

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA No.1849 of 2017
and CMP No.10064 of 2017

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
3/137, Salamedu, Vazhuthareddy,
Villupuram

.. Appellant

versus

1. G.Manjula
2. Minor G.Kamalesh
3. Unnamed foetus
4. T.Elampandiyan
5. E.Senthamarai

.. Respondents

[Minor respondent No.2 and unnamed foetus rep. by their mother - 1st respondent]

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.3621 of 2013, dated 14.07.2016, on the file of the Motor Accident Claims Tribunal, [Principal District Judge], Cuddalore.

For Appellant : Mr.K.J.Sivakumar

JUDGMENT

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

Being aggrieved by the judgment and decree in M.C.O.P.No.3621 of 2013,
dated 14.07.2016, on the file of the Motor Accident Claims Tribunal, [Principal

District Judge], Cuddalore, by which, a sum of Rs.13,95,000/-, has been awarded as compensation, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation and costs, to the legal representatives of the deceased, Tamil Nadu State Transport Corporation Limited, has preferred the present appeal.

2. Facts deduced from the material on record and the impugned judgment are that on 20.07.2013 about 6.00PM, when the deceased Gajendhiran, was travelling as a Pillion rider, in a motorcycle bearing Regn.No.TN-31-D-3764 from south to north direction, on the extreme left side of Chidambaram-Cuddalore Road, at Semankuppam, a transport corporation bus bearing Regn.No.TN-32-N-2582, which came in the opposite direction, at a great speed, driven in a rash and negligent manner, dashed against the motorcycle. As a result, the pillion rider sustained grievous injuries, multiple fractures all over his body and head. He was immediately taken to Government Hospital. Thereafter, he was transferred to JIPMER Hospital, Pondicherry for better treatment. In spite of treatment, he died on 22.07.2013. In this regard, a case in Cr.No.416 of 2013, has been registered on the file of Cuddalore O.T. Police Station, against the driver of the Transport Corporation bus bearing Regn.No.TN-32-N-2582.

3. Contending that at the time of accident, the deceased was aged 28 years, earned Rs.15,000/- per month as Fitter, legal representatives of the deceased viz., wife, son, unnamed foetus and parents, claimed compensation of Rs.25,00,000/- under various heads.

4. Before the claims tribunal, appellant-Transport corporation , has filed a counter affidavit denying the manner of accident. Without prejudice to the above, the transport Corporation has also disputed the age, avocation and income of the deceased, and the quantum of compensation claimed under various heads.

5. On behalf of the claimants, wife of the deceased examined herself as PW1 and reiterated the averments made in the claim petition. PW2 is the eyewitness to the accident. Documents viz., Ex.P1 - Copy of FIR dated 21.07.2013, Ex.P2 - Copy of Postmortem certificate of deceased Gajendhiran dated 22.07.2013, Ex.P3- Copy of M.V. Report in TN-32-N-2582 dated 23.07.2013, Ex.P4, Legal heir Certificate of deceased Gajendhiran dated 17.06.2014 and Ex.P5, Salary certificate of deceased Gajendhiran dated 14.08.2014, have been marked. Driver of the transport corporation bus has been examined as RW1 and no document has been marked on the side of the appellant Transport Corporation.

6. On evaluation of pleadings and evidence, the Claims Tribunal, held that the accident occurred only due to rash and negligent act of the driver of the transport corporation bus bearing Regn.No.TN-32-N-2582.

7. Considering the age, avocation, income and other parameters, required to be taken into consideration, the Claims Tribunal, fixed the monthly income of the deceased as Rs.7,500/- and applied '17' multiplier. After deducting 1/4th towards the personal and living expenses, computed the loss of contribution as Rs.11,47,500/-. That apart, the claims tribunal has awarded compensation of Rs.50,000/-, for loss of consortium to the wife and Rs.50,000/- each to wife, minor son and unnamed foetus, for loss of love and affection. A sum of Rs.10,000/- each has been awarded to the parents under the head loss of love and affection. A sum of Rs.25,000/- has been awarded under the heads, Transportation and funeral expenses. In all, the claims tribunal has quantified the compensation as Rs.13,92,500/- and rounded off the same to Rs.13,95,000/-, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation and costs.

8. Mr.K.J.Sivakumar, learned counsel for the appellant-transport corporation submitted that though negligence is challenged in this appeal, he is not pressing the same.

9. The only challenge is to the quantum of compensation, on the grounds that the tribunal erred in fixing the monthly income of the deceased as Rs.7,500/- without there being any oral or documentary evidence.

10. Heard the learned counsel for the appellant-Transport Corporation on the limited challenge and perused the materials available on record.

11. Perusal of the tribunal's award shows that the deceased was aged 28 years and a self-employed. As a Fitter, he was stated to have earned a sum of Rs.15,000/- per month. The accident has occurred on 20.07.2013. Though legal representatives of the deceased have not adduced any documentary evidence, except Ex.P5, salary certificate, which revealed that the deceased was earning a sum of Rs.500/- per day, as daily wages, the claims tribunal has fixed the monthly income of the deceased as Rs.7,500/-.

12. After deducting 1/4th of the monthly income towards personal and living expenses of the deceased, a sum of Rs.5,625/- alone has been taken as the contribution to the family, which at any stretch of imagination, cannot be said to be arbitrary or grossly excessive, warranting interference. To provide food, shelter, clothing and to meet out expenses for basic necessities, one requires a reasonable income. Further, statutory charges like water, electricity

and other charges, are on the increase. Needles to state that the cost of essential commodities is not static. Cost of transportation is on the rise. In the case on hand, the deceased is survived by a family, comprising of his pregnant wife, minor son and aged parents and considering the escalation in the expenditure on the above, we are of the view that, there is no error in the judgment.

13. Further, perusal of the award shows that the Tribunal has awarded a lesser compensation of Rs.50,000/- under the head consortium to the wife. As per the decision of the Hon'ble Apex Court in ***Rajesh & Others Vs. Rajbir Singh & Others*** reported in ***(2013) 9 SCC 54 = 2013 (2) TN MAC 55 (SC)***, it should be at least Rs.1,00,000/-. Further, the Tribunal has awarded Rs.50,000/- each to the wife, minor son and unnamed foetus under the head loss of love and affection. For parents, a sum of 10,000/- each, alone has been awarded for loss of love and affection. A consolidated sum of Rs.25,000/- has been awarded under the heads Transportation and funeral expenses. There is no award for loss of estate and damages to clothes. Though a sum of Rs.50,000/- has been awarded under the head, loss of love and affection to the wife, in addition to the award under the head loss of consortium, cannot be justified, but, considering the lesser compensation awarded under certain heads and failure to award compensation under legitimate heads, the said sum can be

adjusted. The overall quantum of compensation awarded to the legal representatives cannot be said to be on the higher side, warranting interference. Hence the Civil Miscellaneous Appeal is liable to be dismissed.

14. In the result, the appeal is dismissed, confirming the judgment and decree passed in M.C.O.P.No.3621 of 2013, dated 14.07.2016, on the file of the Motor Accident Claims Tribunal, [Principal District Judge], Cuddalore. No costs. Consequently, the connected Miscellaneous Petition is closed.

15. Consequent to the dismissal of the appeal, the appellant-Transport Corporation is directed to deposit the entire award amount along with interest, at the rate of 7.5% per annum with cost to the credit of M.C.O.P.No.3621 of 2013 on the file of the Motor Accident Claims Tribunal, [Principal District Judge], Cuddalore, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, except the minors, other claimants/respondents are permitted to withdraw their share in the award amount, as apportioned by the tribunal, with proportionate interest and costs, by making necessary applications.

16. Shares of the minor claimants/respondents 2 and 3, shall be deposited in to a Nationalised bank under Fixed Deposit scheme in the name of

the minor claimants, till they attain majority, and the interest accrued on the fixed deposits, may be withdrawn by mother/1st respondent, once in three months.

17. Post the appeal after four weeks, for reporting compliance.

(S.M.K., J) (M.G.R., J.)
22.06.2017

Index: Yes/No.
Internet: Yes/No.
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To

1. The Motor Accident Claims Tribunal,
[Principal District Judge], Cuddalore

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

S. MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

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