

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CMA.No.2424 of 2013

1.Malarmathi
2.Minor Dhasadharan
3.Minor Yuvarani
4.Minor Poovarasan
Minors 2 to 4 rep. By
N.F.Guardian/mother 1st petitioner
5.Perumayee ...Appellants/Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport
Corporation Limited, Salem. ...Respondent/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree made in MCOP. No.607 of 2009 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Salem dated 10.10.2012.

For Appellants : Mr.A.Murugan
For Respondent : Mr.D.Venkatachalam

JUDGMENT

The appellants/claimants are the wife, children and mother respectively of the deceased. They have filed the above petition for compensation for the death of Madhesh @ Madheswaran, who died in a motor accident on 09.07.2008.

2. The accident occurred, while he was riding pillion on a motor cycle. According to the claimant, the accident occurred only due to the rash and negligent driving of the driver of the bus owned by the respondent Corporation. The Tribunal has come to the conclusion that it is a case of composite negligence and apportioned the liability at 50 : 50. The tribunal fixed the total compensation at Rs.6,79,500/- and directed the respondent to pay half the amount of the total compensation (Rs.3,39,750/-).

3. Aggrieved by the apportionment of liability and quantum of compensation, fixed by the tribunal, this appeal has been preferred.

4. A perusal of the records would show that a criminal case has been registered in connection with this accident. Ex.P1 is the Certified copy of the First Information Report. Ex.P2 is the xerox attested copy of post-mortem certificate. The driver of the offending vehicle/bus has been shown as an accused. The oral evidence adduced on the side of the appellants coupled with the FIR and Charge sheet would establish that the driver of the Transport Corporation/Respondent was responsible for the accident. Therefore, the contention of the respondent that there was no negligence on the part of the driver of the respondent/Transport Corporation cannot be countenanced. The driver of the offending vehicle has been examined as RW1 before the Tribunal. The Tribunal on appreciation of evidence, has come to the conclusion that this is a case of composite negligence. According to the Tribunal, the driver of the two wheeler and the driver of the bus were jointly responsible for the accident. There is no challenge as regards the finding on the question of negligence. The respondent has not preferred any appeal.

5. The learned counsel for the appellant would submit that assuming that it is a case of composite negligence, the liability to pay compensation is joint and several. In Kamlesh & Others V. Attar Singh & Ors (2016-3-L.W.75), the Supreme Court has held that in the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feors and to recover the entire compensation as liability of joint tort feors is joint and several. In the case at hand, the rider of the motor cycle involved in the accident is not a party. Therefore, as per the dictum laid down by the Supreme Court, it is open to the respondent to sue the other joint tort feor in independent proceedings. Asfaras the claimants are concerned, they are entitled to recover the entire compensation from any of the joint tort feors. In the light of the dictum laid down by the Supreme Court, the findings of the tribunal that the respondent is liable to pay only 50% of the compensation is liable to be set aside. The claimants are entitled to recover the entire compensation from the respondent.

6. The deceased was a coconut merchant. The tribunal fixed his monthly income as Rs.4,500/-. The learned counsel would submit that the tribunal omitted to make addition to the actual income, while computing future prospects of the deceased. The deceased was 39 years at the time of accident. Therefore, as per the decision in Rajesh & Others Vs Rajbir Singh & Others (2013 (3) CTC 883), 50% of his income has to be added towards future prospects. (monthly income 4,500 + 50% (future prospects) Total= 4500 + 2250/- = 6750/-)

7. There are five dependants on the deceased. Therefore, as per the decision in Sarla Verma and Others Vs Delhi Transport Corporation and Another [(2009) 6 Supreme Court Cases 121], one-fourth of his monthly income has to be deducted towards his personal expenditure. The proper multiplier would be 15.

8. In Rajesh V. Rajbir Singh [(2013)9 SCC 54] the Hon'ble Supreme Court has awarded Rs.25,000/- for funeral expenses; Rs.1 lakh for loss of Consortium and Rs.1 lakh for loss of care and guidance for minor children.

9. In the case at hand, the Tribunal has awarded Rs.2,000/- towards transportation, Rs.10,000/- each towards loss of love and affection, Rs.10,000/- towards loss of consortium, Rs.5,000/- toward Funeral Expenses and Rs.25,000/- towards loss of estate.

10. Having regard to the date of accident (09.07.2008) and the age of the wife (28 years) and the age of the minors (14, 13 and 12) and also bearing in mind the amounts awarded by the Supreme Court in Rajesh case, ((2013 (3) CTC 883)), I am inclined to award Rs.1,00,000/- towards loss of consortium. Under the head of loss of love and affection for the children, I am inclined to award Rs.1,00,000/-. Rs.20,000/- is awarded under the head funeral expenses. As per the decision in Sarla Verma's case, a conventional amount in the range of Rs.5,000/- to Rs.10,000/- can be added as loss of estate. Hence, I am inclined to award Rs.5,000/- for loss of estate. The amount awarded under the head transportation appears to be reasonable and it is confirmed. In view of the above, the compensation is reassessed as follows:

Heads	Calculation
Monthly income Rs.4,500 per month. Add 50% of Rs.4,500 (future prospects)	Rs.6,750/- p.m.
1/4 th towards personal expenses of the deceased	$(6750 \times \frac{1}{4}) = 1687$ $6750 - 1687 = 5063$ (rounded off to 5060)
Compensation after multiplier of 15 is applied	$5060 \times 12 \times 15 =$ Rs.9,10,800
Loss of consortium	Rs.1,00,000

Heads	Calculation
Loss of Love and affection for the children	Rs.1,00,000
Funeral expenses	Rs. 20,000
Transportation	Rs. 2,000
Loss of Estate	Rs. 5,000
Total compensation Amount	Rs.11, 37,800/-

12. In the result, the Civil Miscellaneous Appeal is partly allowed to the extent mentioned herein before. The Respondent-Transport Corporation is directed to deposit the entire amount of compensation Rs.11,37,800/- [Rupees Eleven Lakhs Thirty Seven Thousand and Eight Hundred only] with interest @ 7.5% per annum with proportionate costs, less the deposit already made to the credit of M.C.O.P.No.607 of 2009 on the file of the Motor Accidents Claims Tribunal Additional District Judge, Salem, within a period of six weeks from the date of receipt of a copy of this order. Of the total amount of compensation, the fifth petitioner is entitled to receive Rs.1,50,000/-; the minor claimants are entitled to receive Rs.1,50,000/- each and their share to be deposited in a Nationalized Bank till they attain majority. The first petitioner is permitted to withdraw the accrued interest from the Bank so as to meet the expenses towards the maintenance of minors. The first petitioner/wife is entitled to receive the balance amount. The claimants are permitted to withdraw the compensation amount awarded by this Court with proportionate interest less the amount already withdrawn, if any, by making necessary application before the Tribunal. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
I Additional District Judge, Salem.

2.The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.D.Venkatachalam Advocate sr 12068

+1 cc to Mr.A.Murugan Advocate sr 12102

CMA.No.2424 of 2013

aa21/12/2017