

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1865 of 2011

***Padma (Died)**

**Memo recorded vide order dated
21/02/2018 sole appellant-Thilaga
is the LR of the Deceased Padma**

Thilaga

.... Appellant

...vs...

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram Division -III,
Kancheepuram.

.... Respondent/Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the order and Decree dated 28.10.2010 made in MCOP.No.53 of 2009 on the file of the Motor Accident Claims Tribunal/(Additional District Judge/Fast Track Court No.II) Ranipet.

For Appellants : Mr.P.Natarajan

For Respondents : S.Sairaman

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal dated 28.10.2010 made in MCOP.No.53 of 2009 on the file of the Motor Accident Claims Tribunal/(Additional District Judge/Fast Track Court No.II) Ranipet, the petitioners/claimants filed this present appeal seeking enhancement of award amount.

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

3. The case of the petitioners is that on 05.02.2007 at about 14.45 hours, while the deceased Velu was travelling as a

pillion rider in the two wheeler bearing Registration No.TN-04-K-3316, in Arokkonam - Kancheepuram High Road, towards Kancheepuram, near Vellai Gate bus stop, as the rider of the two wheeler applied brake to prevent it from hitting the vehicle going ahead of it, the deceased fell down on the right side of the road, at that time, the respondent Transport Corporation bus bearing Registration No.TN-21-N-0617 which was coming in the opposite direction ran over the deceased resulting in his death. The accident occurred only due to the rash and negligent driving of the respondent bus by its driver. At the time of accident, the deceased was aged about 25 years doing work as a mason earning a sum of Rs.5000/- to Rs.6000/- per month. The petitioners who are mother and widowed sister of the deceased were depending on the earnings of the deceased. Hence, they seek a sum of Rs.7,00,000/- as compensation from the respondent Transport corporation.

4. On the other hand, the respondent Transport Corporation opposed the claim petition by filing detailed counter stating that the claim of the petitioner about the manner of accident is not correct. Failure to include the owner of the motor cycle and the insurer of the said two wheeler is bad and the petition be dismissed for non joinder of parties. The claim of the petitioners about the age, avocation and income of the deceased is denied. The accident did not occur as claimed by the petitioners. The claim of the petitioners is exorbitant. The driver of the motor cycle alone is responsible for the accident. The respondent is no way connected with the accident and they are not liable to pay any compensation. Hence, the respondent seek dismissal of the appeal.

5. Before the Tribunal, the first petitioner examined herself as P.W.1 and produced documents Ex.P1 to Ex.P6 to prove their claim. On the side of the respondent R.W.1 was examined, but no document was produced.

6. The Tribunal, on the basis of available materials on record, found the respondent Transport Corporation Bus driver alone caused the accident and directed the respondent to pay a sum of Rs.2,10,000/- as compensation to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward with the present appeal seeking enhancement of award amount

7. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel appearing for the petitioners/claimants contends that the Tribunal without appreciating the evidence properly fixed the quantum of award on

the lower side. The Tribunal instead of fixing the monthly income at Rs.6,000/- fixed the monthly income at Rs.1,500/- per month. The future prospects of the deceased who was aged about 25 years was not considered and the amount awarded under the different heads are very low. Hence, the petitioners/claimants seek enhancement of award amount by entertaining the appeal.

9. Per contra, the learned counsel appearing for the respondent Transport Corporation contends that the Tribunal erred in fixing the negligence of the respondent bus driver as cause for the accident, whereas the accident occurred only due to the negligence of the rider of the two wheeler in which the deceased was travelling as a pillion rider. The amount awarded by the Tribunal is on the higher side. There is no reason to enhance the award amount. Hence, the respondent seeks dismissal of this appeal.

10. The petitioners claim that the deceased while travelling as a pillion rider met with an accident due to the rash and negligent driving of the driver of the respondent bus. The police registered Ex.P1 First Information Report against the driver of the respondent bus. After completing the investigation, Ex.P3 charge sheet was laid by the police against the respondent bus driver only. In such circumstances, if the driver of the bus has carefully approached the place at normal speed, the accident would not have occurred. The respondent did not examine the driver of the bus before the Tribunal. As such, the case was registered against the driver only and nothing is elicited in the cross examination of P.W.1 to disprove the petitioners version of the accident. The conclusion of the Tribunal that the negligence of the respondent corporation driver alone caused the accident is just and proper and the same is needs no interference.

11. The petitioners claim that the deceased was aged about 25 years at the time of his death, but, no documents regarding the age of the deceased is produced. In such circumstances, relying upon Ex.P2 Postmortem Certificate and Ex.P4 Death Certificate of the deceased, the age of the deceased Velu is fixed as 25 years. The deceased stated to be employed as mason and considering the demand for mason and the accident occurred during, 2007, it will be appropriate to fix the monthly income of the deceased at Rs.4,500/- instead of Rs.1,500/- fixed by the Tribunal. The deceased was aged about 25 years at the time of accident. Hence, it will be appropriate to add 40% of the income towards future prospects. The deceased being bachelor, 50% of the amount deducted towards his personal expenses. Accordingly, the loss of income calculated as follows:-

(1) Rs.4,500/-, added 40% of the amount of Rs.1,800/-, the

amount would be Rs.6,300/-.

(2) Rs.6,300/-, deducted 50% of the amount of Rs.3,150/- towards personal expenses and the notional loss of income would be Rs.3,150/-

(3) Rs.3,150/- x 12 = Rs. 37,800/- x 18 = 6,80,400/-. The notional loss of income would be Rs.6,80,400/-.

12. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Funeral Expenses = Rs. 15,000.00
Transportation = Rs. 4,600.00

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

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	1,98,000.00	6,80,400.00
2.	Funeral Expenses	5,000.00	15,000.00
3.	Transportation	-	4,600.00
4.	Loss of love and affection	7,000.00	-
	Total	2,10,000.00	7,00,000.00

13. In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.2,10,000/- awarded by the Tribunal dated 28.10.2010 made in MCOP.No.53 of 2009 on the file of the Motor Accident Claims Tribunal/(Additional District Judge/Fast Track Court No.II) Ranipet, is enhanced to Rs.7,00,000/-. The respondent Transport Corporation is directed to deposit the entire enhanced award amount of Rs.7,00,000/- with interest at the rate of 7.5% p.a. From the date of filing the claim petition till the date of deposit the entire award

amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, *** the sole appellant in this CMA viz., Thilaga is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.** The petitioner/claimant is directed to pay the deficit Court fee within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CCC)

Dated: 09/04/2018

***Corrected as per order of this court dated 18/06/2018 and made in CMA.1865 of 2011.**

Sd/-

Assistant Registrar(CCC)
dated 19/07/2018

//True Copy//

Sub Assistant Registrar

rrg

To

The Additional District Judge,
Fast Track Court No.III,
The Motor Accident Claims Tribunal,
Ranipet.

Corrected order to
be substituted for
the order already
Despatched on
19/04/2018 in
CMA.1865/11

copy to
The section Officer
VR Section High Court, Chennai-104

+1 cc to Mr.S.Sairaman Advocate sr 15298

+1 cc to Mr.P.Natrajan Advocate sr 15846

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C.M.A.No.1865 of 2011

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GN(19/07/2018)