

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.426 of 2018

1.Palaniammal
2.Venkatachalam
3.Senthilkumar
4.Banumathi

..Appellants/Petitioners

VS

1.K.Paramasivam
2.The Managing Director
Tamil Nadu State Transport
Corporation (Coimbatore Division-II)Ltd
Chennimalai Road, Erode-1 ..Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 13.09.2012 made in MCOP.No.142 of 2011 on the file of the Motor Accidents Claims tribunal, cum 4th Additional District Court, Bhavani, Erode District.

For appellants : : Mr.C.Kulanthaivel

for Respondents : : Mr.K.J.Sivakumar for R2
R1-Notice dispensed with.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/claimants, challenging the judgment and decree dated 13.09.2012 made in MCOP.No.142 of 2011 on the file of the Motor Accidents Claims tribunal, cum 4th Additional District Court, Bhavani, Erode 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 09.01.2011, at about 6 a.m., while the deceased Ramasamy was proceeding as a pillion rider in two wheeler bearing Reg.No.TN-36-J-0155 from Bhavani to Appakkudal Main Road, while going near Thippichettyalayam Bus stop, the 2nd respondent-Transport

Corporation bus bearing Reg.No.TN-33-N-1270 driven by its driver who is the 1st respondent herein in a rash and negligent manner came at high speed in the opposite direction dashed against the two wheeler in which the deceased was proceeding, causing him fatal injuries, resulting in his death subsequently at G.H.Erode. The negligence of the 1st respondent alone caused the accident. The deceased Ramasamy was aged 49 years and he was earning not less than Rs.10,000/- per month, by working as a Pipeline fixing labour. The Petitioners, who are the wife and children of the deceased were depending on his earnings. Thus, the Petitioners sought for a sum of Rs.20,00,000/- as compensation from the respondents.

3. On the other hand, opposing the petition, by filing counter, the 2nd respondent/Transport Corporation contends that the accident does not occur in the manner alleged by the Petitioners. The claim of the Petitioners about the age, occupation and income of the deceased is not true. The respondent-bus was proceeding only at normal speed, but it was only due to negligence of the rider of the two wheeler, the accident occurred. There was no negligence on the part of the 1st respondent. The Police registered a false case against the 1st respondent. The claim of the Petitioners is exorbitant. Thus, the 2nd 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.7 to prove their contention. On the side of the respondent, R.W.1 was examined, but no documents was produced. On the basis of available evidence, the Tribunal fixed the negligence on the 1st respondent that he alone caused the accident and passed an award for a sum of RS.4,23,000/- payable by the respondents to the Petitioners.

5. Being not satisfied with the quantum of the award, the Petitioners/claimants have come forward with the present appeal.

6. Heard both sides and perused the records carefully.

7. The learned counsel for the Petitioners/appellants contends that the evidence available on record was not properly considered by the Tribunal and the monthly income of the deceased was fixed very low. As the accident occurred during 2011, the income of the deceased ought to have been fixed at Rs.10,000/-. The amount awarded under different heads is very meagre. Thus, the Petitioner sought for enhancement of the

quantum of the award passed by the Tribunal.

8. Per contra, the learned counsel for the 2nd respondent/Transport Corporation contends that the accident occurred due to negligence of the two wheeler rider only. As such, the 1st respondent is no way responsible for the accident. In such circumstances, the respondents are not liable to pay compensation. The award passed by the Tribunal is on the higher side. Thus, the 2nd respondent sought for dismissal of the appeal.

9. The wife of the deceased who is the 1st petitioner herein deposed as P.W.1 and stated about the accident which took place on 09.01.2011. However, P.W.1 is not an eyewitness to the occurrence. The 2nd petitioner who deposed as P.W.2 stated that he witnessed the occurrence and only due to the high speed, in which the 1st respondent drove the bus, the accident occurred. It is clear from Ex.P.4 MVI report that there was no mechanical defect in the respondent bus. The Police registered Ex.P.1 FIR against the 1st respondent only on the basis of complaint given by P.W.2 Venkatachalam. After completion of investigation, the Police have filed Ex.P.7-Charge Sheet pointing out that the negligence of the 1st respondent alone caused the accident.

10. On the other hand, disputing the same, the 2nd respondent examined the conductor of the bus involved in the accident as R.W.1 and he stated that there was no negligence on the part of the bus driver. However, considering the fact that he was only conductor and was involved in issuing tickets, it was not possible for him to witness the occurrence properly. The driver of the bus has not been examined. As such, the evidence given by the conductor on the 2nd respondent side is of no use to prove that the rider of the two wheeler alone caused the accident. In such circumstances, the Tribunal has correctly concluded on the basis of P.W.2 eyewitness account and contents of Ex.P.1 FIR and Ex.P.7-Charge sheet that the negligence of the 1st respondent alone resulted in the accident. The said finding needs no interference.

11. The wife of the deceased Ramasamy who deposed as P.W.1 stated that her husband was 45 years old and by working as Pipeline fixing labour was earning Rs.10,000/- per month. The Petitioners produced the copy of the Post Mortem Certificate as Ex.P.5 and the copy of Death Certificate as Ex.P.6. In the absence of any other documentary proof, regarding the age of the deceased, it is appropriate to fix the deceased age as 50 years on the basis of Ex.P.5-Post Mortem Certificate.

12. The Petitioners claimed that the deceased was working as Pipeline Fixing Labour and was earning Rs.10,000/- per month.

However, there is no proof regarding the employment or the monthly earnings of the deceased. The Tribunal fixed the notional monthly income at Rs.4500/-. This, the Petitioners/claimants contends as very low. Considering the fact that the accident occurred during 2011 and the fact that the deceased was employed as Pipe Line Fixing cooly, it will be appropriate to fix the notional monthly income at the rate of Rs.200/- per day and it comes to Rs.6000/- per month. As the deceased was aged 50 years, being a self employed person, 25% of the income has to be added towards Future Prospects. As the number of dependants are four in number, 1/4th of the income has to be deducted towards personal expenses of the deceased, but the Tribunal deducted only 1/3rd of the income. As the deceased was aged 50 years, the multiplier to be applied is 13. Thus, the contribution of income by the deceased to his family will be as follows:-

Monthly income -Rs.6000/-

25% added towards future prospects (1500)

6000 + 1500 = 7500.

Deduction of 1/4th towards personal expenses (1875)

7500 - 1875 = 5625/-

5625/- x 12 x 13 = Rs.8,77,500/-

As the deceased was aged 50 years, the multiplier to be applied is '13'. Thus, the pecuniary loss to the family of the deceased is Rs.8,77,500/-.

13. 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/-

14. The learned counsel for the Appellants/Petitioners contended that the amounts granted by the Tribunal under the head "loss of love and affection" is very nominal and sought for enhancement. In support of the same, the learned counsel for the Appellants relied upon the Ruling of the Kerala High Court in the case of 1.Valsamma and others Vs. V.A.Baiju, 2. Rev.FR.Joseph Vattakalam, and 3.The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010], and the Ruling of this court reported in 2018(1) TN MAC 289 [Branch Office, New India Assurance Co.Ltd., Vs. Meenakshi and others]. Considering the same, it will be appropriate to provide for Rs.10,000/- each to the Petitioners 2 to 4 under the head "loss of love and affection". Under Transport Expenses, the sum of Rs.2,000/- granted by the Tribunal is confirmed. 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	3,96,000	8,77,500
2.	Loss of love and affection	10,000	30,000
3.	Loss of consortium	10,000	40,000
4.	Funeral expenses	5,000	15,000
5.	Loss of estate	---	15,000
6.	Transport expenses	2,000	2,000
	Total	4,23,000	9,79,500

15. In the result,

- (i) This Civil Miscellaneous Appeal is Partly Allowed;
(ii) The award amount is enhanced to Rs.9,79,500/- from Rs.4,23,000/-;
(iii) The award amount will carry interest at the rate of 7.5% p.a. from the date of petition till the date of realisation;
(iv) The 2nd respondent-Transport Corporation is directed to deposit the entire award amount, along with interest and cost, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.
(v) The appellants shall pay necessary additional court fee before obtaining copy of the decree.

(vi) The Appellants 1 to 4 are entitled to the award amount on the following apportionment:-

1st appellant/wife -40%
appellants 2 to 4 - 20% each

The Appellants 1 to 4 are entitled to withdraw their respective shares of the award amount along with accrued interest. As per order of this Court dated 14.02.2018 passed in CMP.NO.15783 of 2017 in CMA.SR.70335 of 2017, the appellants are not entitled to interest for the delayed period in filing the above CMA. The Tribunal shall pass necessary orders for disbursal of the award amount. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nvsri

(Addl.Court fee paid Rs.4565/- vide SR.NO..51329

To
The Motor Accidents Claims tribunal,
cum 4th Additional District Judge,
Bhavani, Erode District.

Copy to: The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.C.Kulanthaivel, Advocate SR.NO.39199
+1cc to Mr.K.J.Sivakumar, Advocate SR.NO.39039

VGII(CO)
sm:19.11.2018

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