

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2635 of 2011

1. Krishnan
2. Rajambal
3. Sarala
4. Sangeetha

... Appellants/Petitioners

- 1.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Tiruvannamalai (Deleted)
- 2.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram (Impleaded as per order in
I.A.No.2554 of 2009, dated 24.03.2010 and
amended as per order in I.A.No.806 of 2010)

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 01.02.2011 in M.C.O.P.No.748 of 2009 passed by the Motor Accidents Claims Tribunal, District Court Thiruvannamalai.

For Appellants : Mr.F.Terry Chellaraja
For Respondents : Mr.G.palani for R1 & R2

JUDGMENT

The appellants are the claimants in M.C.O.P.No.748 of 2009 on the file of the District Judge, Thiruvannamalai. They have filed the above claim petition seeking for a compensation of Rs.15,00,000/- for the death of one Boopalan. The claimants 1 and 2 are the parents of the deceased, while the claimants 3 and 4 are his brothers.

2.The brief case of the appellants/claimants is as follows:

On 26.04.2009, the deceased Boopalan was riding his two wheeler Bajaj discover bearing Registration No. TN 25 L 1603 on Thiruvannamalai - Chennai road. When he was nearing Pattanam

Village, a speeding bus bearing Registration No. TN 32 N 2646 came from the opposite direction and hit the two wheeler, as a result of which, the deceased Boopalan sustained injuries all over his body. He was immediately rushed to the Government Hospital at Tindivanam. However, he succumbed to injuries.

3. According to the appellants/claimants, the rash and negligent driving of the driver of the bus was the cause of the accident and therefore, they are liable to pay compensation to them.

4. The Tribunal after analysing the evidence on record, held that the deceased was alone negligent in driving his two wheeler. Therefore, the Tribunal exonerated the second respondent from paying any compensation to the appellants/claimants. Aggrieved over the decree and judgment passed by the learned District Judge, Tiruvannamalai, appellants/claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr. F. Terry Chellaraja, learned counsel appearing for the appellants would contend that the appellants/claimants have examined an eye witness to the occurrence. But, the Tribunal did not consider the said evidence and concluded that the deceased was negligent in driving his two wheeler.

6. A perusal of the records shows that one Thiru. Ethirajan (P.W.2) who was a passenger in the offending vehicle was examined on the side of the appellants/claimants. He has clearly deposed that the driver of the bus drove the bus rashly and negligently and hit the two wheeler which was coming in the opposite direction. However, the Tribunal based on the evidence of Thiru Gururajan (R.W.1), driver of the bus has held that the deceased alone was responsible for the accident. According to the driver, though he applied brakes to stop the bus, the two wheeler hit the rear portion of his bus.

7. The driver of a heavy motor vehicle should drive his vehicle at a moderate speed and he should see on all sides of the road. In the instant case, the FIR was registered by the concerned police against the driver of the bus. The Tribunal without considering the FIR and the eye witness account, simply exonerated the second respondent from paying any compensation to the appellants/claimants based on the evidence of the driver of the bus. In the considered opinion of this Court, the observations made by the Tribunal is totally wrong. Therefore, the decree and the order passed by the Motor Accidents Claims Tribunal, Tiruvannamalai is liable to be set aside.

8.The Contention of appellants/claimants is that the deceased was aged 21 years and was working as a driver in a private bus earning a sum of Rs.7,500/- per month. To substantiate their contentions, the appellants/claimants have filed the salary certificate (Ex.P4). The person who has issued the salary certificate was not examined by the appellants/claimants and therefore, the notional income of the deceased is fixed as Rs.6,500/- per month, since the accident took place in the year 2009. 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 prospectus of the deceased. Since, the deceased died as a bachelor, 50% should be deducted towards the personal expenses and the proper multiplier in the instant case would be 18 as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Therefore, the loss of dependency is calculated as follows:

$$\begin{aligned}
 &= \text{Rs.}9,100/- \times 12 \times 18 \times 1/2 \text{ deduction} \\
 &= \text{Rs.}19,65,600/- \times 1/2 \text{ deduction} \\
 &= \text{Rs.}9,82,800/-
 \end{aligned}$$

Apart from the above said amount, the appellants/claimants are entitled to a sum of Rs.15,000/-, Rs.15,000/- and Rs.40,000/- towards loss of estate, funeral expenses and loss of love and affection respectively. The award passed under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.9,82,800/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.10,52,800/-

Thus the appellants/claimants are entitled to a sum of Rs.10,52,800/- together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit.

9.The first and second appellants/claimants are the parents of the deceased. The second appellant/claimant is entitled to a sum of Rs.5,52,800/- together with accrued interest and the first appellant/claimant is entitled to a sum of Rs.2,00,000/- and then the third and fourth appellants/claimants are each entitled to a sum of Rs.1,50,000/-. The second respondent is directed to deposit the award within a period of four weeks from

the date of receipt of a copy of this order and on such deposit being made, the appellants/claimants are at liberty to withdraw the entire amount after following the necessary procedures. The appellants/claimants are directed to pay the court fee for the enhanced compensation amount.

10.With the above observations, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

prm/mbi

To

1.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Tiruvannamalai.

2.The Motor Accidents Claims Tribunal,
District Court, Tiruvannamalai

3.The Section Officer,
VR Section High Court
Madras.(2Copies)

+1cc to Mr.M.Malar, Advocate, S.R.No.81569

C.M.A.No.2635 of 2011

RJI (CO)
GSP(07/01/2019)

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