

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A. No. 1084 of 2018
and CMP.No.9119 of 2018

The Managing Director,
M/s. Tamil Nadu State Transport Corporation,
Division - I, Railway Station Road,
Kumbakonam Town,
Tanjore District. Appellant

Vs.

1. R.Jayaprakasan
2. J.Selvakumari
3. J.Sabarinathan
4. S.Dharmaraj
5. The Branch Manager,
M/s. National Insurance Company Limited,
Nethaji Road,
Tiruvarur Town and District. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 praying to set aside the decree and judgment dated 12.01.2017 made in MCOP. No. 39 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruvarur.

सत्यमेव जयते

For Appellant : Mr.D.Venkatachalam

JUDGMENT

(Judgement of this Court made by R.Pongiappan.J.)

Aggrieved over the award passed by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate, Tiruvarur) in MCOP. No. 39 of 2016 dated 12.01.2017, the Tamil Nadu State Transport Corporation/Appellant herein, who is the first respondent in the above said MCOP has filed this Appeal to set aside the award passed by the Claims Tribunal as erroneous.

2. In the claims tribunal, the respondents 1 to 3 herein have filed the claim petition under Section 166 of Motor Vehicles Act and Rules 3 of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.25,00,000/- for the death of one Yogesh, who died in a road accident. Admittedly, the first and second respondents are the parents and third respondent is the brother of the said deceased Yogesh. After elaborate enquiry, the Claims Tribunal determined a sum of Rs. 16,70,000/- as just compensation for the death of the said Yogesh.

3. The case of the respondents 1 to 3 herein in the Claims Tribunal is that on 01.09.2014 when the deceased was travelling as pillion rider along with his friend Salmah Khan in a two wheeler bearing registration No. TN49 AB 1834 near vaiyakalathur Mudukku Thope, a bus owned by the appellant bearing registration No. TN45 N 2954 came from East to West direction in a rash and negligent manner and hit against the two wheeler, in which the deceased was travelling. Immediately after the accident, both Yogesh and his friend Salman Khan died on the spot itself, for which, a case has been registered by the Sub Inspector of Police, Neelamangalam Police Station in Crime No.234 of 2014 under Section 304 A IPC.

4. Today, we heard the arguments advanced by Mr.D.Venkatachalam, learned counsel appearing for the appellant. No representation on behalf of the respondents 1 to 3.

5. The learned counsel appearing for the appellant submitted that the alleged accident had not happened due to the rash and negligent driving of the bus driver. The said act was not established in the claims tribunal with sufficient evidence and materials, so the appellant herein is not liable for the payment of any compensation. He further added that without looking into these aspects, the claims tribunal casually came to the conclusion that the alleged accident had happened only due to the rash and negligent act of the bus driver, thereby he prayed to set aside the award passed by the claims tribunal.

6. In the claims tribunal in order to prove the negligent act of the bus driver, three witnesses were examined on the side of the claimants. The first respondent being the first claimant had given evidence with regard to the accident as mentioned in FIR. The said evidence was corroborated by one Shanmugavel. Even though the driver of the bus was examined as RW1 on the side of the appellant, he has not denied the manner of the accident as alleged by the claimants. He also admitted in his evidence that a case has been registered by the Sub Inspector of Police, Needamangalam against him. Mere letting in oral evidence by the appellant without any documents for substantiating the claim

is not at all relevant to accept the case of the appellant. Since the documents which are exhibited on the side of the claimants as Ex.P1 FIR and Ex.P2 Motor Vehicle Inspector's Report clearly prove that the alleged accident had happened only due to the rash and negligent act of the bus driver, so, being owner of the bus, the appellant alone held liable for the payment of compensation fixed, if any. Therefore, the arguments advanced with regard to the rash and negligent act of the bus driver and the liability is not an acceptable one.

7. Coming to the determination of monthly income of the deceased, on going through the evidence given by the first claimant before the claims tribunal, the deceased at the time of the accident, was doing tailoring business and earning Rs.15,000/- per month. With regard to this aspect the claims tribunal correctly came to the conclusion that without any supporting documents, the evidence let in by the first petitioner regarding employment is not acceptable one. We also agree with the view taken by the claims tribunal and come to the conclusion that the profession of the deceased was not proved by the claimants.

8. In the said circumstances, in order to calculate the compensation, the claims tribunal without adding the future aspects, determined Rs.7,500/- as notional income after deducting personal expenses. As per the Pranay Sethi's case, it is necessary to add future prospects for calculating compensation. It is an admitted fact that at the time of the accident, the deceased was aged about 25 years. Nowadays, even a coolie can earn Rs.300/- per day, thereby considering the cost of living and other circumstances, we decided to fix Rs.8,000/- as monthly income of the deceased Yogesh.

9. Now, in order to calculate the future prospects, it is necessary to refer the judgement of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017 -13 SCALE 12, in which, the Hon'ble Apex Court has held that if the person having a permanent job and below the age of 40 years, 40% of the monthly income to be added as future prospects. Accordingly, the monthly notional income of the deceased is fixed as Rs.11,200/- (8000 + 3200).

10. Further, in order to deduct the personal and living expenses, the Hon'ble Apex Court in the case of Sarla Verma and Others Vs. Delhi Transport Corporation and another passed in Civil Appeal No. 3483 of 2008 Dated 15.04.2009, has observed that if dependants of the deceased are 2 to 3, one third of the annual income to be deducted towards the personal and living expenses. Accordingly, we decided to deduct one third of the total annual income for calculating the compensation.

11. Now, with regard to the multiplier, the Hon'ble Apex Court in the judgment of Sarla Verma (stated supra), has held that if the person having the age of 25 years, the multiplier of 18 has to be taken into account for calculating loss of dependency. In this case also, as per Exhibit P3, post-mortem certificate, the age of the deceased is mentioned as 39 at the time of the accident, so the appropriate multiplier for calculating the loss of dependency is 18.

12. Further, the Tribunal has awarded Rs. 30,000/- and Rs.20,000/- under heads of funeral expenses and loss of love and affection respectively.

13. In this regard, now as per the Hon'ble Apex Court in the judgment of Pranay Sethi's case (cited supra), addition of Rs.30,000/- would be required to be added on account of conventional heads of loss of estate (Rs.15,000/-) and funeral expenses (Rs.15,000/-). Accordingly, we modify the conventional heads as above.

14. Therefore, we have decided that the annual income of the deceased would be Rs.96,000/- (8000 x 12). Adding a component of 40% for future prospects, the income would stand at Rs.1,34,400/-. Deducting an amount of one third towards personal expenses, the loss of dependency per annum works out to Rs.89,600/-. Applying a multiplier of 18 the total loss of dependency would work out to Rs.16,12,800/-. Further, this Court added an additional amount of Rs.30,000/- towards conventional heads.

Hence, total compensation payable to the claimants is as hereunder:

i. Loss of dependency	: Rs.16,12,800/-
ii. Los of Estate	: Rs. 15,000/-
iii. Funeral Expenses	: Rs. 15,000/-

Total Compensation	: Rs.16,42,800/-

15. Accordingly, the appellant/Transport Corporation is directed to deposit the entire award amount, with interest and costs directly through NEFT or RTGS as directed by the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 to 3 are permitted to withdraw their respective shares, from the total

compensation payable to them, as per the modified award passed by this Court, in the ratio fixed by the Tribunal.

16. In the result, the Civil Miscellenous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.16,70,000/- is reduced to Rs.16,42,800/-. The said amount shall carry the same rate of interest as awarded by the Tribunal, namely, 7.5% per annum and the apportionment shall be as ordered by the Tribunal. Consequently, the connected Miscellenous Peitions is closed. No costs.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tiruvarur.

+1cc to Mr.D.Venkatachalam, Advocate Sr.34793

C.M.A. No. 1084 of 2018
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