

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2402 of 2016
and
Cross Objection No.28 of 2017

C.M.A.No.2402 of 2016

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

... Appellant/Respondent

...vs...

1.Jayalakshmi
2.Anandaraman Achari
3.A.Sathya

... Respondents/Claimants

Cross Objection No.28 of 2017:

1.Jayalakshmi
2.Anandaraman Achari
3.A.Sathya

... Cross Objectors

Vs.

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

... Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, and the cross objection has been filed under order 41 Rule 22 CPC, both against the Order and Decreetal order dated 04.09.2013 made in MCOP.No.243 of 2011 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tindivanm.

For Appellants : Mr.A.Antony Arokiaraja
Appeal and respondent
in cross appeal.

For Respondents : Mr.K.Subburam
in CMA, and cross
objector in cross objection

JUDGMENT

Being aggrieved over the finding of the Tribunal, dated 04.09.2013 made in MCOP.No.243 of 2011 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tindivanam, the respondent transport corporation have come forward with this present appeal to set aside the award passed by the Tribunal.

The petitioners/claimants preferred the Cross Objection No.28 of 2017 in C.M.A.No.2402 of 2016 for enhancement of the award amount.

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 18.03.2010 at about 7.30 p.m., while the deceased Sakthivel was proceeding in a two wheeler bearing Registration No.TN-21-N-2926 from Deevanur to Gingee, while going near Salai Pathamman Temple, the respondent Transport Corporation Bus bearing Registration No.TN-32-W-2936 came at high speed dashed against the two wheeler resulting in the deceased Sakthivel being thrown out and suffered fatal injuries resulting in his death subsequently. The accident occurred only due to the rash and negligent driving by the respondent bus driver. The deceased was aged about 30 years and by working as Iron smith, was earning a sum of Rs.10,000/- per month. The petitioners who are the parents and sister of the deceased were dependent on his earnings. Thus, the petitioners sought for a sum of Rs.10,00,000/- as compensation from the respondent.

4. On the other hand, opposing the claim petition, the respondent Transport Corporation filed counter contending that the accident does not occur due to the negligence of the respondent bus driver and their bus was not involved in any accident. While the accident took place on 18.03.2010, the police registered the case only on 22.03.2010 which are shows that there was no accident as alleged by the petitioners. While the respondent bus was proceeding towards Thirvannamalai from Chennai on 18.03.2010 around 7.30 p.m., the crew of the bus and

passengers were enquired by the police as to whether any accident has occurred and the same was replied in negative. Thus, the respondent bus bearing Registration No.TN-32-W-2936 was not involved in the alleged accident as stated by the petitioners. The age, avocation and income of the deceased as alleged by the petitioners is not true. Thus, the respondent Transport Corporation sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P5 to prove their claim. On the side of the respondent, neither oral nor documentary evidence was let in.

6. The Tribunal, after analysing the evidence available on record found the negligence on the part of the respondent bus driver alone is the cause for the accident and passed an Award for a sum of Rs.3,37,000/- as compensation to the petitioners. Being aggrieved over the finding of the Tribunal, the respondent Transport Corporation has come forward with this present appeal seeking to set aside the award passed by the Tribunal. While so, not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants has come forward with this Cross Objection.

7. I have heard the learned counsel appearing for the appellant Transport Corporation and the learned counsel appearing for the respondents/claimants and perused the materials available on record.

8. The learned counsel appearing for the appellant Transport Corporation contended that the Tribunal wrongly fixed the negligence on their bus driver without any basis. The First Information Report was registered belatedly 4 days after the accident and that itself will go to show the false nature of the complaint. The amount awarded by the Tribunal under the different heads is very excessive. Thus, the respondent Transport Corporation sought for setting aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel appearing for the petitioners/respondents/claimants contended that the Tribunal wrongly fixed the notional income of the deceased at Rs.4,000/- per month and deducted 50% of the amount towards personal expenses. The multiplier applied is also not correct. Thus, the respondents/claimants sought for enhancing the award amount by entertaining the cross objection.

10. The petitioners clearly stated about the involvement of the respondent bus in the accident which took place on 18.03.2010 at 7.30 p.m., The eye witness to the occurrence who

deposed as P.W.2 stated that on the occurrence day at about 7.30 p.m., while he was proceeding as pillion rider in the two wheeler bearing Registration No.TN-32-Y-8596 driven by the deceased Sakthivel near the Salai Patha Amman Temple, the respondent Transport Corporation bus bearing Registration No.TN-32-W-2936 came at high speed dashed against the motor cycle causing fatal injuries to the said Sakthivel. The police also registered the case against the driver of the respondent bus driver as evidenced by Ex.P1 First Information Report. It is clear from the evidence of P.W.2 and the contents of Ex.P1 First Information Report that the negligence of the respondent bus driver alone caused the accident.

11. On the other hand, the respondent did not let in any oral or documentary evidence to contradict the claim of the petitioners. Even though, the respondent contended that false case has been foisted against them, there is nothing on record to substantiate the same. Merely because, there was 4 days delay in filing the first information report after the accident occurred alone is not sufficient to accept the contention of the respondent that false case is foisted against their driver. There is no reason for the police to register the false case against the respondent bus driver. As such, the Tribunal is justified to hold that the negligence of the respondent bus driver alone caused the accident and the claim of the petitioner about the involvement of the respondent bus in the accident is just and proper.

12. The petitioners stated that the deceased was aged about 30 years and by working as Iron smith was earning a sum of Rs.10,000/- per month. It is clear from Ex.P5 Postmortem Certificate that the deceased was aged 30 years. In the absence of any other document regarding his age, it is just and proper to fix his age as 30 years as per Ex.P5 Postmortem Certificate. The petitioners contends that the deceased by working as Iron smith was earning a sum of Rs.10,000/- per month. However, as there is no proof produced to prove the same, the Tribunal fixed the notional income of the deceased at Rs.4,000/- per month. This, the learned counsel appearing for the petitioners/claimants contends it is very low and in fact lesser than the minimum wages payable to any normal person. Considering the fact that the accident took place during 2010, the said contention of the petitioners/claimants appears to be just. Thus, even assuming the deceased was earning Rs.200/- per day, he would have earned a sum of Rs.6,000/- per month. Hence, the notional income of the deceased is fixed at Rs.6,000/- per month. As the deceased was aged 30 years, it will be appropriate to add 40% of the income towards future prospects. So, the monthly income will be $(Rs.6000/- \times 40\% = Rs.2,400/- + Rs.6000/- = Rs.8,400/-)$. The deceased being a bachelor, 50% of

the amount is to be deducted towards his personal expenses. Thus, the contribution to his family will be Rs.4,200/-. As stated earlier, the deceased was aged 30 years. However the Tribunal on the basis of the age of the parents of the deceased applied the multiplier at 13. Pointing it out, the learned counsel appearing for the petitioners/claimants contended that only the age of the deceased is to be taken into account for fixing the multiplier. The said contention is correct. As such, the deceased being aged 30 years, the correct multiplier to be applied is 17. Hence, the loss of income is calculated as follows:-

$$\text{Rs.4,200/-} \times 12 = \text{Rs.50,400/-} \times 17 = \text{Rs.8,56,800/-}.$$

13. 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 modify the compensation as under:-

Loss of Estate	Rs.15,000.00
Funeral Expenses	Rs.15,000.00

Rs.	Rs.30,000.00

14. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	3,12,000.00	8,56,800.00
2.	Funeral Expenses	5,000.00	15,000.00
3.	Loss of love and affection	15,000.00	15,000.00
4.	Loss of Estate	-	15,000.00
5.	Transportation	5,000.00	5,000.00
	Total	3,37,000.00	9,06,800.00

Accordingly, the quantum of compensation Awarded by the Tribunal is modified and the same is enhanced to Rs.9,06,800/-.

15. C.M.A.No.2402 of 2006

In the result, the civil miscellaneous appeal is dismissed. No costs.

16. Cross Objection No.28 of 2017:

In the result, The Cross Objection is allowed. No costs. The amount of Rs.3,37,000/- awarded by the Tribunal dated 04.09.2013 made in MCOP.No.243 of 2011 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tindivanam, is hereby enhanced to Rs.9,06,800/-. The appellant Transport Corporation is directed to deposit the entire award amount of Rs.9,06,800/- with interest at the rate of 7.5% p.a.

from the date of claim petition till the date of deposit the award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 and 2/claimants 1 & 2 are entitled to 40% each of the award amount and the third respondent/3rd petitioner is entitled to 20% of the award amount. The respondents/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. Consequently, CMA No.2402/2016 is dismissed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rrg

To

The II Additional District Judge,
Tindivanam.

Copy to
The Section Officer,
VR,Section, High Court Madras.

+1cc to Mr.K.Subburam, Advocate, S.R.No.31557

+1cc to Mr.A.Antony Arockiaraja, Advocate, S.R.No.31649

C.M.A.No.2402 of 2006

SSI(CO)
GSP(03/07/2018)

सत्यमेव जयते

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