

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.2141 of 2017
and C.M.P.No.11363 of 2017 in C.M.A.Nos.2141 of 2017
and C.M.A.No. 2156 of 2017

C.M.A.No.2141 of 2017:-

Managing Director
Tamil Nadu State Transport
Corporation Ltd.,
Coimbatore Division-II
Sennimalai Road, Erode Town
Erode District ..Appellant/2nd respondent

Vs

1.K.Nirmala devi
2.Minor A.Haranya
3.Minor A.Sanju Sri
4.Ruckmani
5.T.V.Samiappan .. Respondents 1 to 5/Claimants 1 to 5
(Minor 2nd and 3rd Respondent
rep. By its Next Friend/Guardian, mother
1st Respondent)
6.Gopal ..6th Respondent/1st Respondent

C.M.A.No.2156 of 2017:-

1.K.Nirmala devi
2.Minor A.Haranya
3.Minor A.Sanju Sri
4.Rukmani
5.T.V.Samiappan
(Minor 2nd and 3rd Appellants
rep. By its Next Friend/Guardian, mother/1st Appellants)
..Appellants 1 to 5/Claimants 1 to 5

Vs

1.Gopal

2.Managing Director
Tamil Nadu State Transport
Corporation Ltd.,
Coimbatore Division-II
Sennimalai Road, Erode Town
Erode District

..Respondents 1 & 2/Respondents 1 & 2

Prayer in both the CMAs.- Civil Miscellaneous Appeals filed under Section 173 of MV Act, 1988 against the judgment and decree dated 25.03.2015 made in M.C.O.P.No.333 of 2014 on the file of Motor Accidents claims Tribunal, Subordinate Court, Gobichettipalayam.

C.M.A.No.2141 of 2017:-

For appellant : : Mrs.R.T.Sundari
For Respondents : : Mr.S.P.Yuaraj for R1 to R5

C.M.A.No.2156 of 2017:-

For appellants : : Mr.S.P.Yuaraj
For respondents : : Mrs.R.T.Sundari for R2.

COMMON JUDGMENT

The above Civil Miscellaneous Appeals are filed challenging the judgment and decree dated 25.03.2015 made in M.C.O.P.No.333 of 2014 on the file of Motor Accidents claims Tribunal, Subordinate Court, Gobichettipalayam.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioners/claimants is that on 26.04.2008 at about 12.15 pm., when the deceased Arul Prakash was proceeding in his Bajaj Motorcycle bearing Reg.No.TN 38 C 5202 from West to East in Thoranavavi to Thingalur Road, the respondent Corporation bus bearing Reg.No.TN-33-N-1176 came at high speed driven in a rash and negligent manner in the same direction and dashed against the motor cycle in which the deceased was travelling and in the impact, the deceased Arul Prakash fell down and sustained injuries all over his body. Subsequently, the injured died on the way to Hospital. According to the Petitioners, the rash and negligent driving of the bus driver alone caused the accident. The Petitioners further state that they are dependant on the income of the deceased who was aged 33 years at the time of the accident. The deceased was doing Agriculture and also owned a Compressor Vehicle through which he was getting a monthly income of Rs.20,000/-. Since the said Arul Prakash died due to negligent act of the 2nd respondent Corporation Bus driver, the petitioners

seek compensation of Rs.10,00,000/- from the 2nd respondent Transport Corporation.

3. On the other hand, opposing the claim of the Petitioners, the 2nd respondent-Transport Corporation contends that the claim of the Petitioners regarding the negligence of the 1st respondent driver as the cause for the accident is baseless. The 1st respondent driver stopped the bus at Thoranavavi Bus stop and after the passengers boarded the bus, he started the bus slowly and at that time, the deceased came from right side Kunnathur Pirivu road at high speed and dashed the motor cycle against the bus, resulting in the accident. As such, the negligent driving of the deceased alone caused the accident. The 2nd respondent also disputes the claim of the petitioners about the age, avocation and monthly income of the deceased. As the deceased was tort-feasor, the petitioners' claim for compensation cannot be entertained. The 2nd respondent thus sought for dismissal of the petition before the Tribunal.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.8 to substantiate their case. On the side of the 2nd respondent, neither oral nor documentary evidence was produced. As such, on the basis of available materials on record, the Tribunal found the 1st respondent-driver and the deceased Arul Prakash equally responsible for the accident and apportioned the negligence as 50% each. The Tribunal on the basis of available evidence, awarded a sum of Rs.6,15,500/- as compensation to the Petitioners being 50% of the award amount of total amount of Rs.12,31,000/-. Being not satisfied with the Award of the Tribunal, the Petitioners filed C.M.A.No.2156 of 2017. Feeling aggrieved with the quantum of compensation as excessive, the Transport Corporation/2nd respondent preferred C.M.A.No.2141 of 2017.

5. The learned counsel for the Petitioners/claimants contended that without appreciating the evidence of P.W.2 properly, the Tribunal fixed 50% liability on the deceased and the same is to be set aside. While the deceased was getting salary of Rs.20,000/- per month, the Tribunal fixed only Rs.6000/- per month as notional income without any basis. The Tribunal also failed to consider the future prospects and awarded less amounts under conventional heads. As the dependants of the deceased are 5 in numbers, the Tribunal ought to have deducted only 1/4th towards personal expenses of the deceased. Further the tribunal has not awarded any amount under the head "Pain and Suffering" and as such, the Petitioners seek for enhancement of the award amount and also to set aside 50% of the liability fixed on the deceased.

6. Per contra, the learned counsel for the 2nd respondent/Transport Corporation contended that the Tribunal erred in holding that the 1st respondent driver was responsible for the accident and fastening 50% liability on him. The failure on the part of P.W.2 to lodge any police complaint even after witnessing the accident has not been considered properly by the Tribunal. Even though FIR registered against the bus driver, the same was subsequently closed as mistake of fact and the Tribunal failed to take into consideration the same. The Tribunal has granted higher amounts of compensation under various heads and the fixing of salary of Rs.4000/- per month is very high and the Tribunal wrongly applied 17 multiplier and as such, the quantum of the award granted by the Tribunal is very high and the same is to be set aside. Hence the 2nd respondent/Transport Corporation seeks to allow their appeal in CMA.No.2141 of 2017 and to reduce the award amount.

7. This Court considered the arguments advanced by both sides and perused the documents. The 1st petitioner who is the wife of the deceased Arul Prakash stated about the accident occurred. However, P.W.1 has not witnessed the accident. The eyewitness to the accident P.W.2 stated that on 26.04.2008 at about 12.15 p.m., while he was proceeding in Motor cycle in Thoranavavi to Thingalur Road, he saw the deceased Arul Prakash going ahead of him at Kunnathur pirivu road, and, at that time, the 2nd respondent Corporation Bus bearing Reg.No.TN33 N 1176 came in the opposite direction at high speed and dashed against the motor cycle in which the deceased was travelling and due to that impact, the deceased fell down and sustained grievous injuries. It is clear from the evidence of P.W.2 as well as P.W.1 wife of the deceased that immediately after the accident, the deceased was taken to KMC Hospital, Perundurai and thereafter, to Erode Government Hospital for further treatment. However, the deceased died on the way to Government Hospital, Erode. Thus, it is clear from the evidence of P.W.2 that the accident occurred only due to negligent driving of the 1st respondent driver. The petitioners also produced certified copy of the FIR Ex.P.1; Observation Mahazar Ex.P.2; Rough Sketch Ex.P.3. It is evident from Ex.P.1 FIR that the case was registered against the 1st respondent, viz., the driver of 2nd respondent-Transport Corporation Bus, which met with the accident. Pointing it out, the learned counsel for the petitioners contended that the oral evidence of P.W.2-Eye Witness as well as the contents of Ex.P.1-FIR laid against the 1st respondent, clearly establishes the fact of negligence on the part of the 1st respondent driver as the cause of the accident and in such circumstances, fixing 50% liability on the deceased by the Tribunal is unwarranted and unsustainable. It is further pointed out that the 2nd respondent did not let in any oral or documentary evidence to disprove the evidence of P.W.2

and the contents of Ex.P.1-FIR. Hence the petitioners prayed to fix the entire liability on the 2nd respondent bus driver.

8. On the other hand, the learned counsel for the 2nd respondent contended that as per Ex.P.3-Rough Sketch, the place of accident is shown as at the centre of the road and as per Ex.P.4 and Ex.P.5 M.V.I.Reports for the bus and motor cycle, no mechanical defect is found out and as such, the accident having occurred at the middle of the road, fixing of liability in the ratio of 50% : 50% is just and proper.

9. It is true that in Ex.P.3-Rough sketch, the accident spot is shown at the centre of North south Road. Further P.W.2 witness also stated that the the first respondent driver is at fault and the averments made in Ex.P.1-FIR proves the negligence of the 1st respondent driver as the cause for the accident. In such circumstances, on the ground that the accident is occurred in the middle of the road, fixing the liability by 50% : 50% by the Tribunal is unwarranted and the same is to be fixed at 70% : 30% for the 1st respondent Driver and the rider of Two wheeler.

10. The 1st petitioner who is the wife of the deceased stated that at the time of the accident, her husband was 33 years old and he was earning Rs.20,000/- per month. It is evident from Ex.P.8 Legal heir certificate that the 1st petitioner is the wife of the deceased, 2nd and 3rd petitioners are minor children, the 4th and 5th petitioners are the parents of the deceased and they are dependants. The petitioners failed to produce any independent evidence or documentary proof in respect of avocation and monthly income of the deceased. In such circumstances, the Tribunal fixed the notional income of the deceased at Rs.6000/- per month. Accordingly, this court finds the same as reasonable and proper. As far as the calculation of loss of income to the dependants, this court is inclined to make some modification. Accordingly, keeping in view that the family of the deceased are 5 in numbers, 1/4th of the income has to be reduced towards personal expenses of the deceased. Considering the age of the deceased that he was 33 years as per Ex.P.6 Post Mortem and Ex.P.7 Death certificate, the future prospects is fixed at 40% and the calculation of loss of income is as under:-
Rs.6000/- +40% future prospects
 $6000 + 2400 = \text{Rs.}8400/-$
 $8400 - 1/4\text{th deduction}(2100) = \text{Rs.}6300/-$
The multiplier to be adopted is 17.

$6300 \times 12 \times 17 = \text{Rs.}12,85,200/-$

Therefore, this court is inclined to award Rs.12,85,000/- under the head "loss of income".

Further, following the decision of Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs Pranay Sethi and Others], this court is also inclined to award the following

amounts as compensation under conventional heads:-

Consortium	= Rs. 40,000/-
Funeral Expenses	= Rs. 15,000/-
Loss of Estate	= Rs. 15,000/-
Transport Expenses	= Rs. 10,000/-
Adding Loss of income	= Rs.12,85,000/-
Total	= Rs.13,65,200/-

The award amount granted by the Tribunal under other heads are set aside. Thus, the modified enhanced compensation granted by this Court is Rs.13,65,200/-. As discussed above, the negligence is apportioned in the following ratio:-

1st respondent driver 70% : deceased 30%

Accordingly, this court is inclined to award Rs.9,55,640/-, being 70% of the total award amount of Rs.13,65,200/- to the Petitioners. The 2nd respondent-Transport Corporation, as per the ratio of liability fixed by this Court, is directed to pay the compensation of Rs. 9,55,640/- to the Petitioners. The apportionment of the award amount to the petitioners/claimants is as follows:-

1st petitioner/wife - 40% -Rs.3,82,256/-

2nd and 3rd petitioner (minor daughter and son)- 20% each-Rs.1,91,128/- each.

4th and 5th petitioners (parents of the deceased) - 10% each-Rs.95,564/- each.

11. In the result, C.M.A.No.2156 of 2017 filed by the claimants is Partly allowed with costs. C.M.A.No.2141 of 2017 filed by the Transport Corporation is dismissed. The modification of the award is as follows:-

(1) The award granted by the Tribunal is enhanced to Rs.13,65,200/- from Rs.6,15,500/-. The Petitioners 1 to 5/Claimants are entitled to 70% of the award amount viz., Rs.9,55,640/-

(2) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(3) The Transport Corporation is directed to deposit the modified award of Rs.9,55,640/-, being 70% of the award amount with proportionate interest, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(4) The Petitioners/claimants 1, 4 and 5 are permitted to withdraw their respective share, as per the apportionment ordered by this court, with accrued interest, before the Tribunal, by filing necessary application, less the amount if any already withdrawn by them. As far as petitioners 2 and 3, being minor, their share amount shall be deposited in Fixed Deposit, in a Nationalised Bank, till they attain majority and the interest accrued therein, shall be withdrawn by the 1st petitioner/mother, once in 3 months.

(5) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

nvsri

To

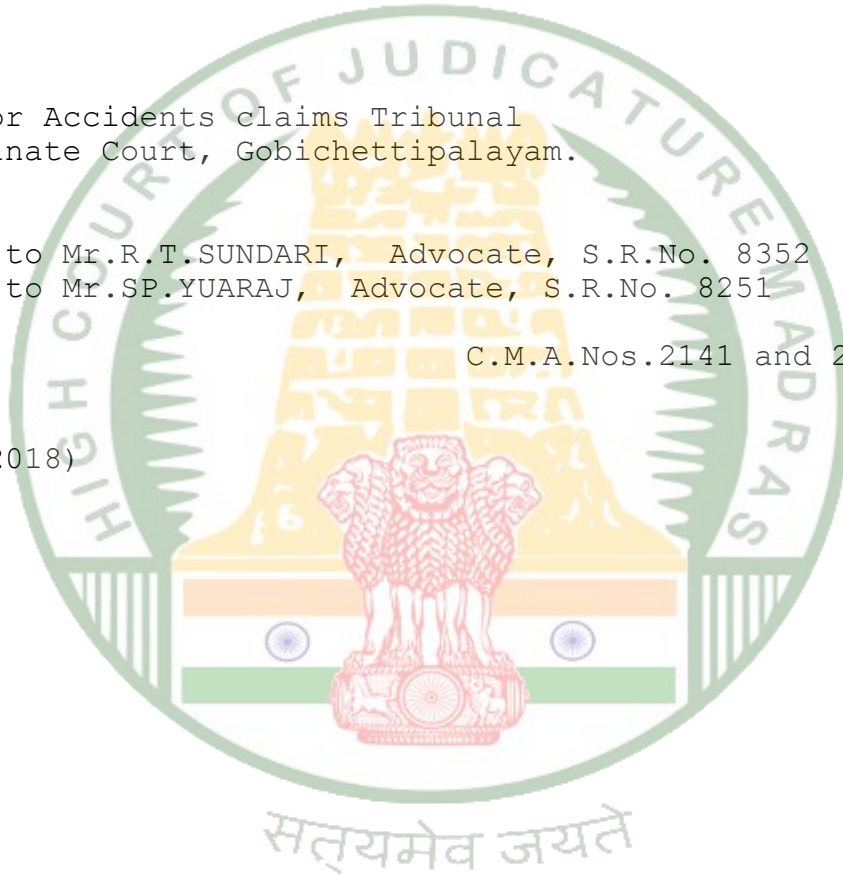
1.The Motor Accidents claims Tribunal
Subordinate Court, Gobichettipalayam.

+1cc to Mr.R.T.SUNDARI, Advocate, S.R.No. 8352

+1cc to Mr.SP.YUARAJ, Advocate, S.R.No. 8251

C.M.A.Nos.2141 and 2156 of 2017

VD(CO)
TR(06/08/2018)



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