

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1992 of 2018

1. K.Saravanan
2. K.Ravi

...Appellants

Vs

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai - 2.

...Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 18.8.2017 passed in M.C.O.P.No.64 of 2016 by the Motor Accidents Claims Tribunal-I, Tiruvallur (Special District Court, Tiruvallur).

For Appellants : Ms.Ramya V.Rao

For Respondent : Mr.S.Sivakumar

JUDGMENT

Calling into question the decree and judgment dated 18.8.2017 passed in M.C.O.P.No.64 of 2016 by the Motor Accidents Claims Tribunal-I, Tiruvallur (Special District Court, Tiruvallur), the present civil miscellaneous appeal is filed.

2. The facts in a nutshell are as under: The claimants are the appellants herein. They are sons of the deceased Kistappan @ Mannar. It is the claim of the appellants that on 26.6.2015 at about 0930 Hours, when the deceased Kistappan @ Mannar, was riding bicycle from Velliyur Water Station and got down from cycle and was crossing the road from North to South, a bus bearing registration No.TN-01-N-9946 proceeding from Redhills to Thiruvallur, driven by its driver in a rash and negligent manner, without noticing the hand signal of the deceased, hit the deceased. Due to the accident, the deceased is said to have sustained grievous injuries and he was taken to Tiruvallur

Government Hospital and thereafter, he was transferred to RGGGH, Chennai for further treatment. He died in the said hospital on the same day.

3. It is the case of the claimants that the accident occurred only due to the rash and negligent driving of the driver of the bus bearing registration No.TN-01-N-9946 and, therefore, the appellants claimed compensation of Rs.10 lakhs.

4. The respondent Corporation in the counter affidavit filed before the Tribunal denied the manner of accident and further stated that the driver of the bus drove the bus at moderate speed and it was only the deceased who suddenly attempted to cross the road without seeing the traffic on the main road and without giving any hand signal. In other words, it was the plea of the Corporation that the deceased was solely responsible for the accident. The Corporation also denied the avocation and income of the deceased. He prayed for dismissal of the claim petition.

5. The learned Tribunal, by decree and judgment dated 18.8.2017 passed in M.C.O.P.No.64 of 2016 held that the driver of the bus was responsible for the accident and that it was only due to his negligence the accident occurred. The Tribunal directed the respondent Corporation to pay compensation of Rs.85,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

6. Seeking enhancement of compensation, the unsatisfied claimants have filed this appeal.

7. The learned counsel appearing on behalf of the appellants argued that the Tribunal failed to follow the Motor Vehicles Act, which clearly states that the legal representatives of the deceased are entitled to compensation. He would submit that the Tribunal went wrong in not awarding compensation under loss of pecuniary benefits/loss of income. Further, she added that the children are entitled to father's estate and compensation has to be awarded accordingly. The learned counsel further submitted that the Tribunal ought to have taken the monthly notional income of the deceased and applied multiplier and awarded just and reasonable compensation. The Tribunal failed to evaluate the facts, pleadings and the case law from proper perspective. Nonetheless, the award passed by the Tribunal was grossly low, unjust and arbitrary and seeks for enhancement.

8. The learned counsel appearing on behalf of the respondent reiterated the reasons that weighed with the Court below and prayed for dismissal of this appeal.

9. I have heard Ms.Ramya V.Rao, learned counsel appearing for the appellants and Mr.S.Sivakumar, learned counsel for the respondent and also perused the materials available on record.

10. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the claimants and secondly, none of those findings are under challenge. As against fastening liability against the respondent, no appeal has been preferred by the respondent. Hence, only the quantum of compensation is in issue in this appeal.

11. The appellants who are married sons have filed the claim petition claiming compensation of Rs.10,00,000/- for the death of their father Kistappan @ Mannar in a road traffic accident. In their claim petition, the appellants have stated that at the time of accident, their father was aged 53 years and was earning Rs.9,000/- per month by doing agricultural coolie.

12. To prove that at the time of accident, the deceased was aged 53 years, the appellants have produced Ex.P12-aadhar card of the deceased. On the other hand, the respondent, by relying upon Ex.P4-post mortem certificate contended that at the time of accident the deceased was aged 67 years. Believing the version of the respondent, the Tribunal has taken the age of deceased as 67 years and determined the compensation. Though the determination of age on the basis of the post mortem certificate is valid, post mortem certificate is not a conclusive proof to prove the age of the deceased. The Doctor who were conducting autopsy noting only the approximate age in the post mortem certificate. Now a days aadhar cards are reliable piece of evidence to prove the age, residence and identity, the appellants can very well rely on the aadhar card of the deceased to prove the age of the deceased. Therefore, this Court holds that the Tribunal went wrong in taking the age of the deceased as 67 based on the post mortem certificate and it ought to have taken the age as 53 years as per Ex.P12-aadhar card. Thus, for determination of the compensation, the age of the deceased is fixed as 53 years at the time of accident.

13. In its award, the Tribunal held that the appellants were not residing with the deceased at the time of accident and therefore, there was no pecuniary loss to the claimants and no loss of dependency of the deceased.

14. The Motor Vehicles Act specifically states that the legal representatives of the deceased are entitled to

compensation. It is well settled that legal representatives cannot be interpreted to mean only dependents.

15. In *Branch Manager, ICICI Lombard General Insurance Co., Mumbai v. Kaliyamoorthy and others*, reported in 2016 (1) TN MAC 453 (DB), a Division Bench of this Court held as under:

"15. Exclusion of a married daughter/sister/brother from the Claim Petition, altogether would be opposed to the object of the Act and it would amounting to adding words to the legislation, which the Court is not supposed to do. As held by the Apex Court, even if there is casus omissus, it is not for the Court to add words to the legislation. The construction and interpretation of the words, "Legal Representatives" in Section 166 of the Motor Vehicles Act, in the context and nature of legislation, being beneficial, should be interpreted in such a way not to take away their rights. Merely because a married daughter/sister is living with her husband, in a separate house, that by itself would not disentitle her from claiming Compensation, as a Legal Representative, to represent, the estate of the deceased.
.....

21. It is a well recognised Rule of Interpretation of Statutes that the expressions used in the statute, should ordinarily be understood, in which, they harmonise with the object of the statute and which effectuate the object of the Legislature and the Court should adopt an object-oriented approach, keeping in mind the language employed in the Statute. When the Legislature has used the words, "Legal Representative" in Section 166 of the Act, and having regard to the duty of the Court to act upon the true intention of the legislature, "Mens or Sententia legis", this Court is not inclined to accept the submissions of the Insurance Company, interpret and circumscribe the meaning of the words, "Legal Representatives" to mean only "dependents". Just because a brother or sister is married, the right to represent the estate of the deceased is not taken away and such an interpretation, would make the provisions of Law of Succession, ineffective."

16. In the case on hand, to prove that the appellants are the legal representatives of the deceased, they have produced Ex.P6-legal heir certificate and the same has not been disputed by the respondent. According to the respondent, the appellants

are not dependents and therefore, they are not entitled to get compensation. Just because the appellants are married, the right to represent the estate of the deceased was not taken away. When the legislature used the words "legal representatives" in Section 166 of the Motor Vehicles Act and having regard to the duty of the Court to act upon the true intention of the legislature, this Court is not inclined to accept the submissions of the respondent that the appellants are not the dependents of the deceased.

17. As the statute is very clear that all the legal representatives can maintain a claim under Section 166 of the Motor Vehicles Act, depending upon the loss of monetary benefit or the gratuitous and invaluable services, measured in terms of money, that the legal representative, might have received and the likelihood of loss in the event of death, married sons can maintain a claim, the words legal representatives cannot be narrowed down to mean only dependents.

18. Though the appellants have contended that at the time of accident, the deceased was earning Rs.9,000/- by doing agricultural coolie work. To disprove the same, the respondent has not produced any materials. However, a person doing agricultural coolie could not have work in all thirty days. Therefore, in the absence of any proof to show that the deceased was earning Rs.9,000/- per month before the accident and taking note of the fact that an agricultural coolie would have earned Rs.200/- to Rs.250/- per day, this Court consider to take the monthly income of the deceased at Rs.6,500/- per month. As the age of the deceased was fixed as 53 years, if he alive, he would have earned more. Therefore, considering the age of the deceased and also no rebuttal evidence was adduced by the respondent, it would be appropriate to give 10% addition towards future prospects. If we give 10% addition, the monthly income would come to Rs.7,150/- and the annual income is calculated at Rs.85,800/-. Deducting one-third towards personal expenses, the contribution to the family would come to Rs.57,200/- per annum.

19. As stated supra, at the time of accident, the deceased was aged 53 years. For the age group 51 - 55, the multiplier to be applied is "11". Adopting multiplier "11", the loss of dependency is calculated at Rs.6,29,200/-.

20. As far as conventional damages awarded by the Tribunal is concerned, it would be appropriate to award a sum of Rs.15,000/- towards funeral expenses; Rs.40,000/- towards loss of love and affection and Rs.15,000/- towards loss of estate. Thus, the total compensation entitled by the appellants is calculated at Rs.6,99,200/-.

21. Though the appellants have claimed compensation of Rs.10,00,000/- before the Tribunal, the Tribunal awarded Rs.85,000/- and the appellants have filed the appeal for the value at Rs.5,00,000/-.

22. In Nagappa v. Gurudayal Singh and others, reported in 2003 ACJ 12 (SC), the Hon'ble Supreme Court held that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if the Tribunal considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such as award. The Hon'ble Supreme Court said that the only embargo was that it should be just compensation, that is to say, it should be neither arbitrary or fanciful nor unjustifiable.

23. In view of the above discussions, the total compensation of Rs.85,000/- awarded by the Tribunal is enhanced to Rs.6,99,200/- as under:

Heads	Rs.
Loss of dependency	6,29,200.00
Loss of estate	15,000.00
Loss of love and affection	40,000.00
Funeral expenses	15,000.00
Total	6,99,200.00

24. In the result, the Civil Miscellaneous Appeal is allowed with proportionate costs. The total compensation of Rs.85,000/- awarded by the Tribunal is enhanced to Rs.6,99,200/-. The respondent is directed to deposit the enhanced compensation with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are entitled for equal share with accrued interest. The appellants are directed to pay the deficit court fee and Registry is directed to draft the decree only after payment of the deficit court fee by the appellants. In so far direction for deposit and withdrawal, the same is unaltered.

vs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal-I,
Tiruvallur
(Special District Court, Tiruvallur).

+1cc to M/s.S.Sivakumar, Advocate, S.R.No.60399

+1cc to M/s.A.N. Viswanatha Rao, Advocate, S.R.No.60391

C.M.A.No.1992 of 2018

CP (CO)

KAK (26/12/2018)



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