

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.214 of 2016

1. Mahalakshmi
2. Subbulakshmi
3. Subbiah ..Appellants/Petitioners

-vs-

The Managing Director,
M.T.C.
Pallavan House,
Anna Salai, Chennai 2. .. Respondent/Respondent

(The 1st Respondent exparte in Lower Court,
hence notice may be dispense with)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.06.2014 made in MCOP. No.2571 of 2012, on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr.K.Varadhakamaraj

For Respondent : Mr. S.Sivakumar

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The wife, mother and father of one Kumaresan aged about 34 years, who died in a motor accident that occurred on 02.06.2011 are the appellants.

2. The claimants sought for a compensation of Rs.1,00,00,000/- for the death of the said Kumaresan. According

to them, the accident occurred when the said Kumaresan was walking on the sideways inside the bus stand near the Central Railway Station, the bus belonging to the respondent Corporation, bearing Registration No.TN 01 N 4040, driven by its driver in a rash and negligent manner dashed against him, resulting in his death. Terming the negligence of the bus driver as cause for the accident, the claimants sought for the compensation as aforesaid from the respondent Corporation, namely the owner of the bus.

3. The Claim Petition was resisted by the Corporation contending that when the bus was travelling on a slow speed towards Central Railway Station, a Mob of Pedestrians crossed the road suddenly forcing the driver of the bus to swerve the bus to the left. As a result of the sudden swerving to the left, the bus ran over the platform and dashed against the deceased resulting in the accident. It is also contended that the deceased was a ticketless passenger in another bus and he had jumped over the platform to avoid the checking squad. The quantum of compensation claimed was also termed as excessive. The Corporation also denied the claim relating to the income of the deceased.

4. The Tribunal, which heard the Original Petition, concluded that the accident occurred due to the rash and negligent driving of the driver of the bus. In coming to the said conclusion, the Tribunal relied upon the Criminal Proceedings, wherein a case was registered against the driver of the bus in Crime No.382 of 2011 under Sections 279, 337, 338 and 304(a) of the Indian Penal code. The Tribunal also took into account the sketch prepared by the Investigation Officer marked as Ex.P2. The evidence of the driver of the bus was examined as R.W.1 was rejected by the Tribunal as it ran counter to the documentary evidence, namely the FIR, the Rough Sketch and the Final Report, which were marked as Exs.P1, P2 and P7 respectively.

5. On the quantum, the Tribunal finding that there was no documentary evidence for the income of the deceased took the monthly notional income at Rs.6,000/- adding Rs.3,000/- towards future prospects, i.e. 50% and deducting 1/3 towards personal expenses of the deceased, the Tribunal arrived at the loss of dependency at Rs.11,52,000/- (Rs.9,000/- x $\frac{2}{3}$ x 12 x 16). The Tribunal awarded a sum of Rs.25,000/- towards loss of consortium, Rs.30,000/- towards loss of love and affection, Rs.10,000/- towards loss of estate, Rs.25,000/- towards funeral expenses and Rs.5,000/- towards transportation. In all the Tribunal awarded a sum of Rs.12,47,000/- as compensation. The Tribunal also apportioned the compensation amongst the claimants as follows:

The 1st claimant wife was awarded a sum of

Rs.8,47,000/- and the claimants 2 & 3 were parents awarded a sum of Rs.2,00,000/- each.

6. Aggrieved, the claimants have come forward with these appeals.

7. We have heard Mr.K.Varadhakamaraj, learned counsel appearing for the appellants and Mr.S.Sivakumar, learned counsel appearing for the respondent Corporation.

8. Mr.K.Varadhakamaraj, learned counsel appearing for the appellants would contend that the Tribunal was not right in taking the monthly notional income of the deceased at Rs.6,000/-. He would point out that the accident had occurred in 2011 and the deceased was a self-employed person running a Provision Store at Villivakkam, which is a part of the Chennai Municipal Corporation. He would also contend that the Tribunal should have taken at least Rs.10,000/- as the monthly income.

9. Per contra, Mr.S.Sivakumar, learned counsel appearing for the Transport Corporation would justify the award pointing out that though a tall claim was made by the claimants stating that he was earning a sum of Rs.65,000/- per month, no documentary evidence of such income was produced.

10. We have considered the rival submissions.

11. The fact that the deceased was running a provision store in the City is not denied. Even adopting a minimum of 300/- rupees per day, the deceased should have earned Rs.9,000/- per month. Considering the fact that the deceased was aged about 34 years only at the time of the accident, we conclude that the monthly income could be notionally taken at Rs.8,000/-, inasmuch as the income from the provision store may not be stable. If a sum of Rs.8,000/- is taken to be the monthly income adding 40% towards future prospects, the monthly income for the purposes of determining the loss of dependency would be Rs.11,200/-. Admittedly, the deceased was survived by his wife and parents and therefore, 1/3 is deducted towards his personal expenses.

Thus, calculated the total loss of dependency would be

Rs.11,200/- x 12 x 16 x 2/3 = Rs.14,33,600/-.

The Tribunal has awarded a sum of Rs.10,000/- each to the claimants towards loss of love and affection and Rs.25,000/- towards loss of consortium to the 1st claimant being the wife. These awards are not in consonance with the Larger Bench decision of the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 1 LW 331. Therefore, the award of the Tribunal on conventional heads is modified as follows:

S.No.	Heads	Amount
1.	Loss of dependency (Rs.11,200/- x 12 x 16 x 2/3)	Rs.14,33,600/-
2.	Towards loss of love and affection to the parents at Rs.25,000/- each	Rs. 50,000/-
3.	Towards loss of consortium to the 1 st claimant wife	Rs. 40,000/-
4.	Towards funeral expenses	Rs. 15,000/-
5.	Towards loss of estate	Rs. 15,000/-
	TOTAL	Rs.15,53,600/-

We are not awarding any amount towards transportation as it is seen that the deceased died on the spot. The amount awarded towards loss of estate at Rs.10,000/- is enhanced to Rs.15,000/-

12. In fine the Appeal is partly allowed, the compensation awarded by the Tribunal is modified and enhanced Rs.15,53,600/- with 7.5% interest from the date of petition till date of payment. However, there shall be no order as to costs in this appeal.

13. The apportionment of the compensation is as follows:

The 1st claimant/1st Appellant wife would be entitled to Rs.9,53,600/- with proportionate interest and the entire costs. The claimants 2 & 3/ appellants 2 and 3 the parents would be entitled to Rs.3,00,000/- each with proportionate interest.

14. The Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited within a period of eight (8) weeks from the date of receipt of a copy of the judgment. On such deposit, the claimants, namely, the appellants 1 to 3 will be entitled to withdraw the entire compensation.

Sd/-

Assistant Registrar(CS -VIII)

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Sub Assistant Registrar

jv

To

The Motor Accidents Claims Tribunal,

Chief Judge,Court of Small Causes, Chennai.

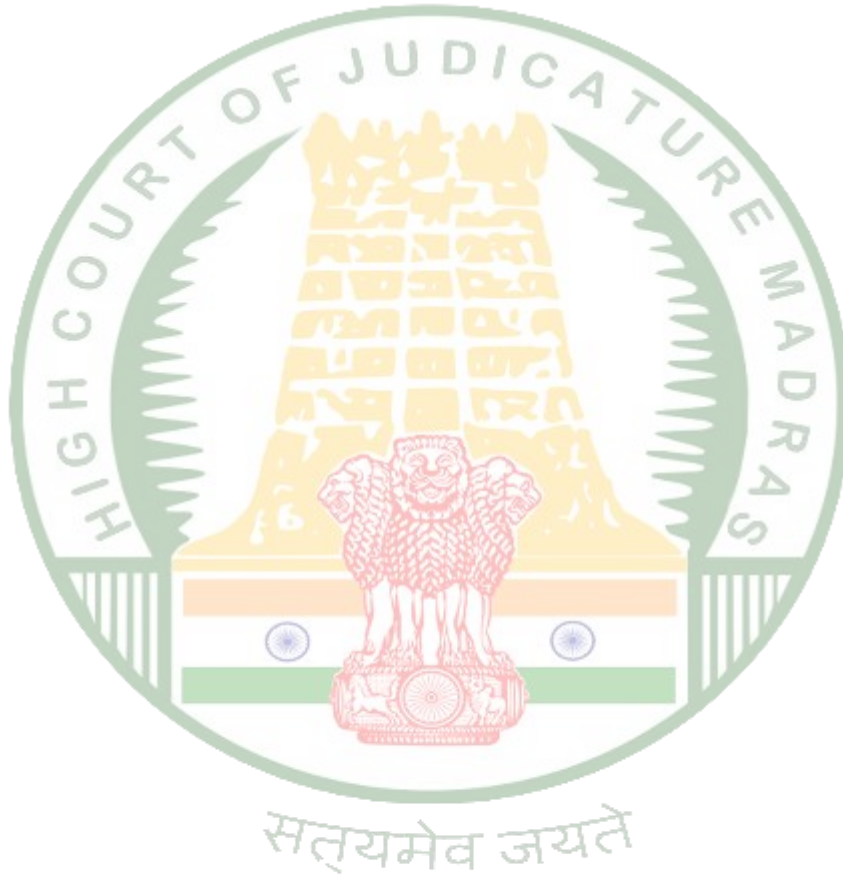
+1cc to M/s.A.S.Bilal, Advocate SR.No.67924

+1cc to Mr.S.Sivakumar, Advocate SR.No.67973

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SJ(CO)

GMY(30/10/2018)



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