

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1989 of 2018
and
CMP.No.15464 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam. ... Appellant/Respondent

Vs

1.Sivakami ... 1st Respondent/Petitioner

2.Sivakumar

3.Shriram General Insurance,
T.Nagar, Chennai.

4.Anjalai ... Respondents 2 to 4/
Respondents 2 to 4

5.Arumugam (died) ... 5th Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 09.11.2017 passed in M.C.O.P.No.108 of 2014 by the Motor Accidents Claims Tribunal (II Additional District Sessions Judge), Chidambaram.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.G.Gobinath (for R4)

JUDGMENT

Being aggrieved by the award of compensation of Rs.15,99,000/- for the death of the deceased Sivakumar in a road accident, the Tamil Nadu State Transport Corporation has filed the appeal.

2. Brief facts are that on 25.6.2013, the deceased Sivakumar and his friend Selvam was proceeding in a motorcycle bearing registration No.TN-31 AK 6294 on Meensurthy Main road. At that time, the motorcycle was driven by Selvam and the deceased was travelling as pillion rider. When the motorcycle was proceeding on the left side of the road, the appellant bus bearing registration No.TN-68 N 0165 driven by its driver in a rash and negligent manner dashed against the motorcycle. Due to the impact, both the deceased and rider of the motorcycle were thrown out and rider of the motorcycle Selvam died on the spot. The deceased sustained grievous injuries and was admitted in Jayangondam Government Hospital where from he was taken to Thanjavur Medical College Hospital and admitted as inpatient. Despite best treatment, Sivakumar succumbed to injuries on 27.6.2013. Regarding the accident, a criminal case in Crime No.250 of 2013 under Sections 279, 337 and 304A IPC was registered by Meensurthy Police Station. At the time of accident, the deceased was aged 25 years and was earning Rs.15,000/- per month by running saloon. Stating that the accident occurred due to rash and negligent driving of the driver of the appellant bus, the first respondent has filed the claim petition claiming compensation of Rs.40,00,000/-. Since the parents of the deceased were not co-operating with the first respondent, they have been added as respondents 4 and 5 in the claim petition.

3. Denying the accident, the appellant has filed the counter stating that on 25.6.2013, the driver of the bus drove the same cautiously and at about 11.45 P.M., when the bus was nearing Saravana Provisional Store, Meensurthy, the motorcycle bearing registration No.TN-31 AK 6294 driven by its rider in a rash and negligent manner and while seeing that the motorcycle was coming beyond the middle line, the driver of the bus severed the bus on the mud road and inspite of that the motorcycle hit the front side of the bus and invited the accident. The accident was solely on the part of the rider of the motorcycle and the driver of the appellant bus no way responsible for the accident. The appellant denied the age, income and occupation of the deceased and prayed for dismissal of the claim petition.

4. I heard Mr.D.Venkatachalam, learned counsel for the appellant and Mr.T.Gobinath, learned counsel for the 4th respondent and perused the entire materials available on record.

5. Before the Tribunal, the first respondent examined herself at P.W.1 and one Ganesan was examined as P.W.2 and Exs.P1 to P15 were marked. On the side of the appellant, two witnesses were examined and no documents were marked.

6. The Tribunal held that the accident occurred due to the

rash and negligent driving of the driver of the appellant bus. Taking the monthly income of the deceased at Rs.6500/- and adding 50% for future prospects and deducting one-third for personal expenses, the Tribunal calculated the loss of dependency at Rs.14,04,000/-. Adding conventional damages, the Tribunal awarded total compensation of Rs.15,99,000/- payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

7. Challenging the impugned award, the learned counsel for the appellant Transport Corporation submitted that the Tribunal ought not to have considered the evidence of P.W.1, who is an interested witness and also the Tribunal has failed to note that the FIR has been registered against the rider of the motorcycle. He would submit that the Tribunal failed to note that the accident occurred only due to the negligence on the part of the rider of the motorcyclist who rode the same in a rash and negligent manner and invited the accident, which has been proved by the appellant by examining its driver as R.W.1. Hence, contributory negligence has to be fixed against the deceased. The learned counsel further submitted that the total compensation awarded by the Tribunal is highly excessive and the award of the Tribunal is liable to be set aside.

8. Reiterating the findings of the Tribunal, the learned counsel for the first respondent submitted that upon analysing the oral and documentary evidence, the Tribunal held that the accident was due to the rash and negligent driving of the driver of the appellant bus. As far as quantum of compensation awarded by the Tribunal is concerned, taking note of the age, avocation and the monthly income of the deceased, the Tribunal awarded Rs.15,99,000/-.

9. To prove that the accident occurred due to rash and negligent driving of the appellant bus, the first respondent examined one Ganesan, eye witness to the accident. In his evidence, P.W.2 has deposed that he was driving auto and at about 11.15 P.M., while he was waiting at Meensurthy Main Road with auto, he saw the appellant bus bearing registration No.TN-68 N 0165 driven by its driver in a rash and negligent manner dashed against the motorcycle.

10. On the other hand, R.W.1, driver of the appellant bus deposed that on the date of accident, he stopped the bus at the bus stop to board passengers into the bus and at that time, the motorcycle came and dashed the bus and the motorcycle fell down. There was lot of contradiction in the evidence of R.W.1 as at one place R.W.1 stated that while the bus was proceeding, the accident was happened whereas in his evidence, R.W.1 deposed that when the bus was stopped, the motorcyclist dashed the bus.

However, on a perusal of Ex.P11-rough sketch, it is seen that the accident occurred due to rash and negligent driving of the driver of the appellant bus. The appellant has failed to rebut the evidence of P.W.2 and Ex.P11-rough sketch. In the absence of rebuttal evidence, the Tribunal was right in holding that the accident was due to the rash and negligent driving of the driver of the appellant bus. Since the appellant has failed to prove that the accident was only due to rash and negligent driving of the motorcycle, this Court affirm the conclusion arrived at by the Tribunal that the accident occurred only due to rash and negligent driving of the driver of the appellant bus.

11. According to the first respondent, at the time of accident, the deceased was aged 25 years and was earning Rs.15,000/- per month by running a saloon. Admittedly, to prove that the deceased was earning Rs.15,000/- per month at the time of accident, the first respondent has not produced any materials. In the absence of proof, the Tribunal has taken the monthly income at Rs.6,500/-, which in my considered view is reasonable for the reason that a person running saloon would be in a position to earn Rs.200/- to Rs.250/- per day.

12. The Tribunal has given 50% addition of salary for future prospects. Though the appellant contended that the Tribunal erred in giving 50% addition towards future prospects, nothing has been produced to prove the same. Considering the age of the deceased and the avocation, 50% addition given by the Tribunal for future prospects is reasonable and the same is maintained.

13. Deducting one-third towards personal expenses, the Tribunal has calculated the contribution to the family at Rs.78,000/-. Adopting multiplier 18, the Tribunal awarded Rs.14,04,000/- for loss of dependency, which in my considered view is reasonable.

14. As far as conventional damages are concerned, the Tribunal awarded Rs.1,00,000/- for loss of consortium; Rs.30,000/- each for loss of love and affection to the respondents 1 and 4; Rs.10,000/- towards transport charges; Rs.25,000/- towards funeral charges. Thus, adding conventional damages with the loss of dependency, the Tribunal awarded total compensation of Rs.15,99,000/-. Since the compensation of Rs.15,99,000/- awarded by the Tribunal is just and reasonable, the same is confirmed.

15. Out of the total compensation of Rs.15,99,000/-, the Tribunal apportioned Rs.10,74,350/- to the first respondent and Rs.5,24,650/- to the fourth respondent/mother. Since the fifth respondent/father died, no apportionment was made. Considering

the relationship of respondents 1 and 4, the appointment made by the Tribunal is maintained.

16. In the result, the Civil Miscellaneous Appeal is dismissed, thereby the award dated 09.11.2017 passed in M.C.O.P.No.108 of 2014 on the file of the Motor Accident Claims Tribunal (II Additional District and Sessions Judge), Chidambaram is confirmed. The appellant is directed to deposit the award amount with interest as ordered by the Tribunal within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accident Claims Tribunal,
II Additional District and Sessions Judge,
Chidambaram.

+1 cc to Mr.T.Gobinath, Advocate SR.No.60481
+1 cc to Mr.D.Venkatachalam, Advocate SR.No.60711

C.M.A.No.1989 of 2018 and
CMP.No.15464 of 2018

RK(CO)
CSL/07.02.2019