THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 1139 of 2018
and CMP.No. 9443 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation
(VPM DVN III) Ltd., Kancheepuram. ..Appellant

Vs.

1. Jayasudha
2. Ilanjiam
3. Pushpalingam
4. Pushpalatha ..Respondents

Prayer: Civil Miscellaneous Appeal is filed to set aside the decree and judgment dated 26.07.2016 made in MCOP. No. 2303 of 2008 on the file of Motor Accident Claims Tribunal, the Chief Small Causes Court, Chennai.

For Appellant : Mr.J.Lokesh
For Respondents : Mr.F.Terry Chellaraja

JUDGMENT
(Judgement of this Court made by Krishnan Ramasamy.J.)

Aggrieved over the award passed by the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai in MCOP. No. 2303 of 2008 dated 26.07.2016, the State Transport Corporation (VPM DVN III) Ltd., Kancheepuram/appellant herein, who is the respondent in the above said MCOP has filed this Appeal to set aside the award of a sum of Rs.16,57,000/- passed by the Claims Tribunal as erroneous.

2. The brief facts of the case are as follows:-

On 06.05.2008 at about 9:30 p.m., the deceased Murali and Senthil met with motor vehicle accident while they were proceeding in a motor cycle bearing registration No.TN-04-AZ-

1049 as pillion rider and rider respectively from Chengalpattu to Kalpakkam. At that time, the driver of the bus bearing registration No.TN-21-N-0544 drove the bus in a rash and negligent manner in the same direction and hit behind the motor cycle, due to which both the rider and pillion rider sustained injuries all over the body and the rider namely Senthil died on the same day, the pillion rider namely Murali was immediately admitted at CMC Hospital, Chengalpattu and then admitted at Government General Hospital, Chennai and there he died on 15.05.2008 while he was undergoing treatment. Therefore the dependants namely the wife, mother, father and sister of the deceased filed MCOP No.2303 of 2008.

3. According to the respondents herein, the accident occurred only due to the rash and negligent driving of the driver of the Appellant Transport Corporation bus bearing Registration No.TN-21-N-0544. The case of the Appellant Transport Corporation is that the accident occured due to the negligent driving of the decesed.

4. Heard Mr.J.Lokesh, learned counsel for the appellant and Mr.F.Terry Chellaraja, learned counsel for the respondents.

5. The main issues that have arisen in this present appeal is as follows:-

1. Whether the negligence fixed on the driver of the bus bearing Registration No.TN-21-N-0544 by the Tribunal is correct?
2. Whether the quantum of compensation fixed by the Tribunal is correct?

5. 1.1. In order to prove the negligence on the part of the driver of the bus, PW3 was examined as an eye witness and he has stated in his evidence that on 06.05.2008 at about 9:30 p.m. while he was waiting for his friend at Thirukazhukundram-Sadras road near Eagai village, at that time two persons came in a motor cycle bearing registration No.TN-04-AZ-1049 and following the said motor cycle a bus bearing registration No.TN-21-N-0544 was driven by its driver in a rash and negligent manner and hit on the rear side of the said motor cycle, due to which the aforesaid two persons fell down and they were taken to the hospital and subsequently it was reported that they were dead. In this regard Thirukazhukundram Police also registered a case in Crime No.204 of 2008 under Sections 279, 337 and 304 (A) IPC agaist the driver of the said bus and a copy of the FIR also marked as Ex.P1, Charge sheet was marked as Ex.P3. Further a copy of the Rough Sketch marked as Ex.P4 which would show that based on the FIR the police investigated the case and filed the charge sheet against the driver of the bus under Sections 279 and 304 (A) of IPC. The oral evidence of PW3 is corroborated by

Ex.P1, Ex.P3 and Ex.P4. To controvert the evidence of PW3 the appellant herein did not examine the driver of the said bus. Examination of eye witness, investigation done by the police and Ex.P1, Ex.P.3 and Ex.P.4 clearly establish that the driver of the bus drove it in a negligent manner. On the contrary, the respondent in the claims Tribunal examined one Srinivasan as RW1 who is none other than the conductor of the bus. He deposed that about 8:10 p.m. when the bus was proceeding from Tambaram to Kalpakkam on Veeranam road, he heard a sound and the bus was stopped and on seeing on the front side of the bus, he found that two persons came in a motor cycle and dashed with the bus and fell down. The evidence of RW1 will not help to prove that the bus driver drove the bus with due care.

Therefore, we have no hesitation to hold that the driver of the Appellant's bus drove it in a negligent manner and caused the accident and thereby the finding of the Tribunal fixing the negligence on the part of the driver of the bus is correct. Accordingly we uphold the view of the Tribunal in this point of negligence.

5.1.2. On going through the documents and evidence relied by the Claims Tribunal, it appears that at the time of giving evidence by PW2, she desposed that her son namely Senthil aged about 25 years, however no other proof with regard to the birth certificate or school certificate was produced. However, the age of the deceased (Senthil) was mentioned as 28 years in the post mortem report. The Tribunal took the age of the deceased (Senthil) as 28 years as mentioned in the post mortem report. The post mortem report was marked as Ex.P.5. Therefore, we also agree with the findings of the Tribunal with regard to the age of the deceased. In the light of the reported decision in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, for the age group between 26 to 30 years old, the multiplier to be adopted is '17'. PW2 has deposed that the deceased Senthil was working as a Carpenter and earned Rs.500/- per day and she further deposed that the deceased (Senthil) was working as a Councillor and earned Rs.6,000/- per month and produced identity card of the deceased which is marked as Ex.P7. PW4 is said to be the employer of the deceased Senthil. However PW4 did not produce any vouchers though he deposed at the time of cross examination that he had some vouchers for the payment of salary to the deceased Senthil. The respondents herein did not mention in the claim statement that the deceased Senthil was working under PW4. PW2 also in her evidence not stated that the deceased was working under PW4. In these circumstances, the Tribunal rightly fixed the income of the deceased Senthil notionally at Rs.6,000/- per month. We also concur with the findings of the

Tribunal for the same.

6. Now in order to calculate the future prospects it is necessary to refer the judgment 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 deceased was having either self employment or fixed salary and below the age of 40 years, 40% of the monthly income to be added as future prospects. In this case, as per the deposition of PW2 it is clear that the deceased was not in the permanent job but on the self employment, thereby 40% of monthly income is added for calculating the pecuniary loss.

7. Now with regard to the multiplier the Hon'ble Apex Court in the case of Sarla Verma case (cited supra) held that if the person having the age of 25 to 30 years the multiplier of 17 to be taken into account for calculating the loss of dependency. In this case also as per Ex.P5 Post Mortem certificate the age of the deceased is 28 years. Hence we take the multiplier of '17' for the purpose of calculating the loss earning of the deceased. Further in order to calculate the personal expenses the Hon'ble Apex Court in the case of Sarla Varma and others Vs. Delhi Transport Corporation and another passed in Civil Appeal No.3483 of 2008 dated 15.04.2009 has observed if the deceased is married and dependants are 1 to 4, $1/4^{th}$ of the total income to be deducted towards the personal expenses of the deceased. Therefore, we decided to deduct $1/4^{th}$ of the total annual income for calculating personal expenses.

8. Accordingly, we decided that the monthly income of the deceased would be Rs.6,000/-. Adding a component of 40% (Rs.2,400/-) for future prospects the income would stand at Rs.8,400/-. Deducting an amount of one fourth i.e., (Rs.2,100/-) towards personal expenses, the loss of dependency per month works out to Rs.6,300/- (Rs.6000/- + Rs.2,400 - Rs.2100/-). Applying the multiplier of '17' the total loss of dependency per annum would work out to Rs.12,85,200/-. Further the Tribunal awarded Rs.1,50,000/- towards loss of love and affection and we confirm the same. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of consortium, in this regard as per the Hon'ble Apex Court in the judgment of Pranay Sethi's case (cited supra) it is made clear that the maximum amount of consortium cannot be accepted more than Rs.40,000/-. Therefore we re-fix the amount as Rs.40,000/- towards consortium which is reduced from Rs.1,00,000/- as fixed by the Tribunal. The Tribunal awarded Rs.5,000/- towards “Transportation” and the same is enhanced to Rs.10,000/-. As no amount was awarded towards “Loss of estate”

by the Tribunal, a sum of Rs.15,000/-. is fixed under that caption. Under the head " Funeral expenses" this Court is inclined to reduce the amount from Rs.25,000/- to Rs.15,000/- as fixed in Pranay Sethi's case (cited supra) by the Hon'ble Supreme Court of India.

9. Hence the total compensation payable to the claimants is as hereunder.

Head	Amount (Rs.)
Loss of Dependency 6000+40%-1/4x12x17	Rs.12,85,200/-
Loss of consortium	Rs.40,000/-
Loss of love and affection	Rs.1,50,000/-
Loss of estate	Rs.15,000/-
Transportation	Rs.10,000/-
Funeral expenses	Rs.15,000/-
Total	Rs.15,15,200/-

10. The total amount of compensation shall be shared by the respondents 1 to 4 herein, in the following manner:-

The wife of the deceased who is the first respondent herein shall receive a sum of Rs.12,15,000/-, the mother of the deceased who is the second respondent herein shall receive a sum of Rs.1,50,000/-, the father of the deceased who is the third respondent herein shall receive a sum of Rs.75,000/- and the sister of the deceased who is the fourth respondent herein shall receive a sum of Rs.90,200/-.

11. Accordingly, the appellant / Tamil Nadu State Transport Corporation (VPM DVN III) Ltd., Kancheepuram 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 two weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 to 4 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 as above.

12. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.16,57,000/- is reduced to Rs.15,15,200/-. 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 this Court. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dpq

To
1. The Motor Accident Claims Tribunal,
Chief Small Causes Court, Chennai.

+1cc to Mr.V.Velu, Advocate SR.No.35935
+1cc to Mr.K.T.Sivakumar, Advocate SR.No.35803

KS(CO)
EU:14.8.2018

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