

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.645 of 2015

- 1.Pattiyammal
- 2.Krishnan

... Appellants /Petitioners

..vs..

- 1.A.Chandrasekaran

- 2.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Division - I, Mettupalayam Road,
Coimbatore.

- 3.K.R. Health Care Private Ltd.,
No.93, Mettupalayam Road,
P.N.Palayam, Coimbatore.

- 4.National Insurance Company Ltd,
No.3, Middleton Street,
Post Box No.9229,
Kolkotta - 700 007.

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 21.12.2011 made in MCOP.No.250 of 2009 on the file of the Motor Accident Claims Tribunal/(Additional District Court, Fast Track Court No.II, Gobichettipalayam.

For Appellants : Mr.Ma.P.Thangavel
For Respondents : Mr.R.T.Sundari for R-2

JUDGMENT

This civil miscellaneous appeal arises out of the Fair and Decreetal order dated 21.12.2011 made in MCOP.No.250 of 2009 on the file of the Motor Accident Claims Tribunal/(Additional District Court, Fast Track Court No.II, Gobichettipalayam.

2. For 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 04.01.2009 at about 16.00 hours, when the deceased was travelling in an Ambulance bearing Registration No.TN-38-AB-0268, as Hospital ward boy, in Coimbatore to Trichy Road, from East to West, the driver of the first respondent bus bearing Registration No.TN-33-N-2376 drove the bus, at high speed in the opposite direction and dashed against the vehicle, in which the deceased was travelling. Due to the said accident, the deceased sustained fatal injuries on his head and all over the body and died on the same day in the Hospital. The accident occurred only due to the negligence of the driver of the second respondent Corporation bus and as such the respondents are liable to pay the compensation. The petitioners further stated that the deceased was working as Ward Boy in a private hospital and earned a sum of Rs.6,000/- per month at the time of the accident. Further, the deceased was aged only 28 years and due to his demise, the petitioners who are the parents of the deceased have lost the love and affection of the Boy and also contribution to the family. Hence, the petitioners seek a sum of Rs.8,00,000/- as compensation.

4. On the other hand, opposing the claim petition, the second respondent Transport Corporation filed a detailed counter stating that the first respondent's driver is not responsible for the accident. The manner of accident also is denied. According to the second respondent, on 04.01.2009 at about 3.15 p.m., when the driver of the second respondent bus was proceeding towards Trichy by driving the bus at normal speed, at that time, an Ambulance came in a opposite direction and suddenly turned to the right side without observing the traffic rules, resulting in collusion between the second respondent bus and the said ambulance van. Thus, according to the second respondent, the negligent driving of the Ambulance by its driver alone caused the accident. However, without proper enquiry, the police has registered a case against the driver of the bus. It is further contended that the driver of the Ambulance is not having valid licence and the petitioners have to prove the age, avocation and monthly income of the deceased. Hence, the second respondent seeks dismissal of the petition.

5. Similarly, the 4th respondent Insurance Company contends that the age, avocation and income of the deceased is to be established and the accident occurred only due to the carelessness and negligent driving of the second respondent corporation bus driver and the ambulance van driver is no way responsible for the accident. Further, as the ambulance van

driver was not having valid driving licence and the vehicle was not having insurance policy and permit in force. The 4th respondent claims that they are not liable to pay the compensation. Hence, he sought for dismissal of the petition.

6. Before the Tribunal, the second petitioner examined himself as P.W.1 and eye witness to the occurrence one Rajendran was examined as P.W.2 and produced documents Ex.P1 to Ex.P6 to substantiate their claim. On the side of the second respondent, one Chandrasekaran was examined as R.W.1 and produced Ex.R1 and Ex.R2 to prove their claim.

7. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the second respondent Corporation bus and hence the respondents 1 and 2 are directed to pay a sum of Rs.2,89,000/- as compensation. The Tribunal has passed the award as follows:-

Pecuniary Loss	Rs.	2,64,000.00
Loss of consortium	Rs.	20,000.00
Funeral Expenses	Rs.	5,000.00

Total	Rs.	2,89,000.00

Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants filed this present appeal seeking enhancement of Award amount.

8. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent and perused the materials available on record.

9. The learned counsel appearing for the appellants/claimants submitted that the Judgment of the Tribunal with regard to the quantum of compensation is very low. The Tribunal failed to consider the appellants/claimants claim for compensation of Rs.8,00,000/- but, the Tribunal awarded only a meager sum of Rs.2,89,000/- as compensation. Hence, based on the available records, it should be enhanced in the interest of justice. He further contends that the Tribunal ought to have considered that at the time of the accident, the deceased was only 26 years and working as ward boy in a private hospital and earned a sum of Rs.6,000/- per month. However, the Tribunal without considering the said fact, fixed the notional income at Rs.3,000/- per month. Moreover, the Tribunal failed to consider 50% of future prospectus, since the deceased was aged about 26 years at the time of the accident. The Tribunal ought to have applied multiplier of 18 considering the age of the deceased, instead of multiplier 11 with respect to age of the parents of

the deceased. He further contends that the amount awarded under other conventional heads by the Tribunal is very low and the same has to be enhanced. Hence, petitioner prays for enhancing the award amount by entertaining the appeal.

10. Per contra, the learned counsel for the second respondent Transport Corporation contended that the Tribunal has properly assessed the loss of income with available record and awarded a just compensation to the petitioners. The claim of the petitioners for enhancement is unsustainable as the award passed by the Tribunal is proper and arrived after due consideration of available materials. Thus, the second respondent seeks dismissal of the appeal.

11. The eye witness to the occurrence, who deposed as P.W.2 stated that on 04.01.2009, while he was proceeding from East to West in his friend motor cycle around 4.00 p.m., he saw the ambulance van going ahead on him at normal speed and suddenly the State Transport Corporation bus bearing Registration No.TN-38-AB-0268 came in the opposite direction at high speed and dashed against the ambulance resulting in the accident. When they rescued the passenger inside the ambulance van, one of them was found dead. During the course of examination, P.W.2 has categorically stated that the driver of the ambulance was not responsible and only the driver of the second respondent bus was responsible for the accident. Further, Ex.P1 First Information Report is registered against the driver of the second respondent bus only. It is also evident from Ex.P5 charge sheet that the driver of the second respondent bus alone is responsible for the accident. As per Ex.P3 and Ex.P4, Motor Vehicle Inspector's report that the vehicles involved in the accident had no mechanical defects. Hence, on the basis of Ex.P1 first information report, Ex.P5 Charge Sheet and the evidence of eye witness P.W.2 it is clear that the rash and negligent driving of the driver of the second respondent bus alone is the cause for the accident and the conclusion of the Tribunal as such is justifiable and it needs no interference.

12. The Tribunal considering the evidence available before it concluded that the deceased was aged about 28 years as per Ex.P2 Postmortem Certificate and the petitioners are legal heirs of the deceased as per Ex.P6 legal heir certificate. Even though the petitioners claim that the deceased earned a sum of Rs.6,000/- per month by working in a private hospital as word boy, no documentary proof to that effect is produced. Therefore, the Tribunal fixed the notional monthly income of the deceased at Rs.3000/- per month. Thus, the petitioners contended that the said amount is very low and the amount should be fixed as Rs.6,500/- per month. Considering the fact that the deceased was working as ward boy in a private hospital, it will

be appropriate to fix a sum of Rs.6,500/- as notional income. Further, as the deceased was aged about 28 years, 40% as the same is to be added as future prospectus. Thus, the monthly income would be Rs.6,500/- added 40% Rs.2,600/- = Rs.9,100/-. As such, the deceased was aged about 28 years, the correct multiplier to be applied is 17. Further, the deceased being bachelor, 50% of the amount earned by the deceased is to be deducted towards his personal expenses. As such the pecuniary loss of income calculated is as follows:- Rs.9,100/- - Rs.4,550/-(50%) = Rs.4,550/- x 12 = Rs.54,600/- x 17 = Rs.9,28,000/-. Thus, the loss of income comes to Rs.9,28,200/-.

13. The learned counsel for the appellants/claimants relying upon the judgment of the Division Bench of this Court dated 06.11.2017 passed in CMA.No.1351 of 2017 contended that the parents of the deceased was entitled to loss of love and affection. Hence, following the said Division Bench ruling of this Court, it will be appropriate to give Rs.25,000/- each for love and affection.

14. 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
Transportation	=	Rs.10,000.00

15. 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	2,64,000.00	9,28,200.00
2.	Loss of Estate	-	15,000.00
3.	Loss of love and affection	-	50,000.00
4.	Funeral Expenses	5,000.00	15,000.00
5.	Loss of consortium	10,000.00	-
6.	Transportation	-	10,000.00
	Total	2,89,000.00	10,18,200.00

16. In view of the above modification, the civil miscellaneous appeal is partly allowed with costs. The second respondent State Transport Corporation is directed to deposit the entire enhanced award amount of Rs.10,18,200/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount and after deducting the amount

that has already been deposited by them within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the petitioners/claimants are entitled to equal share of the award amount. The petitioners/claimants are permitted to withdraw their respective shares with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar (CS III)

//True copy//

Sub Assistant Registrar

rrg

To

The Motor Accident Claims Tribunal
Additional District Judge,
Fast Track Court No.II,
Gobichettipalayam.

+1cc to Mr.R.T.Sundari, Advocate SR.No.8351

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.8361

C.M.A.No.645 of 2015

SSD (CO)
GN (23/05/2018)

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