

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3512 of 2011
and M.P.No.1 of 2011

The Managing Director

Tamil Nadu State Transportation Corporation

(Villupuram Division-1)

Villupuram

..Appellant/Respondent

Vs

1.Kamatchi

2.Latha

3.Bhavani

..Respondents/Petitioners

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.07.2010 passed in MCOP.No.384 of 2004 by the Motor Accident Claims Tribunal on the file of Sub Judge, Cheyyar, Tiruvannamalai District.

For Appellant :: Mr.K.J.Sivakumar

For respondents:: Mr.S.Makesh for R1 to R3.

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellant/Transport Corporation, challenging the judgment and decree dated 07.07.2010 passed in MCOP.No.384 of 2004 by the Motor Accident Claims Tribunal, Sub Judge, Cheyyar, Tiruvannamalai District.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 31.07.2004 at about 9.30 hours, while the deceased Pachaiyappan was travelling in the respondent bus which was going from Vandavasi to Kancheepuram, while going near Thethurai lake, the respondent bus bearing Reg.No.TN-32-N-1548, due to rash and negligent driving of its driver, met with an accident and the deceased Pachaiyappan who was a passenger of the bus suffered fatal

injuries. The accident occurred due to negligence of the respondent bus driver only. The deceased was aged 40 years and by working as Electrician was earning Rs.10,000/- per month. The Petitioners who are the wife and children of the deceased were depending on his income only. Due to sudden demise of the said Pachaiyappan, the petitioners have suffered loss of income and also loss of love and affection. Thus the Petitioners sought for a sum of Rs.10,00,000/- as compensation from the respondent Transport Corporation.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the respondent Transport Corporation contends that the accident does not occur in the manner alleged by the Petitioners. On 31.07.2004 at about 9.30 hours, the respondent bus was proceeding in normal speed from Vandavasi to Kancheepuram, while going near Thethurai lake, on seeing the on coming bus in the opposite direction, the driver took the bus to the left hand side and due to the sand stored on the road side, there was no proper grip and therefore, the bus capsized in the lake adjacent to the road. Some of the passengers suffered simple injuries in the occurrence. The claim made by the Petitioners that Pachaiyappan died due to the injury succumbed in the accident is denied. The accident occurred due to act of God and not due to negligence on the part of the respondent bus driver. Thus the respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.4 respectively to prove their contention. On the side of the respondent, R.W.1 was examined and no document was produced. The Tribunal, after considering the evidence available on record, found that the negligence of the respondent Transport driver caused the accident and awarded Rs.5,32,060/- payable by the respondent Transport Corporation to the Petitioners. Aggrieved over the said finding of the Tribunal, the respondent Corporation has come forward with the present appeal.

5. The learned counsel for the appellant/respondent-Transport Corporation contends that the Tribunal failed to consider the evidence on record properly and passed award. The Tribunal fixed the salary of the deceased at Rs.4000/- per month without any record. The tribunal instead of adopting multiplier 14 as per Apex Court Ruling, wrongly applied multiplier of 15. The amounts awarded under different heads is on the higher side. The accident occurred only due to a road condition and there was no negligence on the part of the respondent bus driver. Thus the appellant/respondent-Transport Corporation sought for setting aside the award passed by the Tribunal by entertaining the appeal.

6. Per contra, the learned counsel for the Petitioners/respondents/claimants contends that due to negligence of the respondent bus driver the accident took place resulting in the death of Pachaiyappan. The tribunal has correctly analysed the evidence placed before it and passed just and fair compensation. Thus the Petitioners/respondents sought for dismissal of the appeal.

7. The wife of the deceased Pacahaiyappan deposed as P.W.1 and she clearly stated about the accident which took place on 31.07.2004, which resulted in the death of her husband Pachaiyappan. The eyewitness to the occurrence deposed as P.W.2 and categorically stated that the accident occurred due to negligence of the respondent bus driver only. According to P.W.2, while he was proceeding in the respondent bus bearing Reg.No.TN-32-N-1548 from Vandavasi to Kancheepuram, on 31.07.2004, at about 9.30 hours, as the bus was driven at high speed, the driver lost control of the bus and capsized resulting in the occurrence. Nothing is elicited in the cross examination of P.W.2 to discredit his version of the accident. The Police also registered Ex.P.1-FIR against the respondent vehicle driver only. It is therefore clear from the evidence of P.W.2 and contents of Ex.P.1-FIR that the negligence of the respondent bus driver alone resulted in the accident.

8. The 1st Petitioner/wife of the deceased who deposed as P.W.1 clearly stated that her husband was aged 45 years and by working as Electrician was earning Rs.9000/- per month. It is clear from Ex.P.2 Post Mortem Certificate that the deceased was aged 45 years. In the absence of any other documentary evidence, on the basis of Ex.P.2, the age of the deceased is fixed at 45 years. It is clear from Ex.P.3 Legal Heir Certificate that the Petitioners/claimants are legal heirs of the deceased and as such they are entitled to seek compensation.

9. Even though the petitioner claimed that the deceased working as Electrician was earning Rs.9000/- per month, it will be appropriate to calculate the monthly earning of the deceased at the rate of Rs.100/- per day and accordingly Rs.3000/- is taken as notional monthly income of the deceased. Since the deceased was aged 45 years and self employed, by following the decision of 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], 25% of the income has to be added for Future Prospects. Considering the number of dependants viz., three in number, 1/3rd of the income shall be deducted towards personal expenses of the deceased. The correct multiplier to be applied herein is '14'. Accordingly, the loss

of dependency is calculated as under:-

Monthly income - 3000

25% added towards future prospects - 750

3000 + 750 = Rs.3750

1/3rd deduction towards personal expenses of the deceased (1250)

3750 - 1250 = Rs.2500.

2500 x 12 x14 = 4,20,000

10. Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is as under:-

Loss of consortium -40,000/-

Funeral expenses -15,000/-

Loss of estate -15,000/-

11. The learned counsel for the Respondents 1 to 3/Petitioners contended that the amounts granted under the head "loss of love and affection" would be confirmed. This court, by following the Ruling reported in 2017 SCC Ker 23174 [1.Valsamma and others Vs. V.A.Baiju, 2.Rev.F.R.Joseph Vattakalam, and 3. The National Insurance Co.Ltd.,] and the Ruling reported in 2018 (1) TN MAC 289 [Branch Office, New India Assurance Co.Ltd., Vs. Meenkashi and others], is of the view that it would be appropriate to award Rs.10,000/- each for the claimants 2 and 3 and accordingly, a total sum of Rs.20,000/- is awarded under the head "loss of love and affection". The modified award amount is as shown below:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of dependency	4,80,060	4,20,000
2.	Loss of love and affection	45,000	20,000
3.	Loss of consortium	---	40,000
4.	Funeral expenses	5,000	15,000
5.	Loss of estate	---	15,000
6.	Transport expenses	2,000	---
	Total	5,32,060	5,10,000

12. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed;
(ii) The award amount is reduced to Rs.5,10,000/- from 5,32,060/-.
(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;
(iv) This court by order dated 23.12.2011 directed the appellant to deposit the entire award together with interest and cost. Hence, the appellant is entitled for refund of excess amount, after satisfying the award of this court.
(v) The Respondents/Claimants 1 to 3 are entitled to the award amount on the following apportionment:-

1st respondent/claimant -50%

2nd and 3rd respondents/claimants - 25% each

The Claimants are entitled to withdraw their respective shares of the award amount along with accrued interest. The Tribunal shall pass necessary orders for disbursement of the award amount. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Motor Accident Claims Tribunal,
Sub Judge, Cheyyar, Thiruvananthapuram District.

+ 1 cc to Mr. S. Magesh, Advocate Sr.37574

C.M.A.No.3512 of 2011

KJ(CO)
EU(21/08/2018)

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