

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1569 of 2015
and C.M.P.No.1812 of 2017
and C.M.A.No.770 of 2016
and C.M.P.No.6301 of 2016

C.M.A.No.1569 of 2015:-

1.P.Rajeswari

2.M.Pakkirisamy

..Appellants
/Petitioners

Vs

Tamil Nadu State Transport
Corporation (VPM)
Limited, rep. By its Managing Director
Kanchipuram Region, Kanchipuram District.

..Respondent/Respondent

C.M.A.No.770 of 2016

Tamil Nadu State Transport Corporation
(VPM) Limited

Rep. By its Managing Director
Kanchipuram Region
Kanchipuram District

..Appellant/Respondent

Vs

1.P.Rajeswari

2.M.Pakkirisamy

..Respondents/Petitioners

Prayer in both the CMAs.- Civil Miscellaneous Appeals filed
against the judgment and decree dated 13.02.2015 made in
M.C.O.P.No.3822 of 2013 on the file of Motor Accidents claims
Tribunal, chief Judge,0 Court of Small Causes, Chennai.

C.M.A.No.1569 of 2015:-

For appellants

: : Mr.UM.Ravichandran

For Respondent

: : Mr.A.Antony Arockiyaraja

C.M.A.No.770 of 2016:-

For appellant

: : Mr.A.Antony Arockiyaraja

For respondents

: : Mr.UM.Ravichandran

COMMON JUDGMENT

Challenging the judgment and decree dated 13.02.2015 made in M.C.O.P.No.3822 of 2013 on the file of Motor Accidents claims Tribunal, Court of Small Causes, Chennai, the Petitioners/claimants have filed C.M.A.No.1569 of 2015 seeking enhancement of award amount and the 2nd respondent/Transport Corporation filed C.M.A.No.770 of 2016 seeking modification of the quantum of the award.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioners/claimants is that on 30.12.2012 at about 18.45 hours, while the deceased Selvam @ Senthamizh Selvam was travelling as pillion rider in a two wheeler bearing Reg.No.TN-49-U-4632 from North to South in the East Coast Road, opposite to Crocodile Park, Vadanemilli, the respondent Bus bearing Reg.NO.TN-21-N-1217 came at high speed in opposite direction, dashed against the two wheeler, in which the deceased was proceeding as pillion rider, causing him fatal injuries, resulting in the death of all the three persons, travelling in the said Motor cycle. The negligence of the respondent vehicle driver alone caused the accident. The deceased was aged 24 years and by working as Centring Worker, he was earning Rs.800/- per day. The Petitioners who are the parents of the deceased are suffering from loss of love and affection of their son and also his contribution to the family. Thus the petitioners sought for a sum of Rs.25,00,000/- as compensation from the respondent-Transport Corporation.

3. On the other hand, opposing the claim of the Petitioners, the respondent/Transport Corporation contends that the accident did not occur in the manner alleged by the Petitioners. While the respondent bus was proceeding from Pondicherry to Chennai, on 30.12.2012, in normal speed, near Vadanemili, the driver saw a two wheeler coming in the opposite direction carrying three persons and accidentally, the rider of the two wheeler without caring for the oncoming Traffic, turned right and again turned towards left on seeing the bus and consequently, lost control, dashed against the respondent bus, resulting in the accident. Due to the same, all the three persons travelling in the two wheeler died on the spot. The accident occurred only due to negligence of the rider of the two wheeler. Thus the respondent/Transport Corporation sought for dismissal of the Petition.

4. Before the Tribunal, the petitioner examined P.W.1 to P.W.3 and produced documents Ex.P.1 to Ex.P.11 to prove their claim. On the side of the respondent, the driver of the bus involved in the accident deposed as R.W.1, but did not produce any documents. The Tribunal, on appreciation of evidence

available on record found that the negligence of the respondent vehicle driver alone caused the accident and passed the Award for a sum of Rs.7,28,000/- payable by the respondent to the Petitioner. Being not satisfied with the same, the Petitioners/claimants preferred CMA.No.1569 of 2015, whereas, aggrieved over the said finding of the Tribunal, the respondent-Transport Corporation preferred CMA.No.770 of 2016 and both the appeals are taken up together for final disposal.

5. The learned counsel for the Petitioners/claimants contend that the Tribunal ought to have fixed the monthly income of the deceased at Rs.10,000/- and considering the age of the deceased, the Tribunal ought to have awarded 50% of the same towards Future Prospects. The Tribunal ought to have provided higher amount of compensation under different heads. The Petitioners sought for enhancement of the award amount to Rs.25,00,000/- by entertaining the appeal.

6. On the other hand, refuting the said claim, the learned counsel for the respondent/Transport Corporation has filed CMA.No.770 of 2016 contending that there was no proof available on record to prove the negligence of the 1st respondent driver alone caused the accident, but the Tribunal wrongly fixed the entire negligence on the respondent bus driver. The accident having occurred due to negligence of the two wheeler rider, the Tribunal ought to have fixed contributory negligence on the deceased as well. The Tribunal wrongly fixed the notional income of the deceased at Rs.6000/- per month instead of Rs.3000/-. The amount awarded under different heads is exorbitant and thus the Transport Corporation sought for dismissal of the appeal filed by the Petitioners/claimants, CMA.No.770 of 2016 and to allow their appeal in CMA.No.1569 of 2015 and to set aside the Award passed by the Tribunal.

7. The Petitioners contended that the accident occurred only due to rash and negligent driving of the respondent bus driver. According to the Petitioner, the Police registered case against the driver of the respondent bus as per Ex.P.1 copy of FIR. The same will prove the negligence of the respondent bus driver alone is the cause for the accident. The person who witnessed the occurrence is examined as P.W.3. According to him, on 30.12.2012, at about 6.45 p.m., while he was standing in front of crocodile park near East Coast Road, his colleague the deceased Aravind came from North to south in two wheeler bearing Reg.No.TN-49-U4632 with two pillion riders. At that time, the respondent bus bearing Reg.No.TN-21-N-1217 came at high speed and in the attempt to overtook a car which was going ahead, came to the wrong side of the road, dashed against the two wheeler in which the deceased Aravind was proceeding with two pillion riders viz., Selvam @ Senthamizh Selvam, the son of the petitioners herein and another person. According to P.W.3,

immediately Mammalapuram Police came there, took complaint from one Selvaraj and registered Ex.P.1-FIR. Thus it is the claim of the Petitioners that the accident occurred only because of the negligence of the driver of the respondent bus who dashed against the two wheeler, when attempting to overtake the car which was going ahead of him.

8. Refuting the said evidence of P.W.2, the respondent counsel by relying upon the oral evidence of R.W.1, stated that due to the negligence of the two wheeler rider alone, the accident occurred. R.W.1 stated that while the bus was proceeding from Pondicherry to Chennai, near Crocodile Park at Vadanemili, he saw the Motor cycle carrying three persons coming in a rash and negligent manner and all of them were in drunken mood and on seeing that, he stopped the bus. However, the rider of the two wheeler lost control and dashed against the bus, resulting in the accident. But, there is no documentary proof in support of the said statement. Further R.W.1 has stated that he saw the motor cycle at the distance of 20 metre and he has no knowledge about the drunken mood of the rider directly. The respondent-Transport Corporation has not raised any such ground in their counter affidavit. The Police registered Ex.P.1-FIR against the respondent bus driver only. If really the accident had occurred due to the negligence on the part of the two wheeler rider, the bus driver would have lodged the complaint with the Police narrating the same. The Police registered criminal case against the bus driver and the Management suspended him for three months. In such circumstances, the ground that drunken driving of the two wheeler, which was put forth for the first time before the Tribunal by R.W.1 only and the said oral evidence has not been corroborated by any documentary proof, the same cannot be accepted. Further, the oral evidence of R.W.1 is that of interested person and on that ground also the same cannot be accepted.

9. On the other hand, the evidence of P.W.3, who is the third party corroborated the version of P.W.1 and the contents of Ex.P.1-FIR. Further P.W.3 has clearly stated that the respondent bus while attempting to overtake vehicle going ahead of it, came to the wrong side of the road and dashed against the motor cycle, in which the deceased was travelling. There is nothing elicited from the evidence of P.W.3 suggesting that the rider of the two wheeler came in the wrong side and dashed against the bus. As such, it is concluded that the negligence of the respondent bus driver alone caused the accident.

10. The learned counsel for the Petitioners/claimants relied upon the decision reported in 2013 (2) TNMAC 861 [Thangammal and others Vs. The Managing Director, TNSTC, Salem] to contend that mere travelling of three persons by itself would not constitute negligence unless and until substantial evidence was let in to

prove the case that because of three persons travelling in the two wheeler, the rider of the two wheeler lost control and thereby caused the accident, no contributory negligence could be attributed on the two wheeler rider. In the case on hand, there is no such averment available on record. Therefore, the contention of the respondent-Transport Corporation seeking to fix contributory negligence on the part of the two wheeler rider, lacks merit. Further there is no material evidence on record to support the contention that the two wheeler rider was under drunken mood and due to that only dashed against the bus. Therefore, the finding of the Tribunal that negligence on the part of the respondent bus driver alone caused the accident is just and proper and the same needs no interference.

11. The Petitioners claim that the deceased was their son and by working as Centring worker, was earning Rs.800/- per day. The deceased was stated to be 24 years old at the time of his death. The Petitioner who deposed as P.W.1 stated that the deceased was aged 26 years. It is clear from Ex.P.2-Post Mortem Report that the age of the deceased is 26 and also considering the fact that on the date of accident, i.e, 30.12.2012, the deceased was a bachelor, the Tribunal, while fixing the monthly income at Rs.6000/-, deducted 50% of the income towards personal expenses and applied multiplier 17, fixed Rs.6,12,000/- as loss of pecuniary benefits. However, the petitioners claim that by working as centring worker, the petitioner was earning Rs.800/- per day and thereby earned not less than Rs.10,000/- per month. Further, relying upon the decision of Apex Court in the decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the Petitioners pleaded that 40% of the income has to be added towards Future Prospects. However, the petitioners have not produced any proof in support of the avocation and income of the deceased. In such circumstances, considering the nature of demand for centring worker and the fact that the accident occurred in 2012, it will be appropriate to fix the income of the deceased at Rs.8000/- per month. The loss of dependency is calculated as under:-

Monthly salary - Rs.8000/-
40% additional towards Future Prospects (3200)

8000 + 3200 = Rs.11,200/-

After deducting 50% towards personal expenses of the deceased, his contribution to the family will be Rs.5600/-
11,200/- - 50% deduction = Rs.5600

Rs.5600 x 12 x 17 = Rs.11,42,400/-. Thus a sum of Rs.11,42,400/- is awarded under the head "Loss of dependency". The sum of Rs.5,000/- awarded by the Tribunal under the head Transport expenses is just and proper and hence, the same is confirmed. Insofar as compensation under conventional heads are concerned, by applying the Ruling of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the following amounts are awarded.

Funeral expenses -15,000/-
Loss of estate -15,000/-
Loss of consortium -40,000/-
Add: Loss of dependency -11,42,400/-
Transport expenses - 5,000/-
Total = Rs.11,77,400/-

Accordingly, the compensation awarded by the Tribunal stands modified to Rs.11,77,400/-. The Petitioners 1 and 2/Appellants 1 and 2 in CMA.No.1569 of 2015 are entitled to apportionment of equal share in the award amount.

12. In the result,

(i) This Civil Miscellaneous Appeal filed by the Petitioners in CMA.No.1569 of 2015 is Partly Allowed; C.M.A.No.770 of 2016 filed by Transport Corporation is dismissed.

(ii) The award amount is enhanced to Rs.11,77,400/- from Rs.6,92,000/-;

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The Transport Corporation/Appellant in CMA.No.770/2016 is directed to deposit the entire award amount along with proportionate interest and cost, as ordered by this court, less the amount, if any already deposited.

(v) The Petitioners 1 and 2/Appellants 1 and 2 in CMA.No.1569 of 2015 are entitled to withdraw their respective share amount of the award amount along with accrued interest. The Tribunal shall pass necessary orders following the appropriate procedure for disbursement of the award amount.

(vi) No costs. Consequently, connected MPs are closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

nvsri

To

1.The Motor Accidents claims Tribunal
Chief Judge, Court of Small Causes, Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras. (2 copies)

+2 Ccs to Mr.U.M. Ravichandran, Advocate sr 26608.
+1 CC to Mr. Antony Arockiaraja, Advocate sr 26502.

C.M.A.Nos.1569 of 2015
and 770 of 2016

GJ(CO)
SP(31/05/2018)