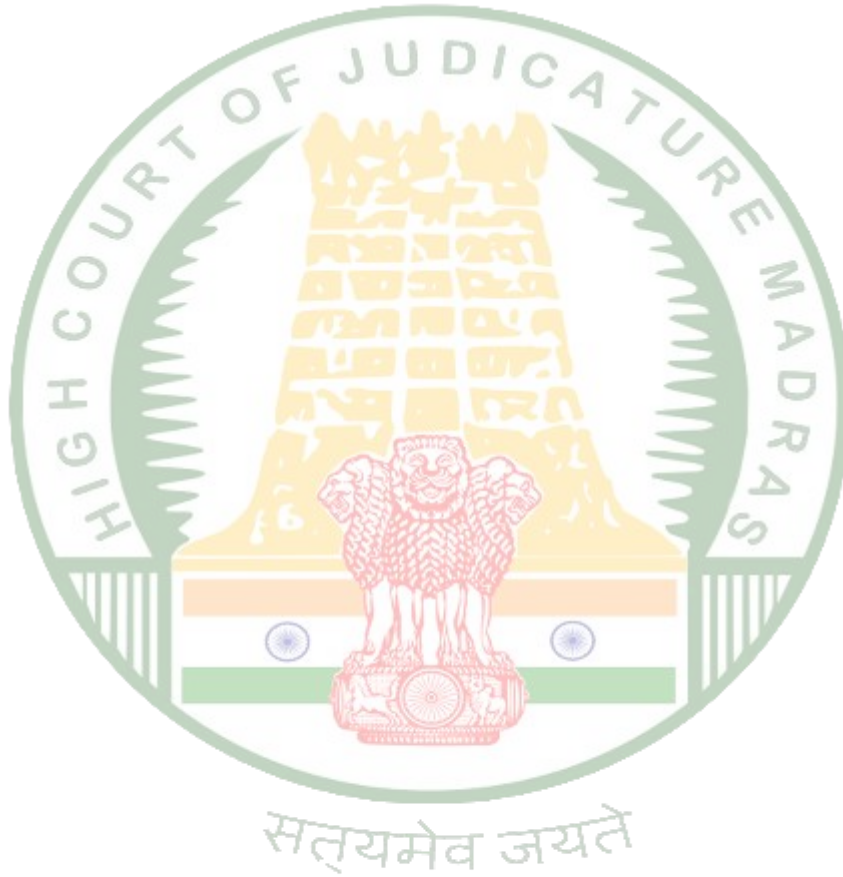
Sub Assistant Registrar

ASR

To
The Motor Accident Claims Tribunal,
(Special Sub Court No.2, Court of Small Causes), Chennai.

vsn(CO)
md(19/04/2017)

C.M.A.No.926 of 2017 and
C.M.P.No.4587 of 2017



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