

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.NO.2228 OF 2011
and
CROSS OBJECTION NO.151 OF 2011

The Managing Director,
Tamil nadu State Express Transport Corporation
(Division I) Ltd.
Pallavan House,
Anna salai, Chennai 600 002

...Appellant in CMA/
Respondent in Cross Objection

Vs.

1. C.Janaki
2. P.V.Ganapathy
3.Miss G.Bindhu

...Respondents in CMA/Cross
Objectors in Cross Objection

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988, and the Cross Objection under order XLI Rule 22 of CPC against the award made in M.C.O.P.No.5693 of 2004 dated 30.07.2009 on the file of the Motor Vehicles Accident Claims Tribunal and in the V Court of Small Causes Chennai.

For Appellant : Mr.K.J.Sivakumar in C.M.A. and
Respondent in Cross Objection

For Respondents : Mr.V.Mohan Choudary in C.M.A. and
Appellant in Cross Objection

JUDGMENT

Civil Miscellaneous Appeal No.2228 of 2001 is filed by the Tamil Nadu State Express Transport Corporation (Division I) Ltd., Anna Salai Chennai, questioning the quantum of compensation awarded by the Tribunal dated 30.07.2009 in M.C.O.P.No.5693 of 2004 filed under Section 166(A) of the Motor Vehicles Act, 1988, on the file of V Judge, Court of Small Causes, Chennai. The Claimants in M.C.O.P.No.5693 of 2004 have filed Cross Objection No.151 of 2011 seeking for enhancement of compensation.

2. For the sake of convenience, the parties are called as per their ranking in the Tribunal.

3. The brief facts of the case of the claimants is as follows:

On 25.10.2004, the deceased G.Vinodh, Son of claimants 1 and 2 and brother of claimant No.3, was riding his motor cycle bearing Registration No.TN-02-C-0568 along Jawaharlal Nehru 100 feet road, Guindy, Chennai. At about 14.15 hours, a speeding bus bearing Registration No.TN-01-N-6395, belonging to Tamil Nadu State Express Transport Corporation (Division I) Ltd., hit the two wheeler, as a result of which, the deceased G.Vinodh was thrown out of his two wheeler and died on the spot. According to the claimants, the rash and negligent driving of the driver of the bus, bearing Registration No.TN-01-N-6395, belonging to the Tamil Nadu State Express Transport Corporation (Division I) Ltd., was the cause of accident and that they are liable to pay compensation of Rs.12,00,000/- to them.

4. The Tamil Nadu State Express Transport Corporation (Division I) Ltd., contested the Claim Petition by filing a counter. It is contended in the counter that the deceased also equally contributed to the accident. The learned V Judge, Court of Small Causes, Chennai, after analysing the evidence on record, awarded a compensation of Rs.6,04,800/- together with interest at the rate of 9.5% per annum to the claimants. Aggrieved over the order passed by the Tribunal, the Transport Corporation has filed the appeal in C.M.A.No.2228 of 2011, while, the claimants have filed the Cross Objection in CROS OBJ No.151 of 2011.

5. The learned counsel appearing for the claimants would contend that, the Tribunal, while calculating the loss of dependency, did not add any amount towards future prospects and that the evidence of Mr.Saravana Raja(PW3), was not considered while fixing the monthly income of the deceased. He would further contend that, a very meagre amount of Rs.15,000/- towards loss of love and affection and Rs.10,000/- towards the funeral expenses were awarded by the Tribunal. According to him, the award passed by the Tribunal is liable to be enhanced.

6. Per contra, the learned counsel appearing for the Tamil Nadu State Express Transport Corporation (Division I) Ltd./ appellant in CMA No.2228 of 2011, would contend that, the Tribunal had awarded a sum of Rs.6,04,800/- based on the well established principles of law which were in vogue on the date of passing of order and therefore, the award passed by the Tribunal need not be disturbed at this juncture. He further contended that the deceased was also responsible for the accident since he rode his two wheeler rashly and negligently. The claimants have examined an eye witness to the occurrence to substantiate their contention that the accident took place on account of the rash and negligent driving of the driver of the bus, bearing Registration No.TN-01-N-6395. A perusal of records also shows

that one Mr.Lakshmipathy, who is said to have witnessed the occurrence, had lodged a complaint with the Police on the date of occurrence itself. The Police, after investigation, had filed the final report (Ex.P2) against the driver of the bus bearing Registration No.TN-01-N-6395. Though the driver of the bus was examined as R.W.1, evidence adduced on the side of the claimants clearly points out that the driver of the bus alone was responsible for the accident. As far as the quantum of compensation is concerned, the Tribunal fixed the monthly income of the deceased as Rs.4,200/- based on the evidence of P.W.4 and the salary certificate Ex.P13.

7. The learned counsel appearing for the claimants would contend that, one Mr.Saravana Raja(P.W.3), was running a Computer Show Room in the name and style of S.R.Computer Show Room at Ekkattuthangal, as evidenced by Firm Registration Certificate (Ex.P10), and he clearly deposed that he was paying a salary of Rs.6,405/- per month to the deceased G.Vinodh and that the evidence of P.W.3 was not at all considered by the Tribunal. As rightly observed by the Tribunal, except the oral evidence of P.W.3, no other document was filed to show that the deceased was getting a salary of Rs.6,405/- per month from P.W.3. Therefore, the Tribunal was right in fixing the monthly income of the deceased as Rs.4,200/-. Since the age of the deceased on the date of accident was 26 years, the proper multiplier to be adopted in the instant case as per the decision on Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 is 17.

8. As per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards the future prospects, which would be Rs.5,880/- (Rs.4,200/- + 40%). The deceased died as a bachelor and therefore, 50% should be deducted from the income of the deceased towards his personal expenses. Therefore, the monthly income should be taken up as Rs.2,940/- (50% of Rs.5,880/-). Therefore, the loss of dependency is Rs.2940 x 12 x 17 = Rs.5,99,760/-. Apart from the abovesaid amount, the claimants are entitled to a sum of Rs.40,000/- towards loss of love and affection and Rs.15,000/- towards the funeral expenses and Rs.15,000/- towards loss of estate. Thus, the compensation amount is enhanced as detailed below:

Calculation:

Notional Income = Rs.4,200/-
40% Future Prospects = Rs.1,680/-
Total = Rs.4,200/- + Rs.1,680 = Rs.5,880/-

Multiplier Method:

= Rs.5,880/- * 12 * Multiplier 17 * 1/2 deduction
= Rs.11,99,520/- * 1/2
= Rs.5,99,760/-

S.No	Head	Amount granted (Rs.)
1.	Loss of dependency	5,99,760/-
2.	Loss of love and affection	40,000/-
3.	Funeral expenses	15,000/-
5.	Loss of estate	15,000/-
Total		6,69,760/-

9. In the result, C.M.A.No.2228 of 2011 filed by the Managing Director, Tamil Nadu State Express Transport Corporation, (Division I) Ltd., is dismissed. No costs. The Cross Objection No.151 of 2011 filed by the Respondents/claimants is partly allowed and the compensation amount is enhanced to Rs.6,69,760/- (Rupees Six Lakhs Sixty Nine Thousand Seven Hundred and Sixty only)) with interest at the rate of 7.5% per annum. The Tamil Nadu State Express Transport Corporation (Division I) Ltd., is directed to deposit the enhanced compensation amount, less the amount already deposited by them, with interest at the rate of 7.5% per annum, within a period of four weeks and on such deposit being made, the claimants are entitled to withdraw the same as per the terms provided in the order passed by the Tribunal.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
V Judge
Court of Small Causes, Chennai.

2. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.V.Mohan Choudary, Advocate sr 86156.

+1 CC to Mr.K.J.Sivakumar, Advocate sr 87168.

+1 CC to Mr.V.Mohan Choudary, Advocate sr 86156. (13/03/2019)

C.M.A.NO.2228 OF 2011
and

CROSS OBJECTION
NO.151 OF 2011

AK(CO)
SP(15/02/2019)