

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.101 of 2017

1.T.Sumathi

2.T.Pushpasaran (Minor)

3.T.Vasan (Minor)

4.K.Meenakshi

Minor 2nd and 3rd petitioners represented
by their mother 1st petitioner as guardian.

..Appellants/Petitioners

Versus

The Managing Director,
Tamil Nadu State Transport Corporation,
3/137, Salamedu, Vazhuthareddy,
Villupuram 605 602.

..Respondent/Respondent

Civil Miscellaneous Appeal filed against the order and
decree dated 22.01.2014 made in M.C.O.P.No.308 of 2011 on the
file of the Motor Accident Claims Tribunal, Principal District
Judge at Cuddalore.

For Appellants : Mr.Ramya V.Rao

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

The petitioners/appellants have filed this appeal against
the order and decree dated 11.01.2014 made in M.C.O.P.No.308 of
2011 on the file of the Motor Accident Claims Tribunal,
Principal District Judge at Cuddalore.

2. For the sake of convenience, the parties are referred to
hereunder according to their litigative status before the
Tribunal.

3. The case of the petitioners is that on 26.11.2010 at
about 04.30p.m., while the deceased was riding his motor cycle
bearing Registration No.TN-31-K-0823 from East-West at
Karaimeadu, the respondent bus bearing Registration No.TN-32-N-
2948 came in the opposite direction at high speed dashed against
the two wheeler, in which, the deceased was proceeding, causing
him fatal injuries, resulting in his death. At the time of the

accident, the deceased was aged 33 years and by working as a building contractor was earning Rs.25,000/- per month. The petitioners who are the wife, children and mother of the deceased are dependents on the income of the deceased. Hence, the petitioners seek a sum of Rs.25,00,000/- as compensation from the respondent/Transport Corporation.

4. On the other hand, opposing the claim of the petitioners, by filing counter, the respondent/Transport Corporation contends that the accident occurred only due to negligence of the deceased, who was riding the two wheeler in an improper manner. The petition is bad for not impleading the owner and insurer of the two wheeler involved in the accident. The deceased did not possess any valid license for driving the two wheeler. The vehicle driven by the deceased was carrying totally three more persons, which is in violation of the rules. The age, avocation and income of the deceased alleged in the petition is disputed. The claim of the petitioners is exorbitant. The petition is liable to be dismissed.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.5 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, on the basis of available evidence, found that the respondent driver alone is responsible for the cause of the accident and passed an award for a sum of Rs.9,24,000/- payable by the respondent/Transport Corporation to the petitioners. Being not satisfied with the quantum of the award, the petitioners/claimants have come forward with the present appeal.

6. The learned counsel for the petitioners contends that the Tribunal failed to fix the monthly income properly and the future prospects of the deceased was not considered. No amount was provide for loss of love and affection. The amount awarded under different heads is very normal. Thus, the petitioners seek enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the respondent/Transport Corporation contends that the deceased himself being a tortfeasor, the petitioners are not entitled to seek for enhancement of the award amount. The petitioners have not produced any proof regarding the avocation, income of the deceased and as such, the quantum fixed by the Tribunal itself is on higher side. As the deceased was travelling with two other persons in the two wheeler, it amounts to violation of traffic rules and as such, the petitioners are not entitled to seek compensation. Thus, the respondent/Transport Corporation sought for dismissal of the appeal.

8. Heard both sides and perused the available materials on record.

9. The petitioners contends that on the fateful day, while the deceased was travelling in the two wheeler bearing Registration No.TN-31-K-0823, at about 4.30p.m., on 26.11.2010, the respondent bus came at high speed in the opposite direction and dashed against the two wheeler, resulting in the death of the said Thirumal. The eye-witness to the occurrence who deposed as P.W.2 clearly stated about the manner, in which the accident occurred. The suggestion put by the respondent to P.W.2 that the deceased Thirumal and two other person viz., Arumugam and Prabakaran was proceeding in the motor cycle was denied by P.W.2. There is nothing on record to prove that the deceased drove the vehicle in a rash and negligent manner. Further, the police registered Ex.P.1 - F.I.R., against the driver of the respondent bus only. The respondent has not chosen to let in any evidence either the driver of the bus or any other witnesses to disprove the contention of the petitioners. It is clear from Ex.P.2 - M.V.I Report that there was no mechanical defect in the vehicle. As such, on the basis of P.W.2 oral evidence as well as Ex.P.1 - F.I.R, it is clear that the accident occurred only due to rash and negligent driving of the respondent bus driver.

10. The deceased was stated to be aged 33 years and by working as a building contractor, was earning Rs.25,000/- per month. As per Ex.P.3 - Postmortem, the deceased was stated to be 33 years and in the absence of any other proof regarding his age, on the basis of Ex.P.3 - Postmortem report his age is fixed as 33 years.

11. The petitioners contended that the deceased was earning Rs.25,000/- as building contractor as per Ex.P.5 - Salary Certificate. However, the petitioners have not examined any one from the concern, in which the deceased was employed as a building contractor. To prove the same, there is no other supporting evidence to prove that Ex.P.5 was issued by duly authorised person. In such circumstances, it will be appropriate to fix the notional income of the deceased at Rs.6,500/- per month instead of Rs.6,000/- fixed by the Tribunal. As the deceased was aged 33 years, it will be appropriate to add 40% of the income towards future prospects. Further, $\frac{1}{4}$ th of the income is to be deducted towards the personal expenses of the deceased and the correct multiplier to be applied is '16'. Thus, the loss of dependency is calculated as under,

Monthly income = Rs.6,500/-
By adding 40% towards future prospects,
Rs.6500 + 40%(2600) = Rs.9,100/-
 $\frac{1}{4}$ th deduction towards personal expenses,
Rs.9,100 - $\frac{1}{4}$ = Rs.3,033/-

By applying multiplier of 16,

Rs. 6825 x 12 x 16 = Rs.13,10,400/-.

Thus, a sum of Rs.13,10,400/- is granted as compensation under the head "Loss of Income".

12. In respect of awarding compensation under conventional heads, as per the judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation has to be awarded towards loss of estate, loss of consortium and funeral expenses and hence, this court is inclined to grant a sum of Rs.15,000/- each towards loss of estate and funeral expenses and for loss of consortium a sum of Rs.40,000/- is awarded.

13. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of Income	8,64,000.00	13,10,400.00
2	Funeral Expenses	10,000.00	15,000.00
3	Loss of Estate	-	15,000.00
4	Transport	10,000.00	-
5	Love and Affection	30,000.00	-
6	Loss of Consortium	10,000.00	40,000.00
7	Total	9,24,000.00	13,80,400.00

14. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.13,80,400/- from Rs.9,24,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above enhanced award amount, the 2nd respondent/Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The apportionment of the modified enhanced award amount is as follows:-

1st, 2nd and 3rd petitioners - 30% each
4th petitioner - 10%

(v) On such deposit, the 1st and 4th petitioners/1st and 4th appellants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(vi) The share of the 2nd and 3rd petitioners/minors are directed to be deposited in any one of the nationalised bank till they attain majority. The 1st petitioner/guardian of the 2nd and 3rd petitioners is permitted to withdraw the accrued interest once in three months.

(vii) Petitioners/Claimants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bri

To

1.The Principal District Judge,
Cuddalore.

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

+1cc to Mr.A.N.Viswanatha Rao, Advocate Sr.No.22770

CNR(CO)

sm:2.5.2018

C.M.A.No.101 of 2017

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