IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.06.2018
CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.1974 of 2017 and 2260 of 2016
and
M.P.No.15946 of 2016

C.M.A.No.1974 of 2017

1. Saraswathi
2. Raja
3. Manjula ... Appellants/Petitioner

Vs

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

2. Manjula
Proprietor of Preethi Distributors,
Marathahalli Main Road,
Marathahalli, Bangalore.

3. The Branch Manager,
United India Insurance Company,
Bangalore. ... Respondents/Respondents

PRAYER :Civil Miscellaneous Appeal filed against the Judgment and decree dated 20.09.2013 made in M.C.O.P.No.254 of 2008 on the file of the Motor Accidents Claims Tribunal cum 1st Additional District Court, Tindivanam.

For Appellant :Mr.D.Ravichander
For Respondents :Mr.K.J.Shivakumar for R1
R2 - exparte

C.M.A.No.2260 of 2016

The Managing Director
Tamil Nadu State Transport Corporation,
Villupuram. ... Appellant/1st Respondent

Vs

1. Saraswathi
2. Raja
3. Manjula .. 1-3 Respondents/1-3 Petitioners
4. Manjula
   Proprietor of Preethi Distributors,
   Marathahalli Main Road,
   Marathahalli, Bangalore.
5. The Branch Manager,
   United India Insurance Company,
   Bangalore. ...4 & 5 Respondents/2 & 3 Respondents

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and decree dated 20.09.2013 made in M.C.O.P.No.254 of 2008 on the file of the Motor Accidents Claims Tribunal cum 1st Additional District Court, Tindivanam.

For Appellants :Mr.K.J.Sivakumar
For Respondents :M/s.D.Ravichandren for R1 to R3

COMMON JUDGMENT

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J)

These appeals have been preferred against the award passed by the Tribunal, awarding a sum of Rs.31,65,000/-. Both the Transport Corporation as well as claimants are before this Court. The claimants have filed CMA.No.1974 of 2017 and the Transport Corporation has filed CMA.No.2260 of 2016.

2.For the sake of convenience hereinafter, the appellants in C.M.A. No.1974 of 2017 would be referred as claimants and the appellants in C.M.A.No.2260 of 2016 would be referred as Transport Corporation.

3. Heard the learned counsel for the claimants and the learned counsel for the Transport Corporation.

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

On 23.07.2005 at about 5:00 a.m. when the deceased (Madhi) and his friends namely Janakiram, Venkatesh and Prakash were travelling in Santro Car bearing Registration No.KA-03/MD-5010 to visit Thirunallar Saturn Temple and when nearing Papangulam Village, Villupuram town area, Villupuram Gingee Main road the driver Madhi was driving the car within the prescribed speed on the left side of the road. At that point of time a Tamil Nadu State Transport Corporation bus bearing Registration No.TN32/N-2000 came from Villupuram direction in a rash and negligent manner dashed against the deceased car, due to the accident an aluminium beading of the bus went into the head of the deceased and due to that the said Mathi died on the spot. Therefore the case of the claimants is that there is no negligence or fault on the part of the deceased (Mathi) and the accident occurred only due to the negligent driving of the TNSTC bus driver. The deceased left behind his wife and two children.

5. The case of the Transport Corporation is that on 23.07.2005 the TNSTC bus bearing Registration No.TN32/N-2000 started its trip from Villupuram to Thirunallar driven by its driver carefully and diligently according to the traffic rules and regulations. While the bus was moving in a slow speed near a curve at 4:50 a.m. near Papangulam Village, Villupuram town area, Villupuram Gingee main road the driver of Santro Car bearing Registration No.KA-03/MD-5010 drove the car in a rash and negligent manner in the opposite direction and brutally hit the stationed bus on the right side of the body near the diesel tank and caused the accident. According to the Transport Corporation, the driver parked the bus on noticing the rash and negligent driving of the car driver. Therefore the Transport Corporation contention is that the accident occurred due to the rash and negligent driving of the car driver. According to the contention of the Insurance Company namely the United India Insurance Company, the third respondent before the Tribunal states that the accident occurred due to the rash and negligent driving in the curve and hit the second respondent's vehicle and caused accident. Further the third respondent before the Tribunal states that at the time of filing the claim statement, the claimants did not implead the second and third respondents before the Tribunal and they were impleaded by the Transport Corporation. However, none appeared on behalf of third respondent/Insurance Company.

6. Under the above circumstances, after hearing both the parties and considering the evidence deposed by both the claimants and Transport Corporation, the Tribunal had fixed the negligence on both the driver of the car bearing registration No. KA-03/MD-5010 and bus bearing registration No. TN32/N-2000 equally. Against the award amount of Rs.31,65,000/- the claimants and the Transport Corporation preferred the present appeal on the following issues:-

1. Whether the Tribunal had fixed the negligence equally on the part of the driver of the car and on the driver of the bus is correct?
2. Whether the compensation awarded by the Tribunal is correct?

6.1.1. The Tribunal examined PW1 who is the wife of deceased (Madhi) and PW2 who is the eye witness of the occurrence. According to PW2, on 23.07.2005 at about 5:00 a.m. the deceased and his friends namely Janakiram who sat on the front seat and two others namely Venkatesh and Prakash sat on the back side of the Santro Car bearing registration No.KA-03/MD-5010 and were driving from their home towards Thirunallar Saturn Temple and when nearing Papangulam Village, Villupuram town area, Villupuram Gingee main road, the driver of the car drove the vehicle within the limited speed on the left side of the road, in a curve a TNSTC bus bearing registration No.TN32/N-2000 came from Villupuram direction driving in a rash and negligent manner dashed against the deceased car. Due to the said accident an aluminium beading of the bus went into the head of the deceased and consequently the driver of the car namely Madhi died on the spot. According to PW2 there is no negligence or fault on the deceased and the accident occurred only due to the negligent driving of the TNSTC bus driver. To strengthen the evidence of PW2, FIR was marked as Ex.P1. FIR was lodged by one Janakiraman who travelled in the car along with the deceased. Subsequently police also registered a case in Crime No.456/05 under Section 279, 337 and 304(A) of IPC against the driver of the bus. Facts stated in the FIR corroborates the evidence of PW1 and PW2, further PW1 also corroborates the evidence of PW2.

6.1.2. On the other hand, the Transport Corporation contended that the accident had not occurred due to the negligent driving of the TNSTC bus driver but due to negligent driving of deceased who hit the standing Transport Corporation bus. On behalf of the Transport Corporation RW1 & RW2 adduced evidence and Ex.R1 to Ex.R4 were also marked. We have perused the evidence of RW1 and RW2 and also Ex.R1 to Ex.R4. On perusal of Ex.P3 and Exp.4 it was stated that there was damage on the front side of the car. On the other hand the driver of the car died on the spot due to the aluminium beading of the bus went into the head of the deceased. On a perusal of the document mentioned above we have come to the conclusion that the negligence is on the part of both the driver of the bus and the driver of the car. Hence we fix the contributory negligence equally on the part of the driver of the car and bus. Therefore we uphold the view of the Tribunal fixing the contributory negligence equally on the driver of the bus and on the driver of the car.

6.2.1. The driver of the car had sustained fatal injuries and died on the spot and PW1 marked Ex.P2 the copy of post mortem certificate. On a perusal of the Ex.P2, it discloses that the deceased died due to shock and homerrage because of head injuries sustained in the accident. The deceased Madhi left behind his wife, son and daughter. Hence, the claimants are entitled for the compensation based on the loss of income of the deceased.

6.2.2. As per the deposition of PW1 and the age disclosed in

Ex.P2 Post mortem certificate, the age of the deceased, at the time of death, was 47 years. According to the claimants the deceased was running a R/M Agencies at KGF road, Bangarupet, Bangalore and he was earning about Rs.6,47,000/- per year. To substantiate the statement of PW1, the assessment order passed by the income tax department dated 28.03.2005 for the year 2003-2004 were marked as Ex.P.5. Though the deceased filed his returns for the year 2003-2004, but there was no return filed for the year 2004-2005. It is pertinent to mention here that the last date for filing the return of income for the financial year 2004-2005 would be on 31.07.2005, but the deceased died on 23.07.2005 which is much before the due date. Therefore, non-filing of income tax return for the financial year 2004-2005 was not the fault of deceased but he had some time to file the same. However the above assessment order marked as Ex.P.5 will not help for the determination of the income of the deceased, since he was running the business in the name of R/M Agencies. He was carrying on the business as retail dealer as purchaser and seller of liquor and also plying the bus. For the purpose of determination of the income of the deceased only his monthly remuneration can be taken into consideration to fix the income of the deceased. The Tribunal has fixed the income of the deceased as Rs.30,000/- per month. As per the assessment order for the year 2003-2004 the income of the deceased was shown as Rs.6,40,467/- which includes agricultural income, income from sale and purchase of liquor business. As per the assessment order more than 50% of the income shown as agricultural income. Thus agricultural income cannot be considered for determining income of the deceased, since the claimants, as legal heirs, can carry on the agricultural activity. The balance income of Rs.2,98,000/- also cannot be taken into consideration fully for the purpose of income of the deceased, since this income came from liquor business and plying the bus. These two business also can be continued by the claimants. Under the above circumstances, the Tribunal had fixed the income as Rs.30,000/- which we feel it on higher side. Therefore, considering the business of the deceased, we feel that fixing a sum of Rs.18,000/- as his managerial remuneration would be reasonable.

7. In the present case the deceased is aged about 47 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 45 to 50 years old, the multiplier to be adopted is '13'. 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 3, 1/3rd of the total income to be deducted towards the personal expenses of the deceased. Therefore, we decided to deduct 1/3rd of the total annual income for calculating personal expenses. Now in order

to calculate the future prospects it is necessary to refer the judgment of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, in which the Hon'ble Apex Court has held that if the deceased was having either self employment or fixed salary and between the age 40 to 50 years, 30% of the monthly income to be added as future prospects.

8. Accordingly, we decided that the monthly income of the deceased would be Rs.18,000/-. Adding a component of 30% (Rs.5,400/-) for future prospects the income would stand at Rs.23,400/-. Deducting an amount of one third i.e., (Rs.7,800/-) towards personal expenses, the loss of dependency per month works out to Rs.15,600/-. Applying the multiplier of '13' the total loss of dependency per annum would work out to Rs.24,33,600/-.

9. The Tribunal awarded a sum of Rs.10,000/- 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. The Tribunal has awarded a sum of Rs.30,000/- towards love and affection but we refix the same as Rs.40,000/- for 2nd and 3rd appellants. As no amount was awarded towards "Loss of estate" by the Tribunal, a sum of Rs.15,000/-. is fixed under that caption. Under the head " Funeral expenses" the Tribunal has awarded a sum of Rs.5,000/- as fixed in Pranay Sethi's case (cited supra) by the Hon'ble Supreme Court of India, this Court is inclined to enhance the amount to Rs.15,000/-

10. Hence the total compensation payable to the claimants is as hereunder.

Head	Amount (Rs.)
Loss of Dependency	Rs.24,33,600/-
Loss of consortium	Rs. 40,000/-
Loss of love and affection to the 2nd claimant/son Loss of love and affection to the 3rd claimant/daughter	Rs. 20,000/- Rs. 20,000/-
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs.25,43,600/-

11. The total amount of compensation shall be shared by the claimants 1 to 3 herein, in the following manner:-

The wife of the deceased who is the first respondent herein shall receive a sum of Rs.15,00,000/-, son of the deceased who is the second respondent herein shall receive a sum of Rs.4,00,000/-, and the daughter of deceased who is the third respondent herein shall receive a sum of Rs.6,43,600/- lakhs.

12. The Transport Corporation and United India Insurance Company are directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through RTGS within a period of one week thereon.

13.Accordingly, CMA.No.1974 of 2017 is dismissed. CMA.No.2260 of 2016 is partly allowed by reducing the award of the Tribunal from Rs.31,65,000/- to Rs.25,43,600/- with interest and costs. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dpq

To

The Motor Accidents Claims Tribunal cum
1st Additional District Court, Tindivanam.

+1cc to Mr.K.J.Shivakumar, Advocate, S.R.No.37047

C.M.A.Nos.1974 of 2017 and 2260 of 2016
and
M.P.No.15946 of 2016

SSD(CO)
CS/20/11/2018