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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2369 of 2017

and C.M.P.No.12702 of 2017

The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai, Chennai - 2 .. Appellant/Respondent

..VS..

Ramayee (Since deceased)

1. Pitchai
2. Kalyani
3. Susila
4. Asaithambi

... Respondents/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 02.07.2015 made in M.C.O.P.No.4253 of 2011 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr. S.Sivakumar

For Respondent: Mr. K. Varadha Kamaraj

J U D G M E N T

Ramayee, since deceased, originally filed a claim petition for compensation, claiming a sum of Rs.6,00,000/-, in respect of the injuries sustained by her in an accident that took place on 27.06.2011. Later on, she died on 18.11.2012, on account of the injuries sustained by her in the accident. The Legal Representatives have been impleaded and they have continued the claim petition.

2. The Tribunal has framed the following three issues for consideration:-

- (i) Whether the accident occurred was due to the rash and negligent driving of the respondent's vehicle?
- (ii) Whether the first claimant sustained injuries leading to her death was due to the



accident?

(iii) If so, whether the claimants are entitled to the compensation? from whom? to what extent?"

3. So far as the quantum of compensation is concerned, the Tribunal has passed an award for a sum of Rs.7,69,000/- under the following break up details:-

Loss of income	-	Rs.5,59,000/- (rounded off)
(Rs.6,900 x 12 x 9 x 3/4)		
Loss of love and affection-	Rs.	50,000/-
Loss of consortium	-	Rs.1,00,000/-
Funeral expenses	-	Rs. 50,000/-
Loss of estate	-	Rs. 10,000/-

Rs.7,69,000/-

4. Contending that the death was not due to the injuries sustained in the accident and that the finding contrary to that is unsustainable, the Transport Corporation has filed this appeal, inter-alia challenging the quantum also.

5. The first contention of the learned counsel for the appellant / Transport Corporation is that the accident itself was not on account of the negligence of the appellant's bus driver, but on account of the tyre-burst, and therefore, no liability can be fastened on the part of the appellant.

5.1. This contention cannot be accepted, as the word "negligence" not only denotes negligent conduct of the driver, but it indicates lack of duty to take care. It is a word with wide import and it is capable of interpretation from several perspectives. The negligence may be in not maintaining the vehicle as a vehicle; in not driving the vehicle following the rules; in not handling the passengers carefully, etc., If the accident is due to tyre-burst, the negligence is on the part of the appellant / Corporation, in not maintaining the vehicle in the road-worthy condition and in not maintaining the vehicle in a way, in which, it is safe for the public to travel. Therefore, when the accident is on account of the tyre-burst, the negligence is apparent and no further proof is required. In other words, the concept of *res ipsa loquitur* would be applicable to the facts of the case, i.e, the accident speaks for itself and no further proof is required to prove the negligence. Therefore, the contention that there was no negligence, on the part of the appellant, cannot be accepted.

6. The next contention to be considered is that, the death was not on account of the injuries sustained in the accident and therefore, the appellant Transport Corporation is not liable.

6.1. However, the learned counsel appearing for the



claimants / respondents would submit that there are overwhelming evidence that has been considered by the Claims Tribunal in giving a finding that the death was only on account of the injuries sustained in the accident.

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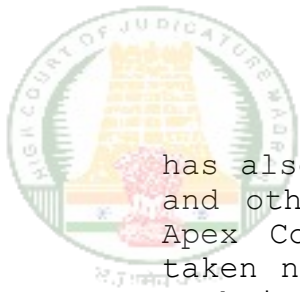
7. In order to appreciate the contentions raised, it is necessary to find out the nature of injuries sustained, period of treatment and the impact of the injury over the life of the deceased. The discharge summary of the deceased would go to show that the deceased Ramayee had been aged 55 at the time of accident; she has been admitted in the hospital on 27.06.2011 and she had been an inpatient till 10.07.2011; she has suffered compound fracture of both bones in the left leg. The mode of accident as alleged in the evidence is that, on account of the tyre burst, the body of the bus had broken and there is cut injury over the left leg on account of which she has suffered loss of flesh as well as fracture of bones.

8. In the evidence, it is stated that the flesh from the thigh bone has been removed and plastic surgery was done in the lower part of the leg. It is also alleged that the external fixing has been done to support the fractured bones and she had been in continuous treatment though not as an inpatient, but as outpatient. It is specifically stated in the evidence of P.W.2, Dr. Ilango that the physical injuries and equally the mental injuries were responsible for the death of the deceased, on 18.11.2012.

9. In order to support the oral evidence, the Claimants have relied upon the evidence of the expert, Dr. Saravanabhavanantham, who has spoken to about the cause of the accident.

9.1. He has stated that the injured had been admitted in the hospital on 18.11.2012 at 10.17 am and she was reported dead at 09.20 pm on the same day; in the cause of death, it is mentioned that the death was due to myocardial infection. The Doctor has also stated that the deceased appeared to have died due to bone injury and surgical procedure and it can also be due to myocardial infection. The nature and extent of the proof required in the case arising out of accident is preponderance of probability and not proof beyond reasonable doubt. By adducing evidence of P.W.2 as well as the Doctor, the initial burden of proof has been discharged by the claimants to show that the death can be on account of the injuries sustained by her in the accident.

10. There is no contrary evidence or rebuttal evidence on the part of the appellant / Transport Corporation to show that the death could not be due to the injuries sustained in the accident or that it was due to some other reason. The Tribunal



has also relied upon the decision reported in the case of Rajesh and others v. Rajbir Singh and others, where-under the Hon'ble Apex Court has held that the victims' sufferings have to be taken note of by the Tribunal and the Courts have to ignore the technicalities and niceties in the process. Therefore, the contention that the death of the deceased was not on account of the injuries have no legs to stand and that ground also fails.

11. So far as the quantum of compensation is concerned, there are serious contentions raised that the quantum of compensation awarded is excessive. The specific contention taken is that the loss of consortium awarded at Rs.1,00,000/- when the deceased herself was aged 55, is excessive.

12. This contention is well founded and the loss of consortium is reduced from Rs.1,00,000/- to Rs.50,000/-. Equally, the funeral expenses awarded at Rs.50,000/- is reduced to Rs.25,000/-. The loss of estate awarded at Rs.10,000/- has no basis and the award under that head is set-aside.

13. So far as the loss of income is concerned, the monthly income has been taken at Rs.6,900/- and deducting 1/3rd towards the personal expenses and adopting the multiplier of 11, the quantification has been done. When the injured / claimant, who died later, was aged about 60, as per the death certificate, the income taken at Rs.6,900/- is on the higher side and the loss of income should be quantified taking the monthly income at Rs.6,000/-. Therefore, the loss of income is quantified at Rs.4,86,000/- (Rs.6,000/- x 12 x 9 x 3/4). The loss of love and affection is estimated at Rs.45,000/- and the loss of consortium is estimated at Rs.45,000/-. Thus, the total amount of compensation is quantified at Rs.6,01,000/-. The restructured breakup details of the award of compensation reads thus:-

Loss of income	-	Rs.4,86,000/-
Loss of love and affection	-	Rs. 45,000/-
Loss of consortium	-	Rs. 45,000/-
Funeral expenses	-	Rs. 25,000/-

		Rs.6,01,000/-

14. In the result, the Civil Miscellaneous Appeal is partly-allowed, by reducing the quantum of compensation from Rs.7,69,000/- to Rs.6,01,000/-, which is payable with interest at 7.5% per annum, from the date of petition till the date of deposit. No costs. Consequently, the connected CMP is closed.

15. The appellant / Transport Corporation is directed to deposit the amount of compensation, as awarded by this Court,



along with interest at 7.5% per annum, from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants / respondents are entitled to withdraw 50% of the amount of compensation, in the same proportion, as apportioned by the Claims Tribunal and the balance 50% shall be kept in a fixed deposit, initially for a period of three years.* The interest accrued on the fixed deposit shall be withdrawn by the claimants directly from the Bank.

Sd/-

Assistant Registrar (CS-vi)
dated:12/04/2018

*Deleted as per order dt.13/06/2018
made in CMA.NO.2369/2017
sd/Assistant Registrar (CS.VII)
dated:21/06/2018

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Sub Assistant Registrar

srk

To

1. The V court of Small causes,
Motor Accident Claims Tribunal,
Chennai.

To be Substituted for the
order already despatched on
08/05/2018.

2. The Section Officer, V.R.Section, Madras High Court,
Chennai 104.

+1cc to Mr.Varadha Kamaraj, Advocate, Sr.36941

C.M.A.No.2369 of 2017
& C.M.P.No.12702 of 2017

sj (CO)
TR(16/04/2018)
GSP(25/06/2018)