

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3103 of 2017

K.Ananthi

..Appellant/Petitioner

Versus

1. Prabukumar

2. The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division) Ltd,
37-Mettupalayam Road, Coimbatore-43.

3. S.Rangasamy

4. Saraswathi

..Respondents/Respondents

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act 1988, against the judgment and decree dated 14.03.2014 made in M.C.O.P.No.54 of 2013 on the file of the Motor Accident Claims Tribunal (Special District Judge), Erode.

For Appellant : Mr.R.Nalliyappan

For Respondents : Ms.R.T.Sundari for R2

J U D G M E N T

The appellant has filed this appeal against the judgment and decree dated 14.03.2014 made in M.C.O.P.No.54 of 2013 on the file of the Motor Accident Claims Tribunal (Special District Judge), Erode.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of death. The petitioner/claimant states that on 02.05.2011 at about 11.45 a.m., when she was travelling with her husband, R.Kandasamy, the deceased in the 2nd respondent/Transport Corporation bus bearing Registration No.TN-38-N-2074 from New Bus stand, Coimbatore to Gandhipuram Bus Stand, the 1st respondent/driver had driven the vehicle in a rash and negligent manner and as he turned the bus at high speed, the deceased who was standing near the front door, fell down suffering grievous head injury and subsequently died in the

hospital on the same day. The accident occurred only due to rash and negligent driving of the bus by the 1st respondent driver. At the time of the accident, the deceased was aged 34 years and was doing agricultural work, getting Rs.8,000/- per month from the agricultural work and a further sum of Rs.12,000/- per month from his Real Estate business. The petitioner who is the wife of the deceased is dependent on the income of her husband who is the sole breadwinner of the family. Hence, the petitioner seeks a sum of Rs.15,00,000/- as compensation from the 2nd respondent/Transport Corporation.

3. On the other hand, opposing the petition by filing the counter, the 2nd respondent/Transport Corporation denied the claim of the petitioner, that the accident occurred due to the negligent driving of the bus by the 1st respondent driver herein. The respondent states on the fateful day, the bus bearing Registration No.TN-38-N-2074 was proceeding in its regular trip and at about 11.45 a.m., as the bus moved from the Saibaba colony bus stand and about 200 feet away turned to right side, a male passenger, who was standing near the front entrance of the bus fell down from the front foot board and sustained grievous injuries. In spite of the instructions of the Conductor of the bus to the passenger to get inside the bus, the deceased did not mind the same and stood on the foot board inspite of warning by the conductor. Thus, the negligence of the deceased alone resulted in the occurrence and as such the claim of the petitioner is not correct. The age, occupation, income of the deceased is disputed. The Tribunal, has not properly considered the materials available on record and awarded a sum of Rs.8,99,000/- as compensation. The claim of the petitioner is exorbitant. Hence the 2nd respondent/Transport Corporation seek dismissal of the petition.

4. Before the Tribunal, the petitioner examined herself as P.W.1 and eye-witness to the occurrence as P.W.2 and produced documents Exs.P1 to P11. On the side of the respondent, the driver and conductor of the bus involved in the accident were examined as R.W.1 and R.W.2 but no document was produced. The Tribunal on the basis of available material found that the 1st respondent driver is responsible for the occurrence and awarded a sum of Rs.8,99,000/- as compensation to the petitioner. Being not satisfied with the quantum of the award, the petitioner/claimant has come forward with the present appeal.

5. Heard both sides counsel and perused the available materials on record.

6. The learned counsel for the petitioner contended that the Tribunal failed to appreciate the income of the deceased properly and wrongly fixed the notional income at Rs.4,500/- per

month and the multiplier adopted by the tribunal is also not correct. The amount awarded under various heads is not proper as the deceased was aged only 34 years and left behind his only legal heir, the petitioner herein, who is the wife of the deceased. The award passed by the Tribunal is very low and the same has to be enhanced. Thus, the petitioner seeks to entertain the appeal.

7. Per contra, the learned counsel for the respondent contended that the accident occurred only due to the negligence of the deceased and as such the Tribunal erred in fixing the negligence on the part of the driver of the respondent bus. Further, the award passed by the Tribunal is on the higher side and as such the plea of the petitioner in the appeal cannot be entertained and the same has to be dismissed.

8. The petitioner states on 02.05.2011, while she was travelling along with her husband/the deceased in the respondent Corporation bus, as driver turned the bus towards from western side at high speed the deceased standing inside the bus near the front door fell down and suffered grievous head injuries, causing his death. According, to P.W.1, after completing the medical checkup as they were returning home, the accident took place. It is evident from Ex.P.11, document that the petitioner herein underwent medical examination on the said date in a private hospital. Further, the petitioner who deposed as P.W.1 had lodged the complaint about the accident. Further, the petitioner also stated that the police after Registering Ex.P.1 - F.I.R, investigated the matter and filed Ex.P.6 - Charge sheet against the 1st respondent driver holding him responsible for the accident. The petitioner also produced Ex.P.2-Rough Sketch and Ex.P.3-Observation Mazhar of the occurrence spot respectively. Thus, the petitioner claims the negligence and rashness on the part of the 1st respondent driver alone caused the accident.

9. However, disputing the same, the driver and conductor of the bus who deposed as R.W.1 and R.W.2 stated that the negligence of the deceased alone resulted in his fall from the bus causing him grievous injuries. Even though, R.W.1 and R.W.2 stated that the deceased was standing in the front foot board and fell down as he was not holding on the handle bar properly, the same is not acceptable, since R.W.1 in his cross examination admitted that he did not know as to where the deceased was standing and holding the bar. Admittedly, the incident occurred in the junction point of north-south road and east-west road as exhibited by Ex.P.2 - Rough sketch. Even though, R.W.2 - Conductor stated the deceased was not able to hold the steel bar properly, as he was standing with cellphone in his hand, and fell down, there is no such pleading to that effect. Further, the police after registering the case investigated the matter

and filed a charge sheet only against the 1st respondent/driver which will clearly show that the accident occurred only due to negligence of the 1st respondent. In such circumstances, it is clear from the evidence of P.W.1 who witnessed the occurrence and the contents of Ex.P.1 - F.I.R, Ex.P.6 - Charge sheet, that the negligence on the part of the 1st respondent/driver alone caused the accident. The finding of the Tribunal to that extent is just and proper and it needs no interference.

10. The petitioner stated that the deceased was aged 34 years and he was getting Rs.20,000/- per month from his agricultural and Real Estate business. As per Ex.P.5-Post Mortem certificate, the deceased was stated to be 35 years old. Hence, the age of the deceased is fixed at 35 years and the relevant multiplier to be applied is 16. The Tribunal, after considering the materials on record fixed the notional income of Rs.4,500/- per month. Even though, there is no independent evidence or documentary proof of actual income of the deceased, considering the age and the nature of business namely Real Estate and agricultural work of the deceased, it would be appropriate to fix his monthly income at Rs.6,500/- instead of Rs.4,500/- fixed by the Tribunal. Since the deceased was aged 35 years, the future prospects is to be calculated as 50%.
Notional monthly income = Rs.6,500/-
50% addition towards future prospects
(Rs.6,500 x 50% = Rs.3,250/-) (6500+3250) = Rs.9,750/-

11. Even though, the petitioner claimed the deceased was doing agricultural work, Ex.P.10 - Kist Receipt stands in the name of 3rd respondent, who is the father of the deceased. There is nothing on record to show that the deceased was owing any agricultural property.

12. The petitioner who is the wife of the deceased stated that the respondents 3 and 4, who are the parents of the deceased were aged 70 and 59 years respectively, and they were depending on the income of the deceased. As such, there are three dependants and 1/3rd of the share is to be deducted towards "Personal Expenses", as under:-

1/3rd deduction towards personal expenses (3250)
Rs.9750-1/3(3250) = Rs.6500/-
By applying multiplier of 16,
Rs.6500x12x16 = 12,48,000/-

Thus, a sum of Rs.12,48,000/- is granted as compensation under the head "Loss of Income" and a sum of Rs.15,000/- is granted as compensation under the head "Transportation".

13. Following the Apex Court ruling, towards loss of estate, loss of consortium and funeral expenses in the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], this court is inclined to modify the compensation as under:-

Loss of Estate	= Rs.15,000/-
Loss of consortium	= Rs.40,000/-
Funeral Expenses	= Rs.15,000/-

	Rs.70,000/-

10. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of Income	8,64,000.00	12,48,000.00
2	Loss of Estate	10,000.00	15,000.00
3	Loss of Consortium	10,000.00	40,000.00
4	Funeral Expenses	10,000.00	15,000.00
5	Transportation	5,000.00	15,000.00
6	Total	8,99,000.00	13,33,000.00

11. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

- (i) The award of the Tribunal is modified and enhanced from Rs.8,99,000/- to Rs.13,33,000/-
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) In view of the above enhanced award amount, the 2nd respondent/Transport Corp. is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

- (v) In view of the order of this Court dated 25.10.2017 passed in C.M.P.No.17022 of 2017 in C.M.A(SR).No.72477 of 2017 and since the appeal has been filed with the delay of 1043 days, interest is waived off, for the default period.
- (vi) Appellant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount. No cost.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

bri

To

1. The Motor Accident Claims Tribunal,
Special District Judge, Erode.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.9828

C.M.A.No.3103 of 2017

AD(CO)
CS/08/05/18

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