



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
CMA.No.66 of 2015
and M.P.Nos.1 & 2 of 2015
and Cross.Obj.No.41 of 2018

CMA.No.66 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation (VPM) Limited,
Villupuram Division,
III Vedachalam Maligai, No.1,
Sheikpet Naidu Street,
Kancheepuram.

... Appellant/
respondent

Vs

1. G.Maragathavalli
2. G.Prakash Raj
3. Minor. G.Dhinesh Kumar
4. Minor. Vidya
5. N.Shanmugam
6. Kanagammal

... Respondents/
Petitioners

Cross Objection No.41 of 2018

1. G.Maragathavalli
2. G.Prakash Raj
3. Minor. G.Dhinesh Kumar
4. Minor. Vidya
5. N.Shanmugam
6. Kanagammal

.... Cross objector

Vs

The Managing Director,
Tamil Nadu State Transport
Corporation (VPM) Limited,
Villupuram Division, III
Vedachalam Maligai, No.1,
Sheikpet Naidu Street,
Kancheepuram.

... Respondent

COMMON PRAYER : Civil Miscellaneous Appeal & Cross
Objection are filed against the judgment and decree dated
27.08.2013, made in M.C.O.P.No.899 of 2011 on the file of the



Motor Accident Claims Tribunal, Chief Judge, Small Causes,
Chennai.

For Appellant
in CMA/Transport Corporation : Mr.K.J.Sivakumar

For Petitioners/claimants
Cross Objectors : Mr.K.Prem Kumar

C O M M O N J U D G M E N T

(KRISHNAN RAMASAMY, J)

The appellant/Transport Corporation has preferred the present appeal in CMA.No.66 of 2015 and claimants have filed Cross Objection No.41 of 2018 against the order of Motor Accident Claims Tribunal, Chief Small Causes Judge, Chennai in MCOP No.899 of 2011 dated 27.08.2013.

2. Heard Mr.K.J.Sivakumar, the learned counsel appearing for the appellant/Transport Corporation and Mr.K.Prem Kumar, the learned counsel appearing for the claimants/cross objectors.

3. The brief facts of the case are as follows:-

On 12.02.2011 at about 9:00 p.m. while the deceased was travelling in his Hero Honda motor cycle bearing Reg.No.TN-21-AE-9528 from Orikkal towards Kaliyamboondi Nobel tech industries to attend his job near Kuruvimalai junction road at Kancheepuram to Uthiramerur road, the respondent's bus bearing Reg.No.TN-21-N-0709 was driven by its driver in a rash and negligent manner from Uthiramerur to Kancheepuram in opposite direction and hit against the motor cycle and due to the accident the deceased sustained grievous head and other injuries and died on the way to the hospital leaving behind the petitioners as his legal heirs. A case was registered in Crime No.25 of 2011 in Magarai Police Station. The deceased was aged 42 years and he was working as technician in Nobeltech Industries, Kaliyamboondi, Uthiramerur Taluk and earned Rs.20,000/- per month. The respondent/Transport Corporation being the owner of the bus is liable to pay the compensation to the petitioners.

4. The respondent/Transport Corporation stated that the bus bearing Reg.No.TN-21-N-0709 was proceeding towards Kancheepuram from Uthiramerur and at about 20:20 hrs near Kurivimalai X road bus stop, the bus was stopped for alighting the passengers and a two wheeler bearing Reg.No.TN-21-AE-9528 came straight at a high speed in the opposite direction and dashed against the front bumper of the standing bus and due to that the motor cycle rider fell down and sustained injuries and the injured was taken to Kancheepuram Government Hospital by ambulance van. According to the respondent/Transport Corporation the accident was due to the rash and negligent



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driving of the two wheeler rider. Further the respondent stated that the rider of the motor cycle did not possess valid license and also did not wear helmet at the time of accident. Therefore the Transport Corporation is not entitled to pay any compensation as claimed by the claimants.

5. The Tribunal after considering pleadings and evidences both on oral and writing came to the conclusion that the accident occurred due to the negligent driving of the driver of the bus bearing Registration No. TN-21-N-0709.

6. The Tribunal awarded a sum of Rs.10,57,800/- as compensation to the claimants, against the claim amount of Rs.20,00,000/-. Aggrieved over the said findings and award, the appellant/Transport Corporation has come forward with CMA.No.66 of 2015. Being not satisfied with the quantum of the award, the claimants filed Cross Obj.No.41 of 2018.

7. Under these circumstances, the appellant/Transport Corporation raised the following issues in this appeal:-

1. Whether the negligence fixed by the Tribunal on the part of the driver of the bus is just and fair?
2. Whether the compensation awarded by the Tribunal is just and fair?

7.1.1. On behalf of the claimants, PW2 eye witness was examined and he deposed that on 12.02.2011 at about 9:00 p.m. while the deceased was travelling in his Hero Honda motor cycle bearing bearing Reg.No.TN-21-AE-9528 from Orikkal towards Kaliyamboondi Nobel tech industries to attend his job near Kuruvimalai junction road at Kancheepuram Uthiramerur road and at that time the respondent's bus bearing Reg.No.TN-21-N-0709 was driven by its driver in a rash and negligent manner from Uthiramerur to Kancheepuram in opposite direction and hit against the motor cycle and due to the accident, the deceased sustained grievous head and other injuries and died on the way to the hospital. A case was registered against the driver of the bus in Crime No.25 of 2011 in Magarai Police Station. The deceased was aged 42 years and he was working as technician in Nobeltech Industries, Kaliyamboondi, Uthiramerur Taluk and earned Rs.20,000/- per month. The respondent/Transport Corporation being the owner of the bus is liable to pay the compensation to the petitioners. Based on the evidence of PW2 and Ex.P.1 FIR, the Tribunal came to the conclusion that the negligence is only on the part of the bus driver and not on the part of the rider of the motorcycle. Hence, the Tribunal fixed the negligence on the part of the driver of the bus bearing Reg.No.TN-21-N-0709. We also concur with the findings of the Tribunal in this regard.

7.2.1. PW1 Maragadavalli who is the wife of the deceased (S.Gopalakrishnan) deposed that her husband was aged 42 years at the time of accident and he was a Diploma holder in Mechanical Engineering, Diploma mark sheet and Provisional



certificate of Diploma in Mechanical Engineering were marked as Ex.P.6 and Ex.P.7 respectively. M.P.No.2 of 2015 has been filed seeking to receive the additional evidence and accordingly additional documents No.6 and No.8 have been marked as Ex.P.14 & Ex.P.15 respectively before this Court. Appointment order dated 09.05.2010 was marked as Ex.P.13. The total salary mentioned in the appointment order issued by V.K.G.Steel and Energy Pvt.Limited was Rs.17,500/- per month. To substantiate this contention the claimants produced bank statement for the period from 06.10.2010 to 31.03.2011. It is proved that every month the deceased was drawing a sum of Rs.17,500/- as monthly salary and the same was credited by the employer directly to the account of the deceased. Therefore we have no hesitation to fix the salary of the deceased as Rs.17,500/- for the purpose of determination of "loss of income". The Tribunal fixed the income of the deceased as Rs.6,000/- per month. Hence, we set aside Rs.6,000/- and fix Rs.17,500/- as monthly income of the deceased.

8. PW1 deposed that her husband died on 12.02.2011. Ex.P.2 Post mortem report, Ex.P.3 Death certificate and Ex.P.4 legal heir certificate were marked through PW1. The 1st petitioner is the wife of the deceased, 2nd to 4th petitioners are sons and daughter of the deceased, 5th petitioner is the father of the deceased and 6th petitioner is the mother of the deceased. Post mortem certificate clearly states that the death was due to the injuries sustained by the deceased in the accident.

9. The age of the deceased was 41 years at the time of death and in Ex.P.5, Transfer Certificate, the date of birth of the deceased was mentioned as 07.05.1969. The Post Mortem report, Ex.P.2, also states that the age of the deceased was 41 years. Therefore, the Tribunal fixed the age of the deceased as 41 years. We also concur with the findings of the Tribunal in this regard.

10. Since the deceased died at the age of 41 years, the Tribunal by following the decision reported in 2013(3) CTC 883 [Rajesh and others Vs. Rajbir Singh and others] added 30% towards future prospects. We also concur with the above said view of the Tribunal. Thus 30% of Rs.17,500/- will be a sum of Rs.5,250/-.

11. In the present case, the deceased was aged 41 years. In the light of the reported decision in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, for the age group between 41 to 45 years old, the multiplier to be adopted is '14'. Further in order to calculate the personal expenses, the Hon'ble Apex Court in the case of Sarla Varma (cited supra) has observed that if the deceased is married and dependants are 1 to 6, 1/4th of the total income to be deducted towards the personal expenses of the deceased. The Tribunal also rightly applied the same and we also concur with the findings of the Tribunal



in this regard.

12. Accordingly, we decided that the monthly income of the deceased would be Rs.17,500/-. Adding a component of 30% (Rs.5,250/-) for future prospects, the income would stand at Rs.22,750/-. Deducting an amount of one fourth i.e., (Rs.5,687/-) towards personal expenses, the loss of dependency per month works out to Rs.17,063/-. Applying the multiplier of '14' the total loss of dependency per annum would work out to Rs.28,66,584/-.

13. The Tribunal awarded a sum of Rs.25,000/- towards loss of consortium. In this regard, as per the Hon'ble Apex Court in the judgment of Pranay Sethi's case (cited supra), we re-fix the amount as Rs.40,000/- towards consortium.

14. The Tribunal awarded a sum of Rs.10,000/- towards "loss of estate" and as per the Constitution Bench's judgment in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), the same is enhanced to Rs.15,000/-. The Tribunal awarded Rs.10,000/- under the head "Funeral expenses" and this Court is inclined to enhance it to Rs.15,000/- as fixed in Pranay Sethi's case (cited supra) by the Hon'ble Supreme Court of India. The Tribunal awarded Rs.5,000/- under the head "Transportation"; we are inclined to enhance it to Rs.10,000/-.

15. The tribunal awarded Rs.25,000/- towards love and affection and the same is enhanced to Rs.2,00,000/-. [Rs.50,000/- each to the claimant Nos.2 to 4 and Rs.25,000/- each to the claimant Nos.5 and 6].

16. Hence the total compensation payable to the claimants are as hereunder.

Head	Amount
Loss of dependency	Rs.28,66,584/-
Loss of consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Love and affection to the 2 nd , 3 rd , 4 th , 5 th and 6 th respondents	Rs.2,00,000/-
Transportation	Rs.10,000/-
Total	Rs.31,46,584/-

17. As per the modified award passed by this Court the apportionment is fixed as stated below:-

1. 1st respondent Rs.14,00,000/-
2. 2nd respondent Rs. 5,00,000/-
3. 3rd respondent Rs. 5,00,000/-
4. 4th respondent Rs. 5,00,000/-
5. 5th respondent Rs. 1,00,000/-



6. 6th respondent Rs. 1,46,584/-

18. The Transport Corporation is directed to deposit the entire amount, with interest and costs directly through NEFT or RTGS as per the modified award passed by this Court before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1, 4, 5 & 6 are permitted to withdraw their respective shares as per the ratio fixed by this Court from the total compensation payable to them. The share in respect of the second and third respondents who are minors, shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till minors attain majority. The 1st respondent being the mother of the second and third respondents is permitted to withdraw the quarterly interest from the said deposit. The claimants are directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

19. Accordingly, CMA.No.66 of 2015 is dismissed. Cross.Obj.No.41 of 2018 is partly allowed by enhancing the award of the Tribunal from 10,57,800/- to Rs.31,46,584/-. The said amount shall carry the same rate of interest as awarded by the Tribunal namely 7.5% per annum and the apportionment shall be as ordered by this Court. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To
1.The Chief Judge,
The Motor Accident Claims Tribunal,
Small Causes Court,Chennai.

2.The Section Officer,
VR Section,
High Court, Madras

+lcc to Mr.K.J.Sivakumar, Advocate SR.NO.51987
+lcc to Mr.K.Premkumar, Advocate SR.NO.51619

KJI (CO)
sm:22.11.2018

CMA.No.66 of 2015
and M.P.Nos.1 & 2 of 2015
and Cross.Obj.No.41 of 2018