

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:24.01.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1242 of 2015
and
Civil Miscellaneous Appeal No.103 of 2017
and
CMP.No.771 of 2017

CMA No. 1242 of 2015

1.Aathilakshmi
2.Mr.Govindan

... Appellants

Versus

Metropolitan Transport Corporation,
Rep.by its The Managing Director,
Pallavan House, Anna Salai,
Chennai-600 002.

... Respondent

CMA No. 103 of 2017

Metropolitan Transport Corporation,
Rep.by its The Managing Director,
Pallavan House, Anna Salai,
Chennai-600 002.

... Appellant

1.Aathilakshmi
2.Mr.Govindan

... Respondents

Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 13.01.2015 made in MCOP.No.1141 of 2013 on the file of the Motor Accident Claims Tribunal/III Small Causes Court, Chennai.
CMA No. 1242 of 2015

For Appellants : Mr.K.Suryanarayanan
For Respondent : Mr.S.S.Swaminthan

CMA.No.103 of 2017

For Appellant : Mr.S.S.Swaminathan

For Respondents : Mr.K.Suryanarayanan

COMMON JUDGMENT

Civil Miscellaneous Appeal No.1242 of 2015 is filed by the petitioners/claimants against the award and decree made in MCOP.No.1141 of 2013 dated 13.01.2015 on the file of the Motor Accident Claims Tribunal / III Court of Small Causes, Chennai.

Civil Miscellaneous Appeal No.103 of 2017 is filed by the respondent/transport corporation disputing the findings with regard to negligence inter alia questioning the amount of compensation awarded by the Motor Accident Tribunal in the award and decree dated 13.01.2015 passed in the MCOP.No.1141 of 2013.

2. For the sake of convenience, the parties will be referred to in this judgment as they are arrayed before the Tribunal.

3. The brief facts of the case of the petitioners/appellants in CMA No. 1242 of 2015 are as follows:

According to the petitioners, on 13.11.2012 at about 19.45 hours, the deceased Late G.Rajendran was riding his motor cycle bearing Regn.No.TN-22-DE-0477 at the junction of Medavakkam and at that time, the bus bearing Regn.No.TN-01-N-8417 belonging to respondent/transport corporation was driven by its driver in a rash and negligent manner, came at high speed dashed against the victim resulting in his death on 14.11.2012 at the hospital. The petitioners state that the victim was earning a sum of Rs.700/- per day by working as a car driver and the petitioners are depending on the income of the deceased. Thus the petitioners claimed a compensation of Rs.15,00,000/-. in the claim the petition.

4. On the other hand, opposing the petition, the respondent/transport corporation contends that the driver of the bus was not responsible for the accident on 13.11.2012. The bus belonging to the respondent's corporation was driven by its Driver slowly and was proceeding from Broadway to East Tambaram. At about 19.45 hours, the driver of the vehicle was driving the bus along Velacherry Main road at normal speed and reached near Medavakkam road bus stop. At that time, the conductor of the bus blew the whistle and the driver of the bus immediately applied brake and stopped the bus. Thereafter, the motorcycle bearing Regn.No. TN-22-DE-0477 came in high speed and dashed against the stationary bus. In that impact, the rider of the motorcycle fell down and sustained fatal injuries. In Ex.P1 First Information Report , it is clearly stated that the deceased alone is responsible for the accident. Further, it is pointed out that the owner and insurer of the two wheeler/motorcycle is not impleaded in the petition and therefore the petition is liable to be dismissed for non-joinder of parties. It is further

contended that the compensation sought for by the petitioners is very high and hence respondents sought dismissal of the petition.

5. Before the Tribunal, the petitioners examined the first petitioner as P.W.1 and an eyewitness as P.W.2 and produced Ex.P.1 to Ex.P.5 documents. On the other hand, the driver of the bus belonging to the respondent's corporation's was examined as R.W.1, but no documentary evidence was produced.

6. The Trial court after considering the pleadings as well as the evidence of both sides concluded that the accident occurred only due to rash and negligent driving of the driver of the offending vehicle and directed the respondent/transportation corporation to pay a sum of Rs.7,20,000/- as compensation. Aggrieved over the same, the respondent/transport corporation has come forward with the present appeal C.M.A.No.103/2017 questioning the conclusion of the Tribunal in respect of negligence as well as quantum. The petitioners/appellants in CMA.No.1242 of 2015 were disappointed over the amount fixed as compensation and therefore, they have come forward with the appeal seeking enhancement of the compensation. The compensation awarded by the Tribunal is as follows:-

Sl. No.	Head	Amount granted by the Tribunal
	Loss of pecuniary benefits to the Dependants of the deceased prospects (Rs.3500 x 12 x 15)	Rs.6,30,000/-
2	Loss of Love and Affection for petitioners	Rs.75,000/-
3	Funeral Expenses	Rs.15,000/-
	Total	Rs.7,20,000/-

7. The learned counsel for the petitioners/appellants in CMA.No.1242 of 2015 contended that the Tribunal erred in fixing 20% negligence on the deceased. It was further contended that in the absence of any evidence to show the negligence of the deceased, particularly in the absence of examination of author of Ex.P.1, F.I.R the Tribunal ought not to have imposed 20% negligence on the deceased. The income of the deceased was fixed at a lower level. The income was fixed at Rs.7,000/- per month is very low and deceased earned atleast Rs.15,000/- per month apart from daily batta and other allowances. Thus the petitioners/appellants seek to enhance the award amount.

8. The respondent/transport corporation/ appellant in CMA.No.103 of 2017, on the other hand contends that the Tribunal has fixed quantum of compensation at higher level.

The Tribunal erred in fixing the driver of the bus alone responsible for the accident without any evidence. It is further contended that the amount given as compensation is on the higher side and therefore, the counsel for respondent/transport corporation prayed to allow this appeal and set aside the award passed by the Tribunal.

9. The Tribunal on the basis of available materials and records has fixed the compensation at Rs.7,20,000/-. The petitioners examined eyewitness of the occurrence as P.W.2 who stated that the driver of the bus bearing Regn.No.TN-01-N-8417 stopped suddenly without any indication and as a result of which the motorcycle driven by the deceased dashed against the bus and the rider of the vehicle was thrown off and sustained injuries. On the other hand, the driver of respondent's bus who deposed as R.W.1 stated that the deceased dashed against the stationary bus resulting in his death. However, R.W.1 admitted that only after hearing the sound he came down to see the occurrence. On the other hand, the eyewitness examined as P.W.2 has categorically stated the nature of accident. It is admitted that the respondent's bus driver suddenly applied brake and the rider of the motorcycle who was following the bus dashed against the bus. Considering the nature of occurrence, the Trial court rightly fixed the negligence on both - driver of the bus and rider of the motorcycle, holding the driver of the transport corporation responsible to the extent of 80% and the deceased at 20% negligence and in the circumstances stated above this court is of the view that it is just and proper.

10. P.W.1 stated that the deceased was working as a car driver and according to the petitioners, he was earning Rs.20,000/- per month. They produced Ex.P.5 Driving licence of the deceased as documentary evidence. The Tribunal fixed the age of the deceased as 21 years and notional income as Rs.7,000/-. This Court finds that in the absence of any documentary proof to show the income of the deceased, the Tribunal is right in fixing the notional income of the deceased. However, the Tribunal has not awarded any amount towards future prospects. Taking into account, the age and other attendant circumstances namely self employers person 40%, then income is to be added as future prospects. Taking into account, the fact that the deceased mother was stated to be 42 years old and the deceased being a bachelor, 50% of the salary has to be deducted towards personal expenses and multiplier 18 has to be adopted towards loss of income including Future prospects, as follows:-

Rs.7,000/- (+) 3500 /2 x12 x18 = Rs.11,34,000/-

Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	For Loss of earning (Rs.3500x 12 x 15 = Rs.6,30,000/-)	Rs.6,30,000/-	Rs.11,34,000/-
2	Loss of Love and Affection for petitioners	Rs. 75,000/-	.. .
3	Transportation	...	Rs. 10,000/-
4	Funeral Expenses	Rs.15,000/-	Rs. 15,000/-
5	Loss of Estate	...	Rs. 15,000/-
	Total	Rs.7,20,000/-	Rs.11,74,000/-

Since the deceased has contributed to the accident and his negligence is fixed at 20% , the total compensation is arrived as follows:

Rs.11,74,000/- (-) Rs.2,34,800/- = Rs.9,39,200/-

11. In the result, the CMA No.103 of 2017 is dismissed. CMA.No.1242 of 2015 is partly allowed and award passed by the Tribunal is modified as shown above. The respondent/transport corporation is directed to deposit the compensation amount with interest at 7.5% per annum from the date of petition till the date of deposit within the period of six weeks from the receipt of copy of this order. Less any amount already deposited. The petitioners/ claimants are entitled to get equal share in the award amount. The petitioners are permitted to withdraw their entire share of the award amount with proportionate interest by filing necessary applications. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Managing Director,
Metropolitan Transport Corporation,
Pallavan House, Anna Salai,
Chennai-600 002.

2. The Motor Accident Claims Tribunal
III Small Causes Court, Chennai.

3. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.S.Swaminathan, Advocate Sr.No.5207
+1cc to Mr.K.Suryanarayanan, Advocate Sr.No.5360

SS (CO)
sm:12.3.2018

CMA No.1242 of 2015
and

CMA No.103 of 2017



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