

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.2779 of 2006 and
M.P.1 of 2006

Metropolitan Transport Corporation Ltd.,
Managing Director
Pallavan Salai, Chennai-2. ...Appellant/Respondent

Versus

1. G.Kasthuri ...1st Respondent / 1st Petitioner
2. K.Ganesan ...2nd Respondent / 2nd Petitioner

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree made in M.A.C.T.O.P.No.4521 of 2001 on the file of the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes) at Chennai dated 06.10.2005.

For Appellant : Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree passed in M.A.C.T.O.P.No.4521 of 2001 on the file of the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes) at Chennai dated 06.10.2005.

2. The brief facts leading to the claim application are as follows :-

On 06.05.2001, at about 14:30 hours, when the deceased person was riding the motor cycle, bearing Registration No.TN-04-X 4117 proceeding from Ponneri to Manali in Andar Kuppam Check-post, Chennai to Ponneri High Road, Chengai, East District, at that time, the MTC Bus bearing Registration No.TN-01-N-1601 which was driven by its driver in a rash and negligent manner dashed against the motor cycle. As a result, the deceased sustained fatal injuries. The claimants being parents of the deceased have claimed a sum of Rs.5,00,000/- as compensation.

3.The respondent in the counter statement, denied the facts relating to the accident and also the claim made by the claimants. It is stated in the counter statement that on 06.05.2001, the bus bearing Registration No.TN-01-N-1601, was coming from Ambatur Estate to Minjur and at that time, a container lorry came from the opposite direction and the deceased was coming behind the said lorry in a rash and negligent manner and by overtaking the said container lorry without noticing the bus, hit against the edge of the bus and fallen down and sustain fatal injuries. Hence, it is the carelessness and negligence of the deceased, which resulted in the accident and this respondent is not responsible for the accident and liable for any compensation. It is also stated that the deceased was also responsible for contributory negligence and the sum claimed is excessive and exorbitant.

4.The Tribunal, after analyzing the evidence and the documents placed before the same, has given a finding that it is the driver of the transport bus bearing Registration No.TN-01-N-1601 is responsible for the accident. The tribunal has also awarded a sum of Rs.3,68,000/- under various heads i.e., for loss of income Rs.3,58,800/-, by taking the annual income of the deceased at Rs.2,300/- and adopting the multiplier method 13 and for the Transport expenses Rs.5,000/-, for loss of estate Rs.2,500/-, loss of another sum for loss of estate Rs.2,500/- and for funeral expenses Rs.2,000/-

5.Aggrrieved against the said award, the Metro Transport Corporation has preferred this appeal.

6.In the grounds of appeal the appellant has stated that the tribunal ought to have dismissed the claim application as the deceased was solely responsible for the accident, who overtook a lorry and graced the appellant bus and resulted in the accident. The evidence of R.W.1 was not considered by the tribunal. The tribunal ought to have dismissed the claim petition as the deceased had equally contributed to the accident by his rash and negligence. The sum awarded as compensation at Rs.3,68,000/- is also exorbitant. The monthly income taken by the tribunal is not supported by any evidence and hence, the notional income ought to have been taken by the tribunal. The multiplier method applied by the tribunal is also not proper. Hence, the appellant/Transport Corporation sought for setting aside the judgment of the tribunal. The appellant has also argued that the findings of the tribunal by fixing the negligence on the part of the driver of the transport bus is not fair. Hence, the liability on this appellant has to be set aside or atleast contributory negligence against the deceased have to be ordered.

7. On a perusal of records, it is seen that on the side of the petitioner Ex.P1, FIR and Ex.P3 Rough Sketch were marked. P.W.3 has also stated in his evidence that the accident occurred only due to rash and negligent driving on the part of the driver of the Transport Corporation bus. Ex.P5 is the charge sheet registered against the driver of the Transport Corporation bus. The evidence of R.W.1 who is the driver of the said bus at the time of the accident has stated about the negligent act on the part of the deceased. There is no other witness examined on the side of the respondents regarding the negligent act on the part of the deceased. Hence, it is observed that it is the rash and negligent driving on the part of the driver of the Transport Corporation bus which caused the accident. The findings of the tribunal is also based on the evidence and also the documents. Hence, the findings of the tribunal is very much proper and reasonable.

8. The tribunal while arriving the compensation, has observed that the deceased was unmarried man and his mother aged about 48, hence the tribunal has adopted the multiplier 13 and determined the loss of income by taking the monthly income of the deceased at Rs.3,500/-. The monthly income taken at Rs.3,500/- by the tribunal is very much reasonable, in view of the age of the deceased who is 28 years. Hence, the loss of income arrived by the tribunal is very much reasonable and proper which does not require any interference. The sum calculated at Rs.3,68,000/- is also very much reasonable and the sum awarded by the tribunal under various heads by giving proper reasoning is found very much reasonable and proper and does not require any interference by this Court.

9. Accordingly, the civil miscellaneous appeal is dismissed by confirming the judgment of the tribunal passed in M.A.C.T.O.P.No.4521 of 2001 on the file of the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes) at Chennai dated 06.10.2005. No costs. Consequently connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gbi/at

To

1. The Motor Accidents Claims Tribunal
(III Judge, Court of Small Causes)
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.74453

CMA.No.2779 of 2006

LN(CO)
SSM(23/07/2019).



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