

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2018

CORUM

The Hon'ble Mr.Justice R.Subbiah
and
The Hon'ble Mr.Justice P.D.Audikesavalu

C.M.A.No.1384 of 2014
and
M.P.No. 1 of 2014
and
C.M.P.No.9085 of 2016

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

Vs.

1. J. Gomathi
2. Minor J.Shanmugam
3. Minor J.Dhanalakshmi
(R-2 and 3/Minors are rep. by their mother
and Guardian/R1)
4. Lakshmiammal (died)
(R1 to R3 are the LR of
the deceased 4th respondent
herein as per
order dated 23/02/2018
made in Memo dated 22/02/2018)

... Respondents

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 20.11.2013, in M.C.O.P.No.1376 of 2011, passed by the Motor Accident Claims Tribunal (III Small Causes Court) Chennai.

Appearance

For Appellant : Mr. S.V.Vasantha Kumar
For Respondents 1 to 3 : Mr. R.Kalaiarasan
Respondent-4 : Died

JUDGMENT

(Judgment of the Court was delivered by
R.Subbiah, J.,)

This Civil Miscellaneous Appeal is filed by the Transport Corporation, questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal (IIIrd Judge, Court of Small Causes), Chennai, (henceforth, referred to as 'the Tribunal', for brevity) in and by the award dated 20.11.2013 in M.C.O.P.No.1376 of 2011. Since the present Appeal is filed only questioning the quantum of compensation awarded by the Tribunal, we are not traversing into the other aspects of the award passed by the Tribunal.

2. The respondents 1 to 4 herein, who are the petitioners/claimants before the Tribunal are wife, minor son and daughter and mother of the deceased L.Jayaraman. It is the case of the claimants that on 25.02.2011 at about 8.45 hours, when the deceased was proceeding on his motorcycle, viz., TVL XL Super, bearing Registration No.TN-07-AJ-8048 from Korattur to Tambaram on Maduravoyal-Tambaram bypass Road, the Bus bearing Regn No.TN-32-N-3105, belonging to the State Transport Corporation came in the opposite direction in a rash and negligent manner, and dashed against the said Motorcycle, as a result of which the deceased sustained severe head injuries and died on the spot. Hence, the claimants filed a Claim Petition against the State Transport Corporation, claiming a sum of Rs.12,00,000/- as compensation.

3.The Transport Corporation resisted the Claim Petition by filing a counter statement denying all the averments set out in the Claim Petition.

4.Before the Tribunal, in order to prove the claim, first claimant examined herself as P.W.1 and two other witnesses as P.W.2 and P.W.3, and marked eleven documents as Exs.P.1 to P.11. On behalf of the Transport Corporation, the Driver of the Bus was examined as R.W.1, but no documentary evidence was adduced.

5.The Tribunal, on evaluation of both oral and documentary evidence, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of bus and directed the Transport Corporation to pay the compensation and also directed the claimants to pay the additional Court fee, for having awarded the compensation more than that of the amount

claimed in the Claim Petition. For better appreciation, the compensation amount award passed by the Tribunal under various heads is mentioned infra :-

i)	Pecuniary Loss	:	Rs.18,72,000
ii)	Loss of Consortium	:	Rs. 1,00,000
iii)	Funeral Expenses	:	Rs. 20,000
iv)	Love and Affection	:	Rs. 80,000
.....			
Total		:	Rs.20,72,000/-
.....			

The said sum of Rs.20,72,000/- was directed to be paid together with interest at 7.5% per annum from the date of petition till the date of deposit.

6. Aggrieved by the quantum of compensation awarded by the Tribunal, the present Appeal is filed by the Transport Corporation, as stated above.

7. The learned counsel appearing for the appellant/Transport Corporation submitted that the Tribunal, while determining the compensation towards Pecuniary Loss, had taken a sum of Rs.15,600/- as monthly income of the deceased, and based on the same, awarded a sum of Rs.18,72,000/- under the head of Pecuniary Loss, which is on the higher side. It is further contended that the deceased was only a self-employed (Electrical Contract Worker) and that there is no tangible evidence to show that the deceased was earning Rs.15,000/- per month. While that being so, the Tribunal ought not to have taken the sum of Rs.15,000/- as monthly income and awarded such an exorbitant sum of Rs.18,72,000/- under the head of Pecuniary Loss. Like the same, the compensation awarded towards Loss of Consortium is also high and the same requires reduction. Thus, the learned counsel for the appellant/Transport Corporation prays for modification of the award of the Tribunal under the aforesaid grounds.

8. The learned counsel appearing for the respondents 1 to 4/claimants made his submission supporting the award passed by the Tribunal.

9. Keeping the submissions made by the learned counsel for both sides, we have carefully perused the materials placed on record. It is seen that the claimants, in order to prove the monthly income of the deceased, examined one V.Kalaiselvan as P.W.3, through whom Exs.P.9 to P.11, viz., i) Registration Certificate of Karmel Engineering Civil Contractor, ii) Partnership Deed for running the Contract Work and iii) Salary Certificate issued by P.W.3 were marked. On perusal of those

Exhibits, it is seen that P.W.3/V.Kalaiselvan was running a Partnership Firm under the name and style 'Karmel Engineering Civil Contractor Work' and the deceased was working in the said Firm and was earning Rs.15,000/- per month. The Tribunal, taking into consideration all these aspects, fixed the monthly income of the deceased at Rs.15,000/- and by deducting 1/3rd towards his personal expenses and by adding 30% towards his future prospects, and applying multiplier '15', arrived at a sum of Rs.18,72,000/- towards the Pecuniary Loss. We do not find any infirmity in the calculation made by the Tribunal to award compensation under the head of Pecuniary Loss, since the calculation made by the Tribunal is well within principles laid down by the Hon'ble Supreme Court in various Judgments. However, as rightly pointed out by the learned counsel appearing for the appellant/Transport Corporation, the Tribunal ought not to have awarded such an exorbitant sum of Rs.1,00,000/- under the head of Loss of Consortium, hence, the same is reduced to Rs.40,000/-. Except this modification, the award passed by the Tribunal remains unaltered. The break up details of the modified compensation amount are as follows:-

i)	Pecuniary Loss	:	Rs.18,72,000
ii)	Loss of Consortium	:	Rs. 40,000
iii)	Funeral Expenses	:	Rs. 20,000
iv)	Love and Affection	:	Rs. 80 000
	Total	:	Rs.20,12,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.20,72,000/- awarded by the tribunal is hereby modified and reduced to Rs.20,12,000/-. The appellant/Transport Corporation is directed to deposit the amount determined by us in this appeal, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order.

11. The learned counsel appearing for the respondents/claimants has brought to the knowledge of this Court that the respondents 1 to 3/claimants 1 to 3 have filed a memo, dated 23.02.2014, to treat them as legal heirs of the deceased fourth respondent, as the fourth respondent, mother of the deceased died during the pendency of the Appeal and the learned counsel also produced a copy of the Death Certificate of the fourth respondent as proof, and therefore, submitted that, the award amount could be ordered to be disbursed to the respondents 1 to 3 equally.

12.Considering the fact that the fourth respondent passed away, the first respondent is entitled to a sum of Rs.10,00,000/- and she is permitted to withdraw the same with proportionate interest at the rate of 7.5% p.a. by making necessary application before the Tribunal. Insofar as the minor claimants 2 and 3 are concerned, they are entitled to the balance amount of Rs.10,12,000/-, at the rate of Rs.5,06,000/- each with proportionate interest at the rate of 7.5% p.a. The compensation amount payable to the minor claimants 2 and 3 is directed to be deposited in any one of the Nationalised Banks in fixed deposit, till the minors attain majority. Out of such deposit, the first claimant/mother is permitted to withdraw accrued interest once in three months. The memo filed by the claimants shall form part of the decree. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
(III Small Causes Court) Chennai.

Copy to

The Section Officer,
VR Section, High Court,
Madras-104. [2 copies]

+1cc to Mr.N.M.Muthurajan, Advocate Sr.13856

+1cc to Mr.S.V.Vasanthakumar, Advocate Sr.14842

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srg 28/06/2018