

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2618 of 2014

1.M.Gnanasundhari

2.M.Abinaya

3.M.Velmurugan

Minor Petitioners rep. By their mother
M.Gnanasundari, as guardian and next friend

4.Thangammal

5.Subramanian

...Appellants/Petitioners

vs

1.The Managing Director

Tamil Nadu State Transport Corporation Ltd
Dindigul Division, Dindigul

2.V.Radhakrishnan

3.The New India Assurance Company Ltd.,

MTPCO, V floor, No.45, Moore Street,
Parrys, Chennai-600 001

...Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 24.02.2011 made in M.C.O.P.No.1061 of 2009 on the file of Motor Accident Claims Tribunal, III Additional District Court, Tiruvallur, and then II Fast Track Court at Poonamallee.

For appellants : : Mr.P.Natarajan

for Respondents : : Mr.S.V.Vasantha Kumar for R1
R2 and R3 - Exparte.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/claimants, challenging the judgment and decree dated 24.02.2011 made in M.C.O.P.No.1061 of 2009 on the file of Motor Accident Claims Tribunal, III Additional District Court, Tiruvallur, and then II Fast Track Court at Poonamallee.

2. For the sake of convenience, the parties are referred to

as per their litigative status before the Tribunal. The case of the petitioners is that on 05.01.2009 at about 6.15 hours, while the deceased Marimuthu was driving from Chennai to Sabarimala in the 2nd respondent's van bearing Reg.No.TN 25 H 0366, in Sempatty to Vathlagundu Road, at Veerasikkampatti Village, the 1st respondent Corporation Bus, bearing Reg.No.TN 57 N 1271 came in the opposite direction at high speed driven in a rash and negligent manner, came to the wrong side of the road, and dashed directly against the van, resulting in the instant death of the deceased Marimuthu and seven others persons, who travelled in the van. According to the Petitioners/claimants, the accident occurred only due to the negligence of the 1st respondent Corporation bus driver. It is further averred in the Petition that at the time of the accident, the deceased was aged 22 years and employed as Clerk at Hotel Saravana Bhavan, K.K.Nagar, Chennai, and was getting monthly salary of Rs.7500/-. As the Petitioners, who are the wife, minor children and parents of the deceased were depending on the income of the deceased, claimed compensation of Rs.25,00,000/- from the 1st respondent/Transport Corporation, whose driver alone is responsible for causing the accident.

3. On the other hand, opposing the petition, by filing counter, the 1st respondent-Transport Corporation contends that the Petitioners averments about the manner of the accident is not correct. The driver of the respondent Corporation bus is not responsible for the accident. The Plea of the petitioners about the avocation, income, age and other details of the deceased are denied. The claim of the petitioners is exorbitant. Hence the 1st respondent seeks dismissal of the petition.

4. The 3rd respondent/Insurance Company, with whom, the 2nd respondent van was insured contends that the accident occurred only due to the negligence of the 1st respondent bus driver and hence, the 3rd respondent-Insurance Company is not liable to pay any compensation.

5. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.17 to prove their claim. On the side of the respondents, R.W.1 was examined, but no documentary evidence produced. On the basis of the available material on record, the Tribunal found that the negligence on the part of the 1st respondent bus driver alone has caused the accident and awarded a sum of Rs.10,70,000/- as compensation to the Petitioners. 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/claimants/appellants contended that the Tribunal failed to consider the evidence of P.Ws.1 to 3 properly and fixed the multiplier as well as the personal expenditure of the deceased wrongly. The Tribunal failed to give any amount towards future prospects. The amount awarded under the differed heads by the Tribunal is on the lower side. Hence, the Petitioner seeks enhancement of the quantum of award amount by allowing the appeal.

8. Per contra, the learned counsel for the 1st respondent/Transport Corporation contends that the finding of the Tribunal that the negligence of the bus driver caused the accident is not correct. The Tribunal has not properly appreciated the evidence on record and awarded higher compensation to the petitioners and the same is not sustainable. The plea of the Petitioners for enhancement of the quantum of the award is unwarranted and seeks dismissal of the appeal.

9. The learned counsel for the appellants/petitioners contends that the deceased who is the husband of the 1st petitioner; father of the 2nd and 3rd petitioners and son of 4th and 5th petitioners was proceeding with his colleagues to Sabarimala in the Mahendra Van bearing Reg.No.TN 25 H 0366 belonging to the 2nd respondent and insured with the 3rd respondent. On 05.01.2009 as the van was proceeding in a normal speed in Sembatti to Vathlagundu Road, at Veerasiampatti Village, the 1st respondent Corporation Bus, bearing Reg.No.TN 57 N 1271 came in the opposite direction in high speed driven in a rash and negligent manner on the wrong side of the road, and dashed against the van in which the deceased was travelling. The Police registered Ex.P.1-FIR against the driver of the 1st respondent bus driver only. The eyewitness to the occurrence, who deposed as P.W.2 has clearly stated about the high speed in which the 1st respondent bus came and dashed against the van in which the deceased was travelling. Nothing is extracted in the cross examination of P.W.2 to discredit his evidence. Even though the respondent examined the conductor of the offending vehicle as R.W.1, he stated in his evidence, that only after hearing a huge noise, while proceeding in Sembatti Road, he got down and saw the van which has dashed against the bus. Further, R.W.1 admitted in his evidence that he did not see directly as to whether the van dashed against the bus or vice versa. The 1st respondent failed to examine the driver of the bus. In such circumstances, the evidence of R.W.1 is not of any use in finding out the cause of the accident. As such, considering the evidence of independent 3rd party eyewitness P.W.2 and that Ex.P.1-FIR was registered against the 1st respondent bus driver only, it is apparent that rash and negligent driving of the 1st

respondent bus driver alone caused the accident. The Tribunal has rightly fixed the negligence on the 1st respondent bus driver and the same needs no interference.

10. The crux of the appeal is only the quantum of award passed by the Tribunal. According to the Petitioners, the Tribunal ought to have awarded some amount towards future prospects of the deceased, who was aged 21 years at the time of accident. It is further contended that the sum awarded under various heads by the Tribunal is very low and the same needs enhancement. However, the said contention of the appellants is disputed by the 1st respondent/Transport Corporation.

11. It is apparent from the evidence of P.W.1 who is the 1st petitioner/wife of the deceased that her husband was employed as Office Clerk in Hotel Saravana Bhavan, Chennai, and was earning monthly salary of Rs.7500/-. The staff of the Accounts Branch of the said Hotel who deposed as P.W.3 stated that the deceased Marimuthu joined the service on 01.12.2005 and he was functioning as Office Clerk in 2008 and his salary for December 2008 was Rs.7500/-. The salary certificate is produced as Ex.P.6. It is clear from the oral evidence of P.W.3 and Ex.P.6 salary certificate that the income of the deceased was Rs.7500/- per month. The Petitioners who are 5 in number claim themselves to be dependants of the deceased. Considering the number of dependants are 5, it will be appropriate to deduct 1/4th of the income towards personal expenses of the deceased instead of 1/3rd deducted by the tribunal. Considering the age of the deceased and the fact that he is permanently employed person in Hotel Saravana Bhavan, 50% of the income is to be added towards Future Prospects as per Ruling of the Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs Pranay Sethi and Others]. The appellants/Petitioners pleaded that the deceased was aged 24 years at the time of the accident. They also produced copy of SSLC book of the deceased as Ex.P.8, wherein, his date of birth is given as 02.03.1986. Thus, it is clear from the same that the deceased was aged only 22 years and 10 months on the date of the accident. On the basis of Ex.P.8 Secondary School Leaving Certificate, the age of the deceased is fixed as 22 years and therefore, correct multiplier to be applied is 18. Thus, the monthly income of the deceased is calculated as under:-

7500 + 50% Future Prospects (Rs.3750) = 11,250/-
11,250/- - 1/4th deduction (2812 rounded off to 2800)
11,250 - 2800 = 8450
8450 x 12 x 18 = 18,25,200/-

In the light of the above said calculation, this court is inclined to award Rs.18,25,200/- under the head "loss of

dependency". Further, by following the above cited judgment (Pranay Sethi case), 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/-
Add: Loss of dependency	= Rs 18,25,200/-
Total	= Rs.18,95,200/-

The award amount granted by the Tribunal under other heads are set aside. Thus, the modified enhanced compensation granted by this Court is Rs.18,95,200/-. The apportionment of the award amount to the petitioners/claimants is as follows:-

1st petitioner/wife - 40% -Rs.7,58,080/-
2nd and 3rd petitioner (minor daughter and son)- 20% each-
Rs.3,79,040/- each.
4th and 5th petitioners (parents of the deceased) - 10% each-
Rs.1,89,520/- each.

12. In the result, the Civil Miscellaneous Appeal filed by the Appellants/claimants is Partly allowed with costs. The modification of the award is as follows:-

(1) The award granted by the Tribunal is enhanced to Rs.18,95,200/- from Rs.10,70,000/-.

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

(3) The 1st respondent-Transport Corporation is directed to deposit the modified award of Rs.18,95,200/-, along with proportionate accrued interest and costs, from the date of petition till the date of deposit, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order except for the delay period of 409 days as per order dated 27.08.2014 in M.P.No.2 of 2013 in CMA.SR.No.98309 of 2012.

(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.

Sd/-

Assistant Registrar (CS-ii)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
III Additional District Court, Tiruvallur,
II Fast Track Court at Poonamallee.

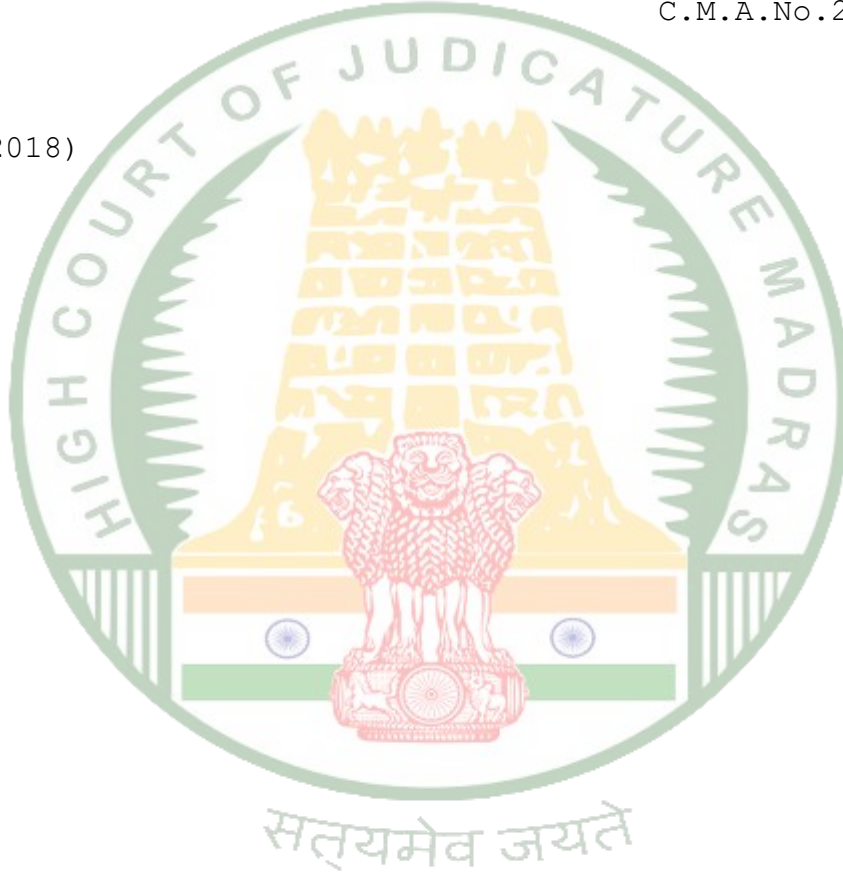
2.The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

+1cc to Mr.S.V.VASANTHAKUMAR, Advocate, S.R.No.13190

+2cc to Mr.P.NATARAJAN, Advocate, S.R.No.12755

C.M.A.No.2618 of 2014

PPA(CO)
TR(11/05/2018)



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