

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.No.1180 of 2018
and
C.M.P.No.9743 of 2018

The Managing Director
M/s.Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Peiyamilaguparai, Trichy - 1. ... Appellant /Respondent

Vs

1.Vembu

2.Minor Adhithyan

3.Minor Abinaya

2nd and 3rd minor petitioner represented
by their natural guardian and
next friend mother Vembu

4.Kalavathi ... Respondents/petitioner

PRAYER : Civil Miscellaneous Appeal filed against
the Judgment and decree dated 27.09.2016 made in
MCOP.No.758 of 2014 on the file of the Motor Accident
Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.T.Gopinath

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Transport Corporation, both on the ground of negligence as well as quantum, against the award of Rs.16,72,000/- awarded to the legal heirs of one Kannan, who died in the accident which occurred on 27.10.2014 aged about 35 years, alleged to be earning about Rs.30,000/- per month, when he was riding his two wheeler and hit against a pig and lost his control and fell on the ground and simultaneously, was run over by a bus, belonging to the transport corporation, which was driven rashly and negligently.

2. Heard Mr.D.Venkatachalam, learned counsel appearing for the appellant and Mr.T.Gopinath, learned counsel appearing for the claimants.

3. Mr.D.Venkatachalam, learned counsel appearing for the appellant would strenuously argue that the deceased hit a pig, without controlling the speed of the motorcycle and fell down and died on the spot and the bus, which came behind him, only ran over the motorcycle and not over the deceased and the two wheeler rider already died due to fall from the motorcycle. He would rely upon the evidence of the driver of the transport corporation, who was examined as RW1 to stress his point.

4. However, Mr.T.Gopinath, learned counsel for the claimants would argue that though the rider fell down on the ground, he did not die and he was subsequently ran over by the bus and that alone caused the death. Therefore, the Tribunal rightly fixed the liability on the driver of the transport corporation.

5. A close scrutiny of the records would show that Ex.P.1-FIR has been filed against the driver of the transport corporation. PW2-eyewitness has categorically stated that he was also riding a motorcycle at the time of accident on the said road and he saw the deceased falling from the motorcycle, after hitting a pig and thereafter, being run over by the bus, which was driven rashly negligently causing the death of the deceased. Moreover, when a person falls from a motorcycle, he would be lying on the ground by the side of the two-wheeler. Therefore, the evidence of RW1 that the bus ran over the motorcycle alone, leaving the deceased, could not be believed. Therefore, the Tribunal believing the evidence of PW2 eyewitness, rightly came to the conclusion that the driver of the transport corporation was rash and negligent and he was responsible for the death of the rider of the two wheeler. The Tribunal further took note of the fact of non-filing of any complaint by RW1-driver. If it is true that he dashed only against the two wheeler and not the rider of the two wheeler, he could have given a complaint. In the absence of such a complaint, the Tribunal rightly fixed the liability on the driver of the transport corporation and it is based on evidence. Such a factual finding cannot be disturbed and the same is confirmed.

6. The deceased is said to be a two wheeler mechanic and proprietor of automobile spare parts shop, earning about Rs.30,000/- per month. However, in the absence of any proof regarding the income, the Tribunal fixed the notional monthly income at Rs.10,000/-.

If really Rs.30,000/- was earned by the

deceased, definitely there should be some documentary evidence in support of the same. In the absence of any proof, the Tribunal rightly fixed Rs.10,000/- as monthly income and the same is confirmed.

7.However, the Tribunal did not add any amount towards future prospects. As per the judgment of the Constitution Bench of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added towards future prospects as the deceased was aged about 35 years. After adding 40% towards future prospects, the monthly income would be at Rs.14,000/- (Rs.10,000/- + 40% of Rs.10,000/-).

8.The size of the family is four and therefore as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), $\frac{1}{4}$ th has to be deducted towards personal expenses. After deducting $\frac{1}{4}$ th the monthly contribution would be Rs.10,500/- (Rs.14,000/- (-) $\frac{1}{4}$ th of Rs.14,000/-).

9.The age of the deceased has been proved to be 35 years as per Ex.P.2-post mortem certificate and other documents viz., Ex.P.14-Transfer certificate of the deceased and Ex.P.16-Pan card of the deceased. Therefore, as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) the appropriate multiplier is "16". Hence, the loss of income would be Rs.20,16,000/- (Rs.10,500/- x 12 x 16).

10.Loss of consortium:

The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium to the 1st respondent and the same has to be reduced to Rs.40,000/- as rightly argued by Mr.D.Venkatachalam, learned counsel appearing for the appellant based on the Constitution Bench's judgment of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Accordingly, the amount awarded towards loss of consortium is reduced to Rs.40,000/-.

11.Loss of love and affection:

The Tribunal has awarded a sum of Rs.1,00,000/- to claimants 2 and 3 for loss of love and affection, who were hardly 8 years and 2 years old at the time of accident. The claimants 2 and 3 lost their father's love and affection throughout their life. The award of any amount towards loss of love and affection to the children is akin to the amount awarded towards loss of consortium to the spouse. Hence, the sum of Rs.1,00,000/- awarded

to claimants 2 and 3 towards loss of love and affection is confirmed. No amount was awarded towards loss of love and affection to the 4th claimant, who is the mother of the deceased. Hence, a sum of Rs.25,000/- is awarded towards loss of love and affection to the 4th claimant.

12.Funeral expenses:

A sum of Rs.20,000/- was awarded by the Tribunal towards funeral expenses. As per the Constitution Bench's judgment in Pranay Sethi's case, the same is reduced to Rs.15,000/-

13.Transportation charges:

A sum of Rs.10,000/- was awarded by the Tribunal towards transportation charges. The same is confirmed.

14.Damages to clothing:

A sum of Rs.2,000/- was awarded by the Tribunal towards transportation charges. The same is confirmed.

15.Loss of estate:

No amount was awarded towards loss of estate. As per the Constitution Bench's judgment in Pranay Sethi's case, a sum of Rs.15,000/- is awarded under this head.

Head	Amount (Rs.)
Total loss of contribution	2016000
Loss of consortium	40000
Loss of love and affection	125000
Funeral expenses	15000
Transportation charges	10000
Damages to clothing	2000
Loss of estate	15000
	2223000

16.Hence, the total compensation payable in this case is Rs.22,23,000/- rounded off to Rs.22,25,000/-.

17.The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. Though the Transport Corporation has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.16,72,000/- is enhanced to Rs.22,25,000/-, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what

is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdoyal Singh reported in 2004 (2) TN MAC 398 (SC).

18. Out of the award amount, the 1st claimant is entitled to get Rs.10,00,000/-, claimants 2 and 3 minor children are entitled to get Rs.5,00,000/- each and the 4th claimant is entitled to get Rs.2,25,000/-. The claimants are directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order.

19. The Transport Corporation is directed to deposit the award amount as per the modified award passed by this Court, within a period of twelve weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the respective shares of claimants 1 and 4 along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon. As far as minor claimants 2 and 3 are concerned, their share shall be deposited in interest bearing Fixed Deposit in any one of the Nationalized Banks, till they attain majority. The 1st claimant/mother is permitted to withdraw interest accruing on such deposit once in three months.

20. Accordingly, this appeal is dismissed, enhancing the award of the Tribunal from Rs.16,72,000/- to Rs.22,25,000/- with interest. Consequently, connected miscellaneous petition is closed. No costs.

सत्यमेव जयते
Sd/-

Assistant Registrar (CS-VII)

///True Copy//

Sub Assistant Registrar

sai
To
The Principal District Judge
(Motor Accident Claims Tribunal) Perambalur.

+1 CC TO MR.D.VENKATACHALAM Advocate SR.NO. 36711
+1 CC TO MR.T.GOBINATH Advocate SR.NO. 36853

C.M.A.No.1180 of 2018

RV (CO)
ASK (24/08/2018)