

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1730 of 2015

Karnataka State Road Transport
Corporation,
Rep. by its Managing Director,
Bangalore.

.... Appellant/2nd respondent

...vs...

- 1.Lilly
- 2.Omana
- 3.Minikandan
- 4.Sujatha
- 5.S.Swamy
- 6.Prakash
- 7.K.Raja

(Notice to the respondents 5 to 7
dispensed with)

- 8.The United India Insurance Company
Ltd.,
rep. by its Managing Director,
Registration Authority Branch,
Udhagamandalam,
Nilgiris District.

... Respondents 1to4/Petitioners
... 5th Respondent/1st respondent
... 6th respondent/3rd respondent
... 7th respondent/4th respondent

... 8th Respondent/5th respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 10.09.2004 made in MCOP.No.10 of 2013 on the file of the Motor Accident Claims Tribunal/(The District Judge), Udhagamandalam.

For Appellant : Mr.T.Thiyagarajan

For Respondents : Mr.Mathew Thomas for R1 to R4
Mr.T.Ravichandran for R-8

Not ready in Notice reg. RR% to 7

JUDGMENT

Aggrieved over the finding of the Tribunal, dated 10.09.2004 made in MCOP.No.10 of 2013 on the file of the Motor Accident Claims Tribunal/(The District Judge), Udhagamandalam, the present appeal has been filed by the 2nd respondent Transport Corporation to set aside the award passed by the Tribunal.

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 01.01.2012 at about 9.45 a.m., while the deceased Raghavan was proceeding in an Auto Rickshaw bearing Registration No.TN-32-Z-6815 from Upper Gudalur to Thorappally, when he was reached Marappalam, the second respondent Transport Corporation bus bearing Registration No.KA-10-F-0006, which was proceeding from Bangalore to Ooty, came at high speed, in a rash and negligent manner, dashed on the auto rickshaw, in which the deceased was proceeding, causing him multiple grievous injuries and died on the way to hospital. The negligence of the second respondent Transport Corporation bus driver alone caused the accident. The deceased was aged 62 years and by working as daily wages in a Tea Shop at Thorappalli, was earning Rs.700/- per day. The petitioners are the wife and children of the deceased Raghavan. They have lost the head of family and also his monetary contribution to the family. Thus, the petitioners seek sum of Rs.5,50,000/- as compensation from the respondents.

4.On the other hand, opposing the claim petition, the second respondent Transport Corporation denied and dispute the allegation of the petitioners about the manner in which the accident occurred. The accident occurred only due to the rash and negligent driving by the third respondent driver of the Auto bearing Registration No.TN-32-Z-6815 and not due to the driver of the Second respondent Transport Corporation bus. The averments made in the petition about the age, occupation and income of the deceased is denied. The death of the deceased was not due to the alleged accident as claimed by the petitioners. As the second respondent bus was going near Marappalam, the Auto bearing Registration No.TN-32-Z-6815 came in the opposite direction, on the wrong side of the road and dashed in the left side front portion of the bus. The driver of the second respondent Transport bus no way responsible for the accident. The negligence of the Auto driver alone caused the accident. The respondents 3 to 5 are the driver, owner and insurer of the said Auto alone are liable to pay compensation. Thus, the second respondent Transport Corporation sought for dismissal of the petition against them.

5.Likewise, opposing the claim of the petition, by filing counter, the 4th respondent contends that the claim of the petitioners is not true. The 4th respondent sold the said Auto bearing Registration No.TN-32-Z-6815 to the third respondent on 18.07.2011 itself. Hence, the 4th respondent has not liable to pay compensation. Thus, he sought for dismissal of the petition against him.

6.The insurer of the Auto Rickshaw who is the 5th respondent Insurance Company contends that the negligence of the second respondent bus driver alone caused the accident. The amount claimed by the petitioners is highly excessive. The third respondent Auto Rickshaw was not having valid permit. The 4th respondent is no way liable to pay compensation. Thus, the 4th respondent seeks dismissal of the petition.

7.Before the Tribunal, the petitioners examined P.W.1 to P.W.3, produced documents Ex.P1 to Ex.P15 to substantiate their claim. The respondents examined the driver of the bus as R.W.1, but no document was produced.

8.The Tribunal, on careful analysis of evidence, found the negligence of the second respondent Transport Corporation bus driver alone caused the accident, passed an Award for a sum of Rs.4,95,000/- payable by the respondents 1 and 2 to the petitioners. Aggrieved over the said finding of the Tribunal, the second respondent-Transport Corporation has come forward with this present appeal seeking to set aside the award passed by the Tribunal.

9.I have heard the learned counsel appearing for the appellant/2nd respondent Transport Corporation and the learned counsel appearing for the respondents 1 to 4 /claimants and perused the materials available on record.

10.The learned counsel appearing for the appellant-2nd respondent Transport Corporation contends that the Tribunal wrongly concluded that the negligence of the first respondent alone caused the accident, while the evidence clearly established the negligence of the third respondent auto driver alone resulted in the accident. The Tribunal ought not to have relied upon Ex.P1 First Information Report to fix the negligence on the second respondent bus driver. The Tribunal also failed to consider the fact that the number of persons travelling in the Auto was beyond the permit capacity. The Tribunal fixed the monthly income of the deceased at the higher level. The amount awarded by the Tribunal under different heads is highly excessive. Thus, the second respondent Transport Corporation seeks to set aside the award passed by the Tribunal by entertaining the appeal.

11.Per contra, the learned counsel appearing for the petitioners/claimants contends that the accident having occurred due to the negligence of the second respondent bus driver alone. The Tribunal has passed an award for a just and reasonable amount which requires no interference. Thus, the petitioners sought for dismissal of this appeal.

12.The petitioners contention is that while the deceased was proceeding in the third respondent Auto met with an accident on 01.01.2012. The wife of the deceased Raghavan deposed as P.W.1, but she is not an eye witness to the occurrence. The persons who witness the occurrence deposed as P.W.2 and P.W.3 clearly stated about the manner in which the accident occurred. The police also registered Ex.P1 First Information Report against the second respondent bus driver only. The Rough Sketch of the occurrence spot produced as Ex.P8 corroborates the version given by P.W.1. The police after completion of investigation laid charge sheet against the second respondent bus driver only as evidenced by Ex.P7 copy of the charge sheet.

13.On the other hand, the driver of the second respondent Transport Corporation bus who deposed as R.W.1 stated that the accident does not occur due to his negligence. However, R.W.1 admitted that the departmental enquiry is going against them about the accident. The Tribunal after physically finding out that the eye sight of the R.W.1 was very poor concluding his negligence alone caused the accident. In the case on hand, admittedly, the police have registered the case against the first respondent only. As such, considering the evidence of P.Ws.2 and 3 and also the fact that the police after completion of investigation laid charge sheet against the first respondent bus driver alone, the Tribunal justified in concluding that the negligence of the first respondent driver alone caused the accident. The same need no interference.

14.The award passed by the Tribunal is seriously challenged by the second respondent Transport Corporation only on the ground of quantum of the award. The deceased is stated to be 62 years old at the time of the accident. In the absence of any specific documentary proof for the same, it will appropriate to fix his age on the basis of Ex.P5 Postmortem Certificate. Thus, the deceased age is fixed as 62 years. The accident occurred in, 2012, even though the petitioners claim that the deceased by working as cook in the Tea stall was earning Rs.700/- per day, it will be appropriate to fix his daily income at Rs.200/- per day. Thus, his monthly income will be Rs.6,000/-. As the deceased was aged 62 years, the multiplier to be applied is 7. Considering the age of the deceased, there is no need to provide for future prospects. As the number of dependents are 4, it will appropriate to deduct 1/4th of the income towards the

personal expenses of the deceased. Thus, the monthly contribution to the family will be Rs.6,000/- 1/4th amount deduction Rs.1,500/ = Rs.4,500/- x 12 =Rs.54,000/- x 7 = Rs.3,78,000/-.

15.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 accord compensation as under:-

Loss of consortium	=	Rs. 40,000.00
Loss of Estate	=	Rs. 15,000.00
Funeral Expenses	=	Rs. 15,000.00
Total		Rs.70,000.00

The amount of Rs.10,000/- awarded by the Tribunal under the head loss of love and affection is hereby confirmed.

16.Accordingly, the compensation warded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	4,50,000.00	3,78,000.00
2.	Loss of Estate	15,000.00	15,000.00
3.	Loss of love and affection	10,000.00	10,000.00
4.	Funeral Expenses	10,000.00	15,000.00
5.	Loss of consortium	25,000.00	40,000.00
	Total	4,95,000.00	4,58,000.00

Accordingly, the amount of Rs.4,95,000/- awarded by the Tribunal is modified and the same is reduced to Rs.4,58,000/-.

17.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.4,95,000/- awarded by the Tribunal dated 10.09.2004 made in MCOP.No.10 of 2013 on the file of the Motor Accident Claims Tribunal/(The District Judge), Udhagamandalam is hereby reduced to Rs.4,58,000/-. The Appellant/2nd respondent Transport Corporation is directed to deposit the entire award amount of Rs.4,58,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. Excess amount if any paid by the appellant Transport Corporation shall be refunded. On such deposit, the first petitioner/first claimant is entitled to 40%

of the share amount and the petitioners 2 to 4/claimants 2 to 4 are entitled to 20% each of the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

rrg

To

The District Judge,
The Motor Accident Claims Tribunal,
Uthagamandalam.

+ 1 cc to Mr. T. Thiyagarajan, Advocate Sr.51108
+ 1 cc to Mr. Thangavadhana Balakrishnan, Advocate Sr.50604
+ 1 cc to Mr. T. Ravichandran, Advocate SR.50895

C.M.A.No.1730 of 2015

GJ (CO)
EU (25/09/2018)

सत्यमेव जयते

WEB COPY