



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.1743 of 2011

The Managing Director,
Tamil Nadu State Transport Corporation Ltd,
Coimbatore Division,
Chennimalai Road,
Erode-1.

.....Appellant /2nd Respondent

Vs

1. Muniappan, S/o. Sengodan,
2. Sembackiyam, W/o. Muniappan,
3. Selvi, D/o. Muniappan,
4. Palaniammal, D/o. Muniappan,
5. Dhanabackiyam, D/o. Muniappan,
6. Arukkani, D/o. Muniappan,
7. Kesavamoorthy, S/o. Muniappan,
8. Palanisamy, S/o. Muniappan,
9. Nanavall @ Sakthivel, S/o. Muniappan,
10. Krishnasamy, S/o. Muniappan, .. R1 to R10/Claimant
11. R.T. Pasuvannan, S/o. Thambangounder,
.. Respondent No.11/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 25.10.2010 made in M.C.O.P.No. 259 of 2008 on the file of the Motor Accident Claims Tribunal (Sub Judge, Bhavani).

For Appellant : Mr. K.J.Sivakumar

For Respondents : Mr.D. Rajendran

J U D G M E N T

Aggrieved over the award passed by the Motor Accidents Claims Tribunal, (Subordinate Judge, Bhavani) in M.C.O.P.No. 259 of 2008, the appellant herein, who is the second respondent in the claim petition filed this appeal, in which, he is seeking the relief to set aside the order passed by the Claim Tribunal. In the Claim Tribunal, the respondent No.1 to 10 had filed a Claim Petition under Section 166 of the Motor Vehicles Act, in which, they claimed a compensation of Rs.10,00,000/- for the death of one Vijayakumar. The respondents 1 and 2 herein are the



parents of the deceased, and other respondents are the brothers and sisters of the deceased. After elaborate enquiry, the Claims Tribunal awarded a compensation of Rs.6,36,000/- with interest at the rate of 7.5% per annum. Further, it was directed the 1st and the 2nd respondents alone are entitled to receive the said compensation of Rs.3,16,000/- each. In otherwise, the claim made by the 3rd to 10th respondents are dismissed.

2. In the Claims Tribunal, the case of the respondents 1 to 3 is as follows:

3. On 25.11.2007 at about 06.30 p.m., in Erode to Gobi main road, near Reliance Petrol Bunk at Gobi, after observing the rules and regulations, the deceased Vijayakumar drove his TVS-50 bearing registration No. TN 36 C 7743 in the extreme left side of East West road. While, he was proceeded in the extreme left side, a bus owned by the respondent bearing registration no. TN 33 N 1322 driven by its driver, came in a rash and negligent manner, opposite to the TVS-50 and hit against the deceased. Due to the accident, the deceased Vijayakumar sustained multiple fractures all over the body.

4. Due to the over bleeding, the deceased Vijayakumar died on the spot of accident itself. Subsequently, the dead body was taken to the government hospital Gobi, for conducting autopsy.

5. For the said accident, the SHO Gobichettipalayam registered a case in Crime No. 771 of 2007 under Sections 279, 304(A) of IPC against the deceased. Subsequent to that, the petitioner had preferred a private complaint against the 1st respondent under Section 200 of Cr.P.C.

6. In the said circumstances, disputing the claim made by the claimants, the 2nd respondent filed a counter disputing the contention that the deceased alone responsible for his death. Further, it was contented that the owner of the vehicle, who driven the TVS-50 is a necessary party for disposing the claim petition. According to him, he is not having any liability to pay the compensation to the claimants.

7. During the time of enquiry, the learned Counsel appearing for the appellant vehemently argued that, at the time of accident, the deceased alone drove the TVS 50 without any valid licence. Further, he contented that the police registered a case only against the deceased, and thereby the findings arrived by the Tribunal fixing the liability on the driver of the bus is erroneous one. Accordingly, the award passed by the Claim Tribunal is liable to be set aside.



8. On the other hand, the learned Counsel appearing for the 1st and 2nd respondent would contend that the document which are all exhibited, on the side of the claimant would establish that the alleged accident has happened, only due to the negligence of bus driver. Further, it was contented that, there is no need to interfere, in the award passed by the Claim Tribunal.

9. Now, on going through the findings arrived by the Claim Tribunal, it is true that the Claim Tribunal has fastened the liability on the 1st respondent, who is the driver of the bus. In this regard, on the side of the Claimant in the Claim Tribunal, the copy of the First Information Report registered by the SHO Gobichettipalayam was marked as Ex.P1. In the said document, it was clearly mentioned at the time of accident, the deceased drove his TVS 50 and dashed against the right side of the bus. Further, it was alleged, except that there is no allegation against the bus driver. However, in the Claim Tribunal the copy of the motor vehicle inspection report of the bus was marked as Ex.P4. On going through the details of the said document it was mentioned due to the accident, the front RH cowl of the bus is crushed, headlight and the indicator of the bus were broken. So, the said circumstances, clearly reveals that only the front side of the bus is dashed against the TVS 50. In the said circumstances, there is no possibility that the deceased dashed his TVS 50, against the right side of the bus. So, the Motor Vehicle Inspection Report clearly established that the accident did not occur due to the negligent act of the deceased. Accordingly, the allegation made in the First Information Report is a false one.

10. Further, in the Claims Tribunal, the copy of the postmortem certificate of the deceased was marked as Ex.P5. In the said documents, on going through the opinion given by the doctor, it could be seen the deceased was died only due to the shock and hemorrhage, of head injury, the injury in vital organs. Further more, before giving final opinion, the viscera of the dead body was sent to medical examination, and the result is also received. In the medical examination report, there is no poison materials or alcohol found in the dead body. Accordingly, the contention raised by the appellant Counsel, that the deceased drove his TVS 50 in a drunken mood and caused injury is false one, the Claims Tribunal also took the same view and found that the accident had happened, only due to the rash and negligent act of the driver of the bus, thereby, the findings arrived by the Claims Tribunal are affirmed in favour of the claimant.

11. Now, coming to the point of quantum arrived by the Claims Tribunal, it was held that the Tribunal determined the



income of the deceased as Rs.4,500/- per month. On the other hand, the first respondent in this case gave evidence that deceased was running a Chicken stall and earn Rs.5,000/- per month. However, in order to prove the said evidence, no substantial documents have been produced on the side of the claimant. However, it is an admitted fact that, at the time of accident, the deceased was aged about 20 years old. The postmortem certificate which was marked as Ex.P5 also corroborated the said evidence. In the said circumstances, it is necessary to fix the income of the deceased depending upon the other circumstances, as per the case of the claimants, the occurrence had happened in the year of 2007, in the said situation our Honourable Apex Court in the year of 2006 in Syad Sathick case fixed Rs.6,500/- as the monthly income of a vegetable vendor. Hence, in this case I am of the opinion, it would be appropriate to determine Rs.5,000/- as the monthly income of the deceased.

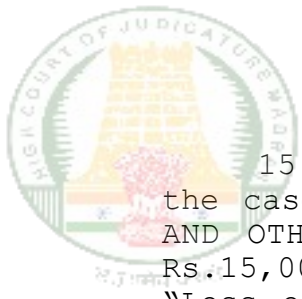
12. Now, on going through the "Future Prospects", it is necessary to follow the judgment of the Constitution Bench in the case of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, in which, our Honourable Apex Court has held that if a person is self-employed in the age of 22, 40% of the Future Prospects has to be added for calculating the loss of dependency. On going through the postmortem certificate, it appears that the deceased was aged about 22 years on the date of accident. Therefore, total monthly income of the deceased comes to,

Total Monthly Income:: Rs.5,000/- (+) 40% (Rs.5,000/-)
:: Rs.5,000/- (+) Rs.2,000/-
:: Rs.7,000/-

13. Now, coming to the point of deduction, it is an admitted fact that the deceased died in the accident without any marriage. So, it is necessary to deduct 50% of the monthly income towards his personal expenses. After deducting 50% towards personal Expenses, the monthly income of the deceased comes to Rs.3,500/- [Rs.7,000 - 50%].

14. With regard to the multiplier, in the case of SARLA VERMA vs. DELHI TRANSPORT CORPORATION reported in (2009) 6 SCC 121, our Honourable Apex Court has held that if a person died in the age of 21 to 25, the appropriate multiplier is 18. In this case as already discussed that the age of the deceased at the time of accident was 22 years, hence the appropriate multiplier for calculating the loss of dependency is 18. Accordingly, the pecuniary loss for the family is fixed as follows:

Loss of Income :: Rs. 3,500/- X 12months X 18 multiplier
:: Rs. 7,56,000/-



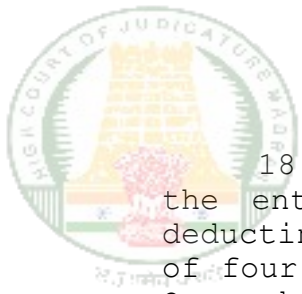
15. Now, on going through the conventional heads as per the case of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, it is necessary to add Rs.15,000/- towards "Funeral Expenses" and Rs.15,000/- towards "Loss of Estate". Accordingly the claimants are entitled to the compensation as follows:

HEAD	AMOUNT (Rs.)
Loss of Dependency	7,56,000/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Transport Charges	2,000/-
Total	7,88,000/-

Hence, the compensation arrived by the Claim Tribunal is modified to the extent of Rs.7,88,000/-.

16. In the Claim Tribunal, the claim application filed by the 3rd to 10th respondents is dismissed. Now, challenging the said order, they have not preferred any appeal. Further more, according to the evidence of P.W.1, respondents 1 and 2 are living in a separate house. In the said circumstances, we cannot come to the conclusion that, the claimants 3 to 10 are the dependents of the deceased Vijaya Kumar. So, dismissing the claim petition filed by the 3rd to 10 respondent is found to be correct. No interference is necessary in the findings arrived by the Claim Tribunal in this regard. Therefore the claimants 1st and 2nd are entitled to equal share.

17. Accordingly, the compensation arrived at by the Claims Tribunal is modified to the extend of Rs.7,88,000/-. The modified compensation of Rs.7,88,000/- has to be apportioned among the claimants equally. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. Though the Insurance Company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.6,36,000/- is enhanced to Rs.7,88,000/- invoking order 41 Rule 33 of CPC and Section 151 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 claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognized by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004(2)TN MAC 398 (SC).



18. The appellant/ 2nd respondent is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, if any with-in a period of four weeks from the date of receipt of copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of the respondents 1 and 2 / claimants through RTGS/NEFT within a period of one week with out any formal application.

19. In the result, the Civil Miscellaneous Appeal is disposed of enhancing the compensation as Rs.7,88,000/-. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

sbn

To,

1. The Sub Judge,
Motor Accident Claims Tribunal,
Bhavani.

2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.61847(11/01/2019)

C. M. A. No.1743 of 2011

NM(CO)

GMV(04/12/2018)