



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.04.2017

CORAM :

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.(MD)No.269 of 2014

and

M.P.(MD) No.1 of 2014

M/s.State Express Transport
Corporation Limited,
Chennai.

... Appellant/Respondent

Vs.

1.Anjammal
2.Dhanalakshmi
3.Arivukannu
4.Muthukumar

... Respondents/Petitioners

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, to allow the appeal, set aside the judgment and decree dated 10.12.2012 passed in M.C.O.P.No.1525 of 2008 on the file of the Motor Accidents Claims Tribunal/III Additional Sub Court, Tiruchirappalli.

For Appellant : Mr.P.Prabhakaran
For Respondent : Mr.B .Prasanna Vinoth for
Mr.A.Thiyagarajan

Judgment Reserved on : 23.03.2017
Judgment Pronounced on : 06.04.2017

JUDGMENT

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

The Civil Miscellaneous Appeal is directed against the judgment and decree dated 10.12.2012 passed in M.C.O.P.No.1525 of 2008 on the file of the Motor Accidents Claims Tribunal/III Additional Sub Court, Tiruchirappalli.

2.The case of the claimants/respondents herein in the claim petition is that the deceased Krishnan, aged about 49 years, who is the husband of the first claimant and father of the claimants 2 to 4, was working as a Watcher in the Forest Range Office and he was drawing salary of Rs.6,497/- per month. On 01.05.2008, at about 19.45 hours, the deceased reached Kodumbalur Chathiram from Thuvarankurichi and when he had gone in the new road in Kodumbalur



Chathiram from South to North kept his left side mud portion of the main road, the driver of the respondent bus bearing Registration No.TN 01 N 6685 belongs to Tamil Nadu State Transport Corporation driven the bus in a rash and negligent manner and suddenly dashed against him and he was thrown away. Due to the said accident, the deceased sustained multiple grievous injuries including severe injury on head, face, right cheek and chin and immediately, he was taken to K.M.C. Hospital, Viralimalalai and when he was shifted to Government Hospital, Trichy, he died on the way.

3. According to the claimants, the accident was due to rash and negligent driving of the driver of the respondent bus and due to the said accident, the deceased Krishnan died. Therefore, the respondent/appellant herein is liable to pay the compensation and the claimants claimed Rs.12,00,000/- as compensation before the Tribunal.

4. The case of the respondent/appellant herein is that on 01.05.2008, the bus bearing Registration No.TN 01 N 6685 on its trip from Madurai to Chennai and the driver was well experienced and he was driving the bus at a moderate speed following all the traffic rules and regulations besides keeping the vehicle to the extreme left. At that time, a Tamil Nadu State Transport Corporation Ltd., bus bearing Registration No.TN 45 N 2563 halted at Kodumbalur bus stop and halted and one of the passengers alighted from the Said bus and suddenly crossed the road and involved in an accident with the respondent bus without noticing the said bus and thus, the accident has occurred. The negligence on the part of the deceased himself is the reason for the accident. Therefore, the respondent/appellant herein is not liable to pay the compensation.

5. In order to prove the case of the claimants, first claimant was examined as P.W.1 and two other witnesses were examined and on the side of the claimants, Exs.P1 to P3 were marked. On the side of the respondent/appellant, the driver was examined as R.W.1 and no documents were marked.

6. After considering the claim petition, counter affidavit and also oral and documentary evidence let in by both the parties, the Tribunal came to the conclusion that the accident was due to rash and negligent driving of the driver of the respondent bus bearing Registration No.TN 01 N 6685 and on a perusal of the evidence of P.W.1 and the Tribunal adopting 13 multiplier, awarded Rs.18,67,120/- under the following heads:

(i) For Loss of Income	:	Rs.11,98,080/-
(ii) Future profits 50%	:	Rs. 5,99,040/-
(iii) Funeral Expenses	:	Rs. 10,000/-
(iv) Transportation	:	Rs. 10,000/-
(v) Love and Affection	:	Rs. 25,000/-
(iii) Loss of Consortium	:	Rs. 25,000/-

Rs.18,67,120/-



7. Aggrieved with the award passed by the Tribunal the respondent Transport Corporation has filed this Civil Miscellaneous Appeal, for the reasons that the compensation awarded by the tribunal is not just and a reasonable compensation and the same is excessive.

8. The learned counsel for the appellant would submit that even though the claimants had claimed compensation of Rs.12,00,000/-, the Tribunal had awarded compensation of Rs.18,67,120/-. He further submitted that the Tribunal had erred in adding 50% towards future prospects. As per Sarala Verma case, if the deceased is between 40 and 50 years of age, he is entitled to only 30% future prospects and therefore, the Tribunal had erred in calculating 50% for future prospects and that amount has to be reduced.

9. The learned counsel for the respondents submitted that the Tribunal had arrived at a just compensation and if the Tribunal finds that the compensation amount comes excess of the claim made by the claimants, there is no bar to the Tribunal to award compensation more than claimed in the claim petition and in this aspect, the Tribunal had come to a correct conclusion and he has no serious objection for calculating the future prospects for 30% instead of 50% and he has also admitted that as per Sarala Verma case, since the deceased is aged about 49 years, he is entitled only 30% of amount towards future prospects.

10. Heard the learned counsel for the appellant and the learned counsel for the respondents.

11. On perusal of the evidence of P.W.2, he is stated to have been eye witness at the time of accident and he was in the tea shop nearby, where the accident had occurred and he has spoken about the manner of the accident. Though on the side of the respondent/appellant, the driver of the respondent/appellant denied the manner of the accident, he has not examined any independent witness and first information report also lodged only against the driver of the respondent/appellant. However, both the parties have not stated as to the fate of the criminal case. But, from the evidence of P.W.2, it is clear that the accident was only due to rash and negligent driving of the driver of the bus bearing Registration No. TN 01 N 6685. Therefore, the Tribunal has rightly held that the accident was only due to rash and negligent driving of the driver of the respondent/appellant's bus.

12. Insofar as the quantum of compensation is concerned, the Tribunal had arrived at a conclusion that since the deceased was aged about 49 years and he was working as Forester in the Forest Department, he was drawing monthly salary of Rs.6,497/-. To prove this, the salary certificate of the deceased was marked as Ex.P3. As per the evidence of P.W.3, who was working as



Assistant in District Forest Office, the deceased would have received Rs.10,240/- as per the implementation of 6th Pay Commission. The salary certificate is of the month of April 2008 marked as Ex.X1 through P.W.3. Therefore, the Tribunal has fixed Rs.10,240/- as the monthly salary of the deceased.

13. The Tribunal applied 13 as multiplier, taking into account the age of the deceased. 1/4 deduction was made from the salary towards personal expenses. By using multiplier 13 and taking the monthly salary Rs.10,240/- and after providing 1/4 deduction towards private expenses, the loss of income was arrived at Rs.11,98,080/- and the Tribunal calculated 50% for his future prospects. However, as per the case of Sarala Verma and others Vs Delhi Transport Corporation, reported in 2009 (6) SCC page 121, the Hon'ble Apex Court has held that, if a Government employee, who is aged between 40 and 50 is entitled to 30% towards his future prospects. Therefore, we are of the view that in this aspect, the Tribunal had erred in calculating 50% towards future prospects and hence, the same needs to be interfered by us. Accordingly, in our considered view, the future prospects can be taken as 30% and accordingly, the same would come to Rs.3,59,424/- and the Tribunal ought to have awarded Rs.3,59,424/- towards future prospects instead of Rs.5,99,040/-.

14. In so far as the other heads of compensation are concerned, the Tribunal had awarded Rs.10,000/- for funeral expenses and also awarded Rs.10,000/- for transportation, which are reasonable and the same need not be interfered by this Court and accordingly, the same is remained. As per the judgment in *Rajesh and Others Vs. Rajbir Singh and others* reported in 2013(2) TNMAC 55(SC), a sum of Rs.1 lakh has to be awarded for loss of consortium. Therefore, the compensation awarded by the Tribunal towards loss of consortium to the wife of the deceased/1st claimant is enhanced from Rs.25,000/- to Rs.1,00,000/-. The Tribunal has awarded only Rs.25,000/- for love and affection to the claimants 1 to 4 in toto. The first claimant is the wife of the deceased. 2nd and claimant is their married daughter, 3rd and 4th claimants are their unmarried daughter and unmarried son and hence, we are of the view that the claimants 1,3 and 4 shall be given Rs.50,000/- each towards love and affection. 2nd claimant shall be given Rs. 34,616/-. Likewise the Tribunal has not awarded any compensation towards loss of estate. The Tribunal ought to have awarded Rs.5,000/- for loss of estate. Therefore, we are of the considered view that the claimants are entitled the award of compensation as follows:



(i) Loss of Income	:	Rs. 11,98,080.00
(ii) Loss of future prospects	:	Rs. 3,59,424.00
(ii) Loss of consortium for wife	:	Rs. 1,00,000.00
(iii) love and affection to claimants 1 to 4	:	Rs. 1,84,616.00
(iv) Loss of Estate	:	Rs. 5,000.00
(v) Funeral Expenses	:	Rs. 10,000.00
(vi) Transportation	:	Rs. 10,000.00

Total		Rs.18,67,120.00

15.The Tribunal has awarded Rs.18,67,120/- as compensation. It is needless to say, that there is no bar to the Tribunal to award compensation, more than the claim in the claim petition, if it feels that the same is just and reasonable. Now, this Court confirms the same with the above modification. The appellant Transport Corporation is directed to deposit the compensation with interest at 7.5% per annum from the date of petition, if already not deposited, if already deposited any amount less the amount already deposited, along with proportionate interest and cost to the credit of the claim petition, within a period of six weeks from the date of receipt of a copy of this order. Since the accident is in the year of 2008, the claimants are permitted to withdraw the entire amount that would be deposited by the appellant Transport Corporation. The claimants are permitted to withdraw their share with award amount less the amount already withdrawn if any, with proportionate interest and cost, through RTGS by filing necessary Application before the Tribunal.

16.The appeal is disposed of with the above modification. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To
Motor Accidents Claims Tribunal/
III Additional Subordinate Judge,
Tiruchirappalli.

+One cc to Mr.P.Prabhakaran, Advocate, SR.No.51030
+One cc to Mr.A.Thiyagarajan, Advocate, SR.No.50623
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