

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2589 of 2017

and

C.M.P.No.14183 of 2017

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Chennai. .. Appellant/Respondent
/Vs/

1. Suguna
2. Minor. Sathya
3. Minor. Kalaichelvi
4. Minor. Venkatesh

Minors rep.by their mother R1 ..Respondents/Petitioner

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.03.2004 made in M.C.O.P.No.4089 of 1999 on the file of the Motor Accident Claims Tribunal, (IV Judge, Small Causes Court, Chennai).

For Appellant : Mr.S.V.Vasantha Kumar

JUDGMENT

The appeal has been preferred by the appellant challenging the award of compensation passed in MCOP No.4089 of 1999 by the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai.

2. The legal heirs of the deceased filed the claim petition claiming a sum of Rs.3,00,000/=. It is the case of the claimants that when the deceased was walking on the side of the road, the bus, belonging to the appellant transport corporation, driven in a rash and negligent manner, hit against the deceased causing fatal injuries. The Tribunal, based on the oral and documentary evidence, awarded a sum of Rs.1,12,500/= with interest at 9% p.a. The Transport Corporation, aggrieved by the same and terming the award as excessive has filed the present appeal.

3. It is contended by the learned counsel for the appellant that the accident happened due to the negligence on the part of the deceased in boarding a running bus, as evidenced

from the deposition of the witnesses and not due to the rash and negligent driving by the driver of the bus and, therefore, the compensation awarded is wholly unjustifiable.

4. A perusal of the materials available on record reveals that the deceased Balaraman, aged 38 years, a coolie/self employed, earning a sum of Rs.100/- per day, died in the accident that happened on 26.04.1999. To substantiate their case, the first claimant examined herself as P.W.1, who is also an eye witness to the occurrence. It is the evidence of P.W.1 that while the deceased tried to board the bus, the driver of the bus, moved the bus in a rash and negligent manner due to which the deceased fell down and the back wheel of the bus ran over the deceased. The deceased was taken to the Government Hospital, where, inspite of treatment, the deceased succumbed to the injuries on 11.2.2000.

5. The evidence of R.W.1, the driver of the bus is to the effect that on the date of occurrence, he took the bus from Parrys Corner and went to T.Nagar between 8.42 to 9.20 in the night. He further deposed that no untoward incident occurred on the said date and no criminal case was registered against him. Though such is the deposition of R.W.1, the said deposition runs counter to the affidavit filed by the Corporation relating to negligence. The said deposition has not been controverted by the appellant Transport Corporation and, therefore, the Tribunal was right in fixing the negligence on the part of the driver of the appellant transport corporation.

6. The record further reveals that though the deceased met with the accident on 24.4.1999 and suffered the injuries to various parts of the body and was admitted in the Government Hospital, where he took treatment, however, it is seen that the deceased died only on 11.02.2000, i.e., nearly after 10 months after the accident. In the mean time, the deceased was operated upon for various ailments, but, however, succumbed to the injuries.

7. In the first information report, the deceased had stated that while he attempted to board the moving bus, he fell down and sustained the injuries. The deceased himself having admitted that he had tried to board the moving bus and had sustained the fall, definitely he was also instrumental in contributing to the accident due to his negligent act. Therefore, the negligence as against the deceased was fixed at 50%.

8. It was deposed by P.W.1 that the deceased was aged 40 years and was earning a sum of Rs.3000/- per month at the time of accident. However, the Tribunal, in the absence of any

material to substantiate the income, fixed the income of the deceased at Rs.1,500/= per month and after deducting 1/3rd towards his personal expenses, adopting the multiplier of 15, arrived at the compensation towards loss of income to the family at Rs.1,80,000/- (Rs.1000 X 12 X 15). The Tribunal fixed the compensation in a sum of Rs.10,000/= towards loss of love and affection; Rs.10,000/= towards loss of estate at Rs.10,000/-; Rs.10,000/- towards loss of consortium Rs.10,000/-; Rs.5,000/- towards funeral expenses and Rs.10,000/- towards pain and sufferings. In all, the Tribunal fixed a sum of Rs.2,25,000/- as compensation. Considering the contributory negligence of the deceased to the accident, the Tribunal fixed the contributory negligence at 50% and accordingly awarded a sum of Rs.1,12,500/= towards the 50% negligence on the part of the appellant corporation.

9. Though the transport corporation has filed this appeal challenging that it is not due to the rash and negligent driving, the accident had happened. However, the appellant was not vigilant enough in adducing evidence and contrary to the same, the evidence adduced by the driver runs counter to the affidavit of the appellant. But for the efforts taken by the Tribunal to find out the truth, the negligence would have solely fallen on the shoulders of the transport corporation. The fact remains that the driver of the bus alone was not the root cause for the accident and the deceased has also contributed his share to the same. Further, the amount of compensation ordered by the Tribunal is meager and the challenge to the same as excessive cannot be sustained. The time lapsed is almost two decades and at this point of time, the records pertaining to the claim petition would not be available and, therefore, this Court would not be in a position to re-assess the evidence and find out a just compensation. In such circumstances, this Court has no other alternative but to confirm the finding arrived at by the Tribunal.

10. For the reasons stated above, this appeal is dismissed confirming the award passed by the Tribunal. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

11. The appellant / Transport corporation is directed to deposit the entire award amount, less the amount, if any, already deposited, along with interest and costs as determined by the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the tribunal is directed to transfer the amount apportioned to the share of the 1st claimant to her bank account and insofar as the minors 2 to 4 are concerned, their apportioned share shall be kept in interest bearing fixed deposit in any one of the

Nationalised Banks till they attain majority and the mother of the minor claimants, viz., the 1st claimant, is entitled to withdraw the interest accrued thereon, once in three months.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

kv/sms/GLN

To

1. The Motor Accident Claims Tribunal,
(IV Judge, Small Causes Court, Chennai).
2. The Section Officer, VR Section,
High Court, Madras.

C.M.A.No.2589 of 2017
and
C.M.P.No.14183 of 2017

VG II (CO)
TR(12/02/2018)