

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.784 of 2007

1.Subramani
2.Sridhar (Minor)
3.Minor Viveena
4.Minor Sathishkumar ... Appellants/Appellants
(Minor rep by 1st appellant

Versus

1.The Managing Director,
M/S.Tamilnadu State Transport Corporation Limited,
Rangapuram,
Vellore District.
2.Venkatesan
3.Jayakumar
4.M/S.United India Insurance Company Ltd.,
35-J, M.B.T. Road,
Raniper. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and decree in M.C.O.P.No.209 of 2004, dated 09.02.2005, on the file of the Motor Accidents Claims Tribunal, Ranipet (Additional District & Sessions Judge) (Fast Track Court-II, Ranipet, Vellore.

For Appellants : Mr.T.Dhanyakumar

For Respondents : Mr.K.J.Sivakumar, for R1
Mr.J.Chandran, for R4

J U D G M E N T

This civil miscellaneous appeal has been preferred by the appellants/claimants against the judgment and decree passed in MCOP.No.209/2004 dated 09.02.2005, on the file of the Motor Accidents Claims Tribunal, Ranipet (Additional District & Sessions Judge, Fast Track Court-II, Ranipet) Vellore.

2. The appellants are claimants in M.C.O.P.No.209 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Judge, Fast Track Court-II, Ranipet, Vellore. They filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the death of one Jeeva, who died in the accident that took place on 04.02.2001. The Tribunal, considering the pleadings, oral and documentary evidence, has awarded a sum of Rs.90,000/- as compensation by holding that the deceased who travelled in the goods vehicle has contributed to the accident and fixed 25% contributory negligence on the part of the deceased. Further observed that the driver of the van, in which the deceased travelled and the bus are equally liable to pay compensation and directed to pay the remaining 75% of the award amount jointly and severally by them. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

3. It is argued by the learned counsel for the appellants that the Tribunal has not considered the exact age of the deceased and committed an error by complying the income that has been taken by the Tribunal at Rs.1,200/- is very much meager, when there is salary certificate marked as P.W.5 has been produced before the Tribunal. The sum awarded for loss of love and affection and consortium is also very much on the lower side. Hence, the Tribunal has awarded a very meager sum, the loss caused to the claimants because of the death of the deceased Jeeva the petitioners lost support, earning loss of income, loss of love and affection and loss of estate.

4. The learned counsel for the appellants further argued that the Tribunal has fixed a liability at 25% for the contributory negligence on the part of the deceased is not at all justified, when the rash and negligent driving is observed on the drivers of the both vehicles. The other contentions raised by the appellant is fixing of notional income at Rs.1,200/- which is very much low and that amount will not help to run a family of five members. Hence, the notional income assessed by the tribunal at Rs.1,200/- needs to be modified.

5. From the award of the tribunal, it is seen that FIR was registered against the driver of the Government Bus. RW2 who is Senior Assistant in the second respondent Insurance Company was examined before the Tribunal and he has deposed that FIR has been registered only against the driver of the bus. Further, though the van is insured with these respondents, the van is the goods carrying vehicle and the permit is given for carrying goods. It is also observed that the driver of the corporation bus was examined before the Tribunal and he has stated that the van driver was under the influence of alcohol. Hence, the accident occurred only due

to the negligent on the part of the driver of the van. It is also seen that the driver of the bus was suspended and subsequently removed from service. The investigation report reveal the fact that the van driver did not possess the valid license. In view of the above evidence, the tribunal has fixed the liability on the both the drivers of the vehicles.

6. In view of the above, the finding of the Tribunal fixing liability equally on both the drivers of the vehicles and 25% on the deceased who contributed the accident by travelling in the good vehicle is very much reasonable and it does not require any interference.

7. By taking into considering the arguments of the learned counsel for the appellants with regard to fixing notional income at Rs.1,200/- which is very much on the lower side, this Court is of the view that it would be appropriate to consider the salary certificate placed before the Tribunal, in which the monthly income is mentioned as Rs.1,500/- and after deducting for the personal expenses, it would come to Rs.1,000/- which this Court finds very much reasonable and proper. Hence, the loss of income has to be calculated accordingly and the sums awarded by the Tribunal under the other head also modified as follows;

Heads	Amount awarded (Rs.)	Amount modified (Rs.)
Loss of expectation	96,000/-	1,20,000/- (1000 x 12x 10)
Funeral expenses	4,000/-	10,000/-
Loss of consortium	10,000/-	10,000/-
Loss of love and affection	10,000/-	15,000/-
Total	1,20,000/-	1,55,000/-

8. From the said award amount, after deducting 25% towards contributory negligence, the appellants are entitled a sum of Rs.1,16,250/-. The Appellants are entitled equal share in the said award amount.

9. In view of the said modification, this Civil Miscellaneous Appeal is partly allowed. No Costs. Consequently, connected Miscellaneous Petition if any, is closed.

10. Accordingly, the 1st and 4th respondents are directed to deposit the modified award amount 50% each with interest and costs, before 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 Tribunal is directed to transfer the amount to the claimant's bank account thro' RTGS within one week thereon as per the apportionment ordered by this Court. The rate of interest shall be at 7.5% per annum.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

at/gbi

To

1. The Motor Accidents Claims Tribunal,
Ranipet (Additional District & Sessions Judge)
Fast Track Court-II, Ranipet, Vellore.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.T.Dhanyakumar, Advocate SR.No.75102

+1cc to Mr.J.Chandran, Advocate SR.No.75595

+1cc to Mr.K.J.Sivakumar , Advocate SR.No.75492

CMA.No.784 of 2007

VSN II (CO)
GMY (24/01/2020)