

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.69 of 2015
and
Cross Objection No.4 of 2017
in Civil Miscellaneous Appeal No.69 of 2015

C.M.A.No.69 of 2015:

The Managing Director,
Tamilnadu State Transport Corporation,
Coimbatore. ... Appellant

Vs

1.Nazeema
2.Minor Mohamed Imrankan
3.Minor Mohamed Ibrahim
4.Minor Mohamed Imshath
(R2 to R4 represented by mother, guardian
next friend R1-Nazeema)
5.Vaippathan-died
6.Patchai Pillai
7.D.Saravanakumar ... Respondents
(R7 not necessary party, hence given up)

Cross Objection No.4 of 2017:

1.Nazeema
2.Minor Mohamed Imrankan
3.Minor Mohamed Ibrahim
4.Minor Mohamed Imshath
(P2 to P4 represented by mother, guardian
next friend R1-Nazeema)
5.Vaippathan (died)
6.Patchai Pillai ... Petitioner

Vs

1.The Managing Director,
Tamilnadu State Transport Corporation,
Coimbatore.

2.Saravanakumar ... Respondents
(R2 not necessary party, given up)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 03.07.2014 passed in M.C.O.P.No.2326 of 2012 by the Motor Accidents Claims Tribunal, Special Sub Judge, Coimbatore.

Cross Objection filed under Order 41, Rule 22 of Code of Civil Procedure, 1908 seeking to enhance the award in M.C.O.P.No.2326 of 2012 by the Motor Accidents Claims Tribunal, Special Sub Judge, Coimbatore.

For Appellant : Mr.V.Udayakumar
in CMA and
1st respondent in
Cross Obj

For Respondents : Mr.Ma.P.Thangavel
1 to 6 in CMA
and Cross Objectors
in Cross Obj

R7 in CMA and
R2 in Cross Objection : Given up

JUDGMENT

Aggrieved the decree and judgment dated 03.07.2014 passed in M.C.O.P.No.2326 of 2012 by the Motor Accidents Claims Tribunal, Special Sub Judge, Coimbatore, the appellant Transport Corporation has filed the appeal. Seeking enhancement, the claimants have filed the Cross Objection in the appeal.

2. For convenience, the parties are referred to as per their array in the appeal.

3. The facts in nutshell are as under: On 1.1.2012 at about 2.15 P.M., the deceased Kasali after purchasing vegetables from the shop returned to his bike bearing registration No.TN-38 K 9895 in Pollachi-Coimbatore Road and while he was nearing Kurichi pirivu, the bus bearing registration No.TN-38 N 807 belonging to the appellant came on the same road in the opposite direction driven by the 7th respondent in a rash and negligent manner dashed against the deceased bike. As a result of which, the deceased was thrown out of his bike and sustained severe head injuries. Immediately, he was taken to the Government Medical College Hospital, Coimbatore, where from he was

transferred to K.G. Hospital, Coimbatore and was taking treatment from 1.1.2012 to 4.1.2012 and succumbed to injuries on 04.1.2012.

4. It is stated that regarding the accident, the 7th respondent lodged a complaint before the Traffic Investigation Wing (East) Police Station, R.S. Puram, Coimbatore and the police have registered a case in Crime No.2 of 2012 under Section 279 and 338 IPC. At the time of accident, the deceased was aged 30 years and was earning Rs.10,000/- by doing vegetable business. The 1st respondent is the wife, respondents 2, 3, 4 are children and respondents 5 and 6 are parents of the deceased. Stating that the accident occurred due to the rash and negligent driving of the driver of the appellant bus i.e., the 7th respondent, the respondents 1 to 6 have filed the claim petition claiming compensation of Rs.20,00,000/-.

5. Resisting the claim petition, the appellant has filed the counter stating that the accident took place only due to the carelessness and negligent act of the deceased. The driver of the bus was not at all responsible for the accident and therefore, the appellant is not liable to pay the compensation. It is stated that the police have registered the case against the deceased and in spite of registration of criminal case, the respondents 1 to 6 have not taken steps to implead the owner and insurer of the motorcycle.

6. It is further stated that on the date of accident, the driver of the bus took the trip from Sungam to Pothanur at about 2.30 P.M. and when the bus was nearing Kuruchi Kulam, the driver of the bus slowly and carefully drove the same by keeping his left. At that time, the driver of the appellant bus saw a motorcyclist who was coming in the opposite direction by overtaking another vehicle at the middle of the road in a rash and negligent manner. On seeing the motorcycle at a close range, the driver of the bus swerved to the extreme left side of the road and applied brake and stopped the bus in order to avoid any accident. In spite of the best efforts taken by the driver to avoid any accident, the motorcycle which was coming in the same fashion in an uncontrollable speed, dashed against the front right side head light corner of the bus and caused the accident. The accident was happened only due to the negligence and carelessness act of the motorcyclist. Hence, the appellant's bus driver was in no way responsible for the accident and the respondent was not liable to pay any compensation to the respondents 1 to 6. In the counter, the appellant also denied the age, occupation and monthly earning of the deceased and prayed for dismissal of the claim petition.

7. Before the Tribunal, on the side of the respondents 1 to 6, P.Ws.1 to 4 were examined and Exs.P1 to P13 were marked. On the side of the appellant, the driver of the bus was examined as R.W.1 and no documents were marked.

8. Upon consideration of oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the bus and being the owner of the bus, the respondent was liable to pay the compensation. Taking the monthly income of the deceased at Rs.6,000/- and deducting one-fourth towards personal expenses and also applying multiplier "16", the Tribunal awarded total compensation of Rs.11,51,600/-. Aggrieved by the compensation awarded by the Tribunal, the appellant has filed the appeal. Not satisfied with the award amount, the respondents 1 to 6 have filed the Cross Objection.

9. Challenging the award, the learned counsel for the appellant submitted that while fixing the negligence against the driver of the appellant bus, the Tribunal failed to take note of the evidence of R.W.1 and also failed to fix contributory negligence on the deceased, who is the tort-feaser. He would submit without any basis, the Tribunal has taken the monthly income of the deceased at Rs.6,000/- and that the total compensation awarded by the Tribunal is highly excessive.

10. Per contra, the learned counsel for the respondents 1 to 6 submitted that by examining the eye-witnesses to the accident, the respondents 1 to 6 have proved that the accident occurred only due to the rash and negligent driving of the driver of the appellant bus and upon appreciation of evidence, the Tribunal rightly held that the accident occurred due to the rash and negligent driving of the 7th respondent. He would submit that except the evidence of R.W.1, the appellant has not examined any witness to disprove the case of the respondents 1 to 6.

11. As far as the quantum of compensation awarded by the Tribunal is concerned, the learned counsel for the respondents 1 to 6 submitted that though the respondents 1 to 6 have proved that the deceased was earning Rs.10,000/- by doing vegetable business, the Tribunal erred in taking the monthly income at Rs.6,000/- and awarded lesser amount as compensation and therefore, same needs to be enhanced.

12. I have heard Mr.V.Udayakumar, learned counsel for the petitioner and Mr.Ma.P.Thangavel, learned counsel for the respondents 1 to 6 and also perused the materials available on record.

13. The points arises for consideration are:

- (1) Whether the Tribunal was right in fastening negligence on the driver of the appellant bus?
- (2) Whether the total compensation awarded by the Tribunal is reasonable?
- (3) If so, what is the quantum of compensation?

14. Point No.1:

The case of the respondents 1 to 6 is that on 1.1.2012 when the deceased was proceeding in his motorcycle bearing registration No.TN-38 K 9895 on Pollachi-Coimbatore Road and when he was nearing Kurichi pirivu, the appellant's bus bearing registration No.TN-38 N 807 coming on the opposite direction driven by its driver in a rash and negligent manner dashed against the deceased and caused the accident.

15. On the other hand, the appellant denied the manner of accident and contended that due to carelessness of the deceased, the accident was happened and therefore, the appellant is not liable to pay the compensation.

16. Before the Tribunal, the respondents 1 to 6 have examined eye-witnesses to the accident viz., P.W.3 and P.W.4, who have spoken clearly that the accident occurred due to the rash and negligent driving of the driver of the appellant bus. The appellant contended that the accident occurred due to the carelessness of the deceased. To prove the same, admittedly, the appellant has not produced any document. The evidence of R.W.1, who is the driver of the bus is not supported by any documentary proof. Though the appellant denied the manner of accident stated by the respondents 1 to 6, Ex.P5-rough sketch clearly supports the case of the respondents 1 to 6 and also disbelieve the version of the appellant. Thus, Ex.P5-rough sketch disprove the evidence of R.W.1.

17. Moreover, the evidence of eye-witnesses are clear and cogent in respect of the negligence on the part of the driver of the appellant bus. Mere lodging of complaint by R.W.1 against the deceased alleging negligence on him would not in any way help the case of the appellant. As stated supra, the oral and documentary evidence produced by the respondents 1 to 6 clearly prove the negligence on the part of the driver of the bus and being the owner of the bus, the appellant is liable to pay compensation to the respondents 1 to 6. Upon appreciation of oral and documentary evidence, the Tribunal rightly held that the accident occurred due to rash and negligent driving of the driver of the appellant bus. I do not find any error in the award of the Tribunal fastening negligence on the part of the driver of the appellant bus. Hence, this Court is of the view that the Tribunal was right in fastening the negligence on the

part of the driver of the appellant bus and Point No.1 is answered accordingly.

18. Point Nos.2 and 3:

As far as quantum of compensation awarded by the Tribunal is concerned, according to the respondents 1 to 6, at the time of accident, the deceased was aged 30 years and was earning Rs.10,000/- by doing vegetable business. To prove the age of the deceased, the respondents 1 to 6 have produced Ex.P11-driving licence, wherein the date of birth of the deceased mentioned as 24.04.1980. The accident occurred on 1.1.2012. Thus, the age of the deceased at the time of accident is 31, which the Tribunal has rightly taken.

19. Coming to the monthly income of the deceased, the respondents 1 to 6 contended that at the time of accident, the deceased was earning Rs.10,000/- per month by doing vegetable business. In the present case, the respondents 1 to 6 have examined the President of Daily Vegetable Merchant Association as P.W.2. In his evidence, P.W.2 deposed that the deceased was doing vegetable business in the market for 10 years and earned Rs.600/- to Rs.1000/- per day. To rebut the same, the appellant has not produced any material. In the absence of rebuttal evidence and on the basis of the evidence of P.W.2, the Tribunal held that the deceased was doing vegetable business before his death. Since the said finding of the Tribunal is based on evidence, this Court does not want to take a different view.

20. As far as the monthly income of the deceased is concerned, the Tribunal has fixed the monthly income at Rs.6,000/-, which in my opinion is lesser. In his evidence, P.W.2 deposed that by doing vegetable business in the market, the deceased earned Rs.600/- to Rs.1000/- per day. The evidence of P.W.2 assumes much importance. Though the respondents 1 to 6 have failed to produce any document to show that the deceased was earning Rs.10,000/- per month or Rs.600 to Rs.1000/- per day as the case may be, taking note of the fact that at the time of accident, the deceased would have earned at least Rs.300/- per day, this Court is of the view that it would be appropriate to fix the monthly income of the deceased at Rs.8,500/-.

21. While awarding compensation, the Tribunal has not taken into consideration the future prospects. If the deceased alive, he would have earned more. Hence, it would be appropriate to give addition of 40% of the salary towards future prospects. If we add 40%, the monthly earning of the deceased would come to Rs.11,900/- (Rs.8500 + 3400).

22. In the present case, the number of dependent family members is 6. Therefore, one-fourth has to be deducted as personal and living expenses of the deceased. Deducting one-fourth towards personal and living expenses, the contribution to the family would come to Rs.8,925/- per month and the annual contribution would come to Rs.1,07,100/-.

23. As stated supra, at the time of accident, the deceased was aged 31 years. For the age group 31-35, the multiplier to be applied is "16". Adopting multiplier "16", the loss of dependency would come to Rs.17,13,600/-.

24. The Tribunal awarded Rs.25,000/- towards funeral expenses; Rs.1,00,000/- towards loss of love and affection; Rs.5,000/- towards loss of estate and Rs.1,00,000/- towards loss of consortium. Considering the facts and circumstances of the case, a sum of Rs.15,000/- is awarded towards loss of estate; Rs.15,000/- towards funeral expenses; Rs.50,000/- each towards loss of love and affection to the respondents 2 to 4; Rs.15,000/- each towards loss of love and affection to the respondents 5 and 6 and Rs.40,000/- towards loss of consortium. Tribunal has not awarded any amount towards transportation charges. Considering the facts and circumstances of the case, a sum of Rs.10,000/- is awarded towards transportation charges and Point Nos.2 and 3 are answered accordingly.

25. In the light of the above mentioned discussion, the total sum of Rs.11,52,000/- awarded by the Tribunal is enhanced to Rs.19,73,600/-as under:

Heads	Rs.
Loss of dependency	17,13,600.00
Loss of love and affection (respondents 2 to 4)	1,50,000.00
Loss of love and affection (respondents 5 & 6)	30,000.00
Loss of consortium (respondent No.1)	40,000.00
Funeral expenses	15,000.00
Loss of estate	15,000.00
Transport charges	10,000.00
Total	19,73,600.00

26. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, the cross objection filed by the respondents 1 to 6/claimants is partly allowed with proportionate costs. The compensation of Rs.11,52,000/-

awarded by the Tribunal in M.C.O.P.No.2326 of 2012, dated 03.07.2014 on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Coimbatore is enhanced to Rs.19,73,600/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Out of the total compensation of Rs.19,73,600/-, the first respondent being the wife is entitled for a sum of Rs.5,00,000/- and respondents 2 to 4 being the children are entitled for a sum of Rs.4,00,000/- each and respondent No.6 being the mother is entitled for a sum of Rs.2,73,600/- with accrued interest. Since the 5th respondent/father died, no apportionment is made. In so far as other directions viz., mode of deposit, withdrawal of the compensation and deposit of the minor amount in a nationalized bank are concerned, the direction of the Tribunal remain unaltered. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Motor Accident Claims Tribunal,
Special Subordinate Judge, Coimbatore.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.V.Udayakumar, Advocate Sr.No.60786
+1 cc to Mr.Ma.P.Thangavel, Advocate Sr.No.60979

Civil Miscellaneous Appeal No.69 of 2015
and Cross Objection No.4 of 2017

KJI (CO)
CSL/22.01.2019