

Reserved on : 24.09.2018
Delivered on : 11.10.2018

In the High Court of Judicature at Madras
Coram
The Honourable Mr.Justice K.K. SASIDHARAN
and
The Hon'ble Mr.Justice RMT. TEEKAA RAMAN

C.M.A.No1556 of 2016
and CMP No.11747 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation Ltd,
Villupuram
..Appellant

..vs..

- 1.Maheswari @ Mahesh
- 2.Bharath
- 3.Malathy
- 4.Mythili
- 5.Minor.Roja
- 6.Raji @ Raju
- 7.Amirthammal @ Amirtham ..Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 15.10.2015 passed in MCOP No.133 of 201 by the Motor Accident claims Tribunal (District and Sessions Court), Krishnagiri.

For Appellant : Mr.S. Sairaman
For R.1 to R.6 : Mr.S. Murugan
For R.7 : Not ready notice

JUDGMENT

(Judgment of the Court was delivered by RMT. TEEKAA RAMAN,J.,)

Aggrieved over the findings rendered by the Motor Accidents Claims Tribunal (District and Sessions Court), Krishnagiri with regard to the rash and negligent aspect as well as the quantum of compensation fixed, the present appeal has been filed by the Tamil Nadu State Transport Corporation.

2. The respondents herein are the legal representatives of the deceased Murugesan @ Murugan, who died in the road accident on 02.12.2013.

3. The case of the respondents/claimants before the Tribunal was that on 02.12.2013, at about 3.00 p.m, the deceased Murugesan @ Murugan was riding a Hero Honda, which was an unregistered vehicle, towards Bargur □ Vaniyambadi National Highways and one Sankar was the pillion rider. When the deceased was about to take a 'U' turn at Bargur Bye pass, a bus belonging to the appellant Transport Corporation, bearing Registration No.TN-23-N-1876, driven by its driver in a rash and negligent manner, came from opposite direction and hit the motorcycle, as a result of which, the deceased sustained injuries and died on 03.12.2012. The claimants/respondents claimed compensation of Rs.1,00,00,000/-

4. The claim made by the claimants was resisted by the appellant Transport Corporation stating that the accident was due to the rash and negligent act of the deceased, who was driving the two wheeler and therefore, the Transport Corporation is not liable to pay any compensation.

5. To substantiate the claim of compensation, on the side of the claimants, the wife of the deceased examined herself as P.W.1 and Sankar, who was the pillion rider was examined as P.W.2 and Ex.P.1 to Ex.P.10 were marked. On the side of the appellant/transport corporation, One Mr.Jairamesh Kumar, the driver of the bus at that time of accident was examined as D.W.1 and no document was marked.

6. The Tribunal, after considering the oral and documentary evidence came to the conclusion that the accident was due to rash and negligent act of the driver of the appellant Transport Corporation bus and fixed the entire liability on the Transport Corporation and awarded a sum of Rs.35,34,960/-, as total compensation payable with 9% interest. The break up details of the compensation amount, awarded by the Tribunal are as follows:

Pecuniary Loss : Rs. 31,44,960/-

Loss of Consortium : Rs. 1,00,000/-

Loss of love and affection to
respondents 2 to 5(Rs.50,000/- each) : Rs. 2,00,000/-

Loss of love and affection to
respondents 6 & 7 (Rs.25,000/-each) : Rs. 50,000/-

Funeral expenses : Rs. 25,000/-

Transportation expenses : Rs. 10,000/-

Damages : Rs. 5,000/-

Total Rs. 35,34,960/-

Challenging the correctness of the award passed by the Tribunal, the present appeal has been filed by the appellant Transport Corporation.

7. The learned counsel for the appellant Transport Corporation has contended that the negligence on the part of the driver of the Transport Corporation was not proved in the manner known to law

and the deceased Murugesan @ Murugan had driven the two wheeler in a rash and negligent manner and was not having any valid driving licence and the quantum arrived by the Tribunal is also excessive and sought to set aside the award passed by the Tribunal.

8. Per contra, the learned counsel for the respondents/claimants would contend that the award is too low and prayed for enhancement suo-motu.

9. Heard both sides and perused the materials available on record.

10. The points for consideration in this appeal is as under:-

(i) Whether the rash and negligent driving by the driver of the appellant Transport Corporation caused the accident?

(ii) Whether the compensation awarded by the Tribunal is excessive?

(iii) To what relief they are entitled to?

11. The learned counsel for the appellant Transport Corporation would contend that the two wheeler Hero Honda was driven by the deceased Murugesan @ Murugan in a rash and negligent manner without noticing the bus, which was about to take □U□ turn in Burgur-Vaniyambadi national High Way. On seeing the bus taking □U□ turn, the deceased applied sudden brake and thus lost the balance and that the driver of the bus was not at fault. In this regard, our attention has been drawn to the evidence of P.W.2 and R.W.1.

12. P.W.2 is none other than the pillion rider at the time of the accident and he is also the author of Ex.P.1 First Information Report. From Ex.P.1, it is seen that P.W.2 Sankar had lodged First Information Report within the jurisdictional police station at the earliest point of time alleging that the driver of the Transport Corporation had driven the bus in a rash and negligent manner and caused the accident.

13. It is also seen that Ex.P.8 is the driving licence issued by Transport Authority in Omen country and also support the case of P.W.2 that the deceased was a man who knows driving at international standards.

14. Per contra, it has been projected that during the time of trial, that R.W.1's evidence has not been taken into consideration. R.W.1 Mr.Jai Ramesh Kumar is the driver of the vehicle against whom first information report has been filed. Though R.W.1, the driver of the Transport Corporation examined himself and deposed that after investigation Referred Charge Sheet has been filed by the police, wherein the deceased has been fixed as negligent for the cause of accident.

15. For the reasons best known, the said Referred Charge Sheet as stated by R.W.1 has not been marked before the Tribunal. Further more, none from the Police Department has been examined to substantiate the said plea. In the absence of any documentary evidence to show that the Referred Charge Sheet has been filed before the concerned jurisdictional Magistrate and in the absence of any police witness being examined on the part of the Transport Corporation to substantiate the plea that the Referred Charge Sheet has been filed, the trial Court has come to the conclusion that the evidence of R.W.1 is of an interested witness while the evidence of P.W.1 is independent and also taking note of the fact that P.W.2 is a pillion rider at the time of accident is an eye-witness coupled with Ex.P.1. The trial Court has rightly come to the conclusion that the accident had taken place due to rash and negligent driving of the driver of the Transport Corporation which is well merited and

well founded and does not warrant any interference and accordingly, this point is held against the appellant Transport Corporation.

16. It is seen from Ex.P.4 passport of the deceased Murugesan @ Murugan that the date of birth of the deceased was 05.06.1972 and the date of accident was 02.12.2013 and therefore, the trial court had rightly arrived at the age of the deceased as 41 and has also chosen the multiplier as 14 following the decision in Sarla Verma and others vs Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 SC. Further based on Ex.P.6 the bank pass book and Ex.P.7 the employment card of the deceased Murugesan @ Murugan issued by the Company at Saudi Arabia, the trial Court has come to the conclusion that he worked as Electrician and earned a monthly income of Rs.20,000/- is also cannot be found fault with. Following the decision in National Insurance Co vs Pranay Sethi reported in 2018 1 Law Weekly 331, for the future prospect, income has to be added @ 25%.

17. With regard to the quantum of compensation, the Tribunal has arrived monthly income of the deceased as Rs.20,000/- and by deducting 10% towards income tax, the amount arrived by the Tribunal was Rs.18,000/-. At the time of accident, the deceased was 41 years old. Hence the Tribunal added 30% the income towards future prospects and thus, arrived at Rs.23,400/- as monthly income for the purpose of calculating the pecuniary loss.

18. On the question of compensation, the learned counsel for the Transport Corporation contended that neither the income nor the contribution made by the deceased has been substantiated in the manner known to law. Per contra, the learned counsel for the respondents/claimants made his submissions supporting the findings rendered by the Tribunal in fixing the liability on the part of the Transport Corporation to pay the compensation. Hence, there is no need to interfere with the compensation amount awarded by the Tribunal.

19. Thereafter, the Tribunal, by considering the number of dependents, deducted 1/5 towards personal expenses, has fixed a sum of Rs.18,720/- as loss of monthly income to the respondents/claimants. Thereafter, by applying multiplier 14 the Tribunal has arrived at Rs.31,44,960/- (Rs.18,720 x 12 x 14) as total loss of income.

20. That apart, the Tribunal awarded a sum of Rs.1,00,000/- towards loss of consortium to the 1st respondent; Rs.2,00,000/- towards loss of love and affection to the respondents 2 to 5; Rs.50,000/- towards loss of love and affection to respondents 6 and 7; Rs.10,000/- towards transportation charges; Rs.5,000/- towards damages and Rs.25,000/- towards funeral expenses and thus awarded a total sum of Rs.35,34,960/-.

21. On a perusal of the award, we find that the Tribunal has fixed the monthly income of the deceased as Rs.18,720/- after deducting 1/5th towards personal expenses and after deducting 10% towards tax. However, it appears that in respect of loss of consortium to the first respondent, the Tribunal has awarded Rs.1,00,000/-, which we find as excessive and the same is reduced to Rs.40,000/- and we also find that towards loss of love and affection to the respondents 2 to 5, the Tribunal awarded Rs.2,00,000/-, which also we find to be excessive and we therefore reduce it to Rs.1,00,000/-. The amount awarded towards transportation charges, damages and funeral are kept intact. Thus, the break up details of the modified/reduced compensation amount are as follows:

Pecuniary loss : Rs.31,44,960/-

Loss of Consortium to 1st respondent : Rs. 40,000/-

Loss of love and affection to the
respondents 2 to 5 : Rs. 1,00,000/-

Loss of love and affection to the
respondents 6 & 7 : Rs. 50,000/-

Transportation Expenses : Rs. 10,000/-

Funeral expenses : Rs. 25,000/-

Damages : Rs. 5,000/-

----- Total Rs.33,74,960/- -----

Consequently, the compensation award of Rs.35,34,960/-, awarded by the Tribunal is hereby
reduced to Rs.33,74,960/-.

22. In all other aspects, the award passed by the Tribunal remains unaltered. This Court by order dated 02.08.2016 directed the Transport Corporation to deposit 50% of the award amount and it is stated by the learned counsel for the appellant Transport Corporation that the appellant has deposited 50% of the award amount and therefore, the appellant is hereby directed to deposit the balance modified amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of the above said MCOP, within a period of four weeks from the date of receipt of a copy of this order with proportionate interest and costs.

23. On such deposit being made, the claimants are permitted to withdraw the amount as apportioned. With the above modification, the civil miscellaneous appeal is partly allowed. No costs. Consequently, connected MP is closed.

(K.K.S.J.,) (T.K.R.J.,)

11 October 2018

sr

Speaking Order

Index:yes/no

website:yes/no

To

Motor Accident claims Tribunal
(District and Sessions Court), Krishnagiri.

K.K. SASIDHARAN,J.,

and

RMT. TEEKAA RAMAN,J.,

sr

Pre-Delivery Judgment in C.M.A.No1556 of 2016

11.10.2018

The Hon'ble Thiru Justice RMT.TEEKAA RAMAN

Pre-Delivery Judgment in CMA No.1556 of 2016

Most Respectfully submitted

S. Revathi

P.a