

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2805 of 2017

The Regional Manager,
Andhrapradesh State Road
Transport Corporation (APSRTC)
Puttur Depot, Puttur,
Andhrapradesh.

...Appellants/Respondent

..vs..

1.Asar
2.Kuttalayi

...Respondents/Petitioners

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 26.11.2015 made in MCOP.No.1120 of 2014 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore.

For Appellant : Mrs.G.V.Shoba

For Respondents : Mr.R.Sreedhar

JUDGMENT

This civil miscellaneous appeal arises out of the Fair and Decreetal order dated 26.11.2015 made in MCOP.No.1120 of 2014 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore.

2. For sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that the deceased Valli aged about 17 years, while proceeding as a pillion rider of the motor cycle bearing Registration No.TN-21-AD-1222, in Nellukara Street, Kancheepuram, at 20.00 hours on 07.12.2013, met with accident caused by the respondent corporation bus bearing Registration No.AP-29-Z-0127, driven by its driver at high speed

in a rash and negligent manner and dashed against the motor cycle, in which the deceased was travelling. Due to the impact, the deceased fell down and suffered fatal injuries and died on the spot. The accident took place only due to the negligence on the part of the respondent corporation bus driver. The deceased was aged about 17 years and she was earning a sum of Rs.10,000/- per month, as she was working as housemaid. Hence, the petitioner, who are the parents of the deceased seeks compensation of Rs.15,00,000/- from the respondent. Hence, the petition.

4. On the other hand, opposing the claim petition, the respondent transport corporation filed a counter stating that the accident did not occur due to the negligence of the driver of the bus, but only due to the negligence of the rider of the motor cycle the accident occurred. The age, avocation and income of the deceased has to be proved by the petitioner. As the negligence of the two wheeler rider alone caused the accident, the respondent transport corporation seeks dismissal of the petition.

5. Before the Tribunal, the first petitioner examined himself as P.W.1 and eye witness to the occurrence one Santhasivam was examined as P.W.2 and produced documents Ex.P1 to Ex.P9 to substantiate their claim. On the side of the respondent R.W.1 was examined and no document was produced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the respondent transport corporation and directed the respondent transport corporation to pay a sum of Rs.7,10,000/- as compensation. Aggrieved over the said finding of the Tribunal, the respondent corporation filed the present appeal.

7. Heard both side counsel and perused the materials available on record.

8. The learned counsel appearing for the respondent transport corporation contended that the trial Court failed to note that the negligent act of the deceased alone caused the accident. The evidence of R.W.1 driver is not properly appreciated by the Tribunal. The Tribunal also failed to note that the negligence of the rider of the two wheeler contributed to the accident. The rider of the two wheeler was not having valid licence. Further, the Tribunal wrongly assessed the monthly income at Rs.6,000/- instead of fixing Rs.3,000/- per month. The Tribunal also wrongly fixed the multiplier and the interest awarded is also on the higher side. Hence, he prays to allow this appeal and set aside the award passed by the Tribunal.

9. Per contra, the learned counsel for the petitioners/claimants contended that the Tribunal has correctly assessed the negligence on the basis of available material and fixed the liability. Hence, the petitioners seek dismissal of the appeal.

10. The petitioners states that on 07.12.2013 at about 8.00 p.m., the deceased was travelling as pillion rider in the two wheeler driven by the first respondent herein who is the father of the deceased and at that time the respondent transport corporation bus came from behind and dashed against the two wheeler resulting in death of the petitioner's daughter at the occurrence spot itself. The eye witness to the occurrence, who deposed as P.W.2 clearly stated about the manner in which the accident took place. According to P.W.2, the respondent transport corporation bus bearing Registration No.AP-29-Z0127 came at very high speed and dashed against the motor cycle from behind. Due to the impact, the pillion rider of the motor cycle fell down and sustained fatal injuries and died on the spot. The petitioners also produced Ex.P1 a copy of the First Information Report registered against the driver of the respondent bus. Refuting the same, the respondent examined the driver of the bus as R.W.1 and he stated that when he was driving the bus at moderate speed from east to west at Kancheepuram Nellukara Steet, near Saradha Motors, a TVS Motor cycle came at high speed and dashed against the bus resulting in the accident. However, the respondent driver has not given any complaint against the rider of the two wheeler. The evidence of P.W.2, who is witness to the occurrence is clear and categorical as he stated that the bus driver alone was responsible for the accident. The police case is also registered against the respondent bus driver only as evidenced by Ex.P1 first information report. In such circumstances, the interested evidence of R.W.1 cannot over ride the third party eye witness account of the accident as deposed by P.W.2. Further, Ex.P1 also support the claim of the petitioners. In such circumstances, the finding of the Tribunal that the negligence of the respondent bus driver alone caused the accident is just and proper and the same is confirmed.

11. The petitioners states that the deceased was aged about 17 years and she was earning a sum of Rs.10,000/- per month by working as housemaid. It is evident from Ex.P3 Postmortem certificate that the deceased was aged about 17 years. Admittedly, she was a bachelor. However, there is no proof for the monthly income of Rs.10,000/- earned by her. Hence, it will appropriate to fix the notional income of the deceased at Rs.6,000/- per month. Considering the age of the deceased, the multiplier to be applied is 18. As the deceased was a bachelor 50% income has to be deducted towards personal expenses. Thus,

Rs.6000/- - 50% = Rs.3000/-. As such the loss of income calculated is as follows:- Rs.3000/- x 12 = Rs.36,000/- x 18 = Rs.6,48,000/-. Thus, the loss of income comes to Rs.6,48,000/-. The amount awarded by the Tribunal under the head of loss of love and affection is set aside.

12. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of Estate	=	Rs. 15,000.00
Funeral Expenses	=	Rs. 15,000.00
Transportation	=	Rs. 5,000.00

13. Accordingly, the compensation awarded by the Tribunal is reduced as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	6,48,000.00	6,48,000.00
2.	Loss of Estate	-	15,000.00
4.	Funeral Expenses	15,000.00	15,000.00
5.	Transportation	10,000.00	5,000.00
6.	Loss of love and affection	40,000.00	
	Total	7,13,000.00	6,83,000.00

14. In view of the above modification, the civil miscellaneous appeal is partly allowed with costs. The respondent transport corporation is directed to deposit the award amount of Rs.6,83,000/- with interest at the rate of 7.5% p.a. From the date of filing the claim petition till the deposit of the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposits, the petitioners/claimants are entitled to equal share of the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS VII)

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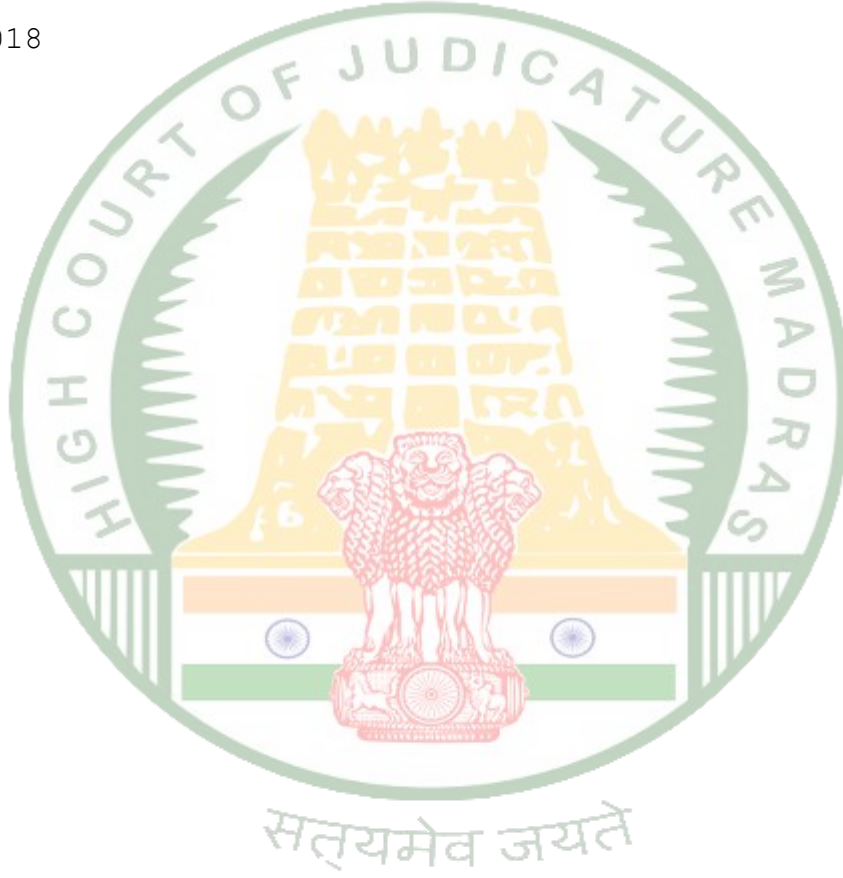
Sub Assistant Registrar

To
The Principal District Motor Accident Claims Tribunal
Principal District Judge,
Cuddalore.

+1 cc to Mrs.M.V.Shoba Advocate sr 8894
+1 cc to Mr.R.Sreedhar Advocate sr 8881

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