

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2018

CORAM

THE HONOURABLE JUSTICE MR.S.BASKARAN

C.M.A.No.3366 of 2014

and M.P.No.1 of 2014

The Managing Director

Tamil Nadu State Transport Corporation Ltd.,

Coimbatore

..Appellant

VS

1.Papathi

2.Mahendra prabu

3.Minor Valliammal

Minor rep. by her mother

And Next friend Papathi

..Respondents 1 to 3/Petitioners

4.Kalidass

5.The Managing Director

Tamil Nadu State Transport Corporation Ltd.,

Anna Salai, Chennai-600 002

6.Ramalingam

7.Ramachandran

8.The United India Insurance Company Ltd.,

Salem-4

..Respondents 4 to 8

R4, R5 and R6 given up.

Prayer: Civil Miscellaneous Appeals filed U/s.173 of M.V.Act against the decree and judgment passed by the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court.No.1,Tirupur, made in MCOP.No.1060 of 2007 dated 31.01.2011.

For appellant : : Mr.S.V.Vasantha Kumar

For respondents : : Mr.C.E.Pratap for R1 and R2

(R3-rep. by R1)

R4 to R6-Given up.

JUDGMENT

The above appeal arise out of the award passed by the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court.No.1,Tirupur, made in MCOP.No.1060 of 2007 dated 31.01.2011.

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 11.07.2007 at 4.00 a.m., when the deceased Subramanian was travelling as a Passenger in the Transport Corporation Bus bearing Reg.No.TN-01-6683, at Salem Main Road, A.Pudur, another bus bearing Reg.No.TN-38-1485 which came in the opposite direction dashed against the above said Corporation bus and also dashed another vehicle bearing Reg.No.TN-30-V-7077, in which the deceased Subramanian sustained fatal injuries and was killed under the means of a bus belonging to Tamil Nadu State Transport Corporation, Coimbatore. The wife, son and daughter of the deceased filed M.C.O.P.No.1060 of 2007 on the file of the Tribunal at Tirupur, claiming compensation of Rs.1,00,000/-. By a common Award passed on 31.01.2011 in MCOP.Nos.1060 and 1063 of 2007, the Tribunal awarded a compensation of Rs.4,60,000/- in the present MCOP.No.1060 of 2007. Aggrieved by the said award, the Transport Corporation is before this court with the above appeal.

3. The first and foremost contention of the learned counsel for the Transport Corporation/Appellant is that the Tribunal failed to consider the argument put forth before it that the Transport Corporation bus was proceeding with moderate speed, but, only due to the rash and negligent driving of the Private Transport bus, in which, the deceased was travelling as a passenger, the accident occurred and the entire negligence is on the part of the Private Transport bus. It is further contended that the Tribunal erroneously taken the income of the deceased as Rs.4,500/- per month without any proof and wrongly adopted multiplier 11, which is highly excessive and exorbitant.

4. However, the learned counsel for the respondents 1 to 3/Petitioners/claimants contended that the Tribunal based on evidence of P.Ws.1 and 2 and Exhibit P.1-FIR and Exhibits P.2 to P.4 Motor vehicle Inspector Reports, found that due to rash and negligent driving of the driver of the Transport Corporation bus bearing Reg.No.TN-38-N-1485, the accident occurred. The learned counsel also submitted that the Tribunal after taking into consideration the documents produced by the Petitioners in Ex.P.5-Post Mortem Certificate, Ex.P.6-Death Certificate, Ex.P.7-Legal Heris Certificate, fixed the age of the deceased as 54. Further, relying on Ex.P.8-Salary Certificate, fixed the

salary of the deceased at Rs.4500/- and further by deducting $\frac{1}{3}^{\text{rd}}$ towards personal expenses of the deceased and by applying multiplier 11, the loss of dependency is calculated as 3,96,000/- and as the same is fair compensation, the same needs no interference. The Tribunal further awarded Rs.15,000/- towards consortium; Rs.45,000/- towards loss of love and affection to respondents 2 and 3; Rs.4,000/- towards funeral expenses and altogether, Rs.4,60,000/- as compensation, which in my considered view is just and proper.

5. The Tribunal has recorded a clear finding of negligence on the part of the driver of the respondent Transport Corporation on the basis of the evidence on record. It is pointed out by the Tribunal that P.W.1 in his evidence stated that the deceased Subramanian died on the spot of the accident and the case has been registered in Ilavansur Police Station regarding the accident involving the vehicle bearing Reg.No.TN38-N-1485 driven by State Transport Corporation driver and Ex.P.1-FIR also filed in this regard. From the Motor Vehicle Inspector Report, it is found that vehicles bearing Reg.No.TN-01-6683, TN-38-1485 and TN-30V-7077 were involved in the accident. One Thangamuthu, passenger in the State Transport Corporation has given complaint in Ilavansur Police Station on 11.07.2007 against the driver of the Vehicle bearing Reg.No.TN-38-N-1485. There is no contra evidence on the side of the respondent Transport Corporation and the evidence of R.W.1 is not corroborated by any other evidence and as such, the negligence on the part of the driver of the State Transport Corporation bus bearing Reg.No.TN-38-N-1485 alone caused the accident.

6. The Tribunal has taken note of the eyewitness account narrated by P.W.1 and P.W.2. The evidence of P.W.1, appears to be unassailable. Therefore, the finding with regard to the negligence cannot be interfered with.

7. Insofar as the quantum is concerned, it is seen that the claimants viz., the wife, son and daughter of the deceased, in their claim petition, stated that the deceased was working as Electrician in DSK Hospital, Tirupur, and stated to have earned monthly income of Rs.5,000/-. The Tribunal, taking note of Ex.P.7-Salary Certificate fixed the income notionally at Rs.4500/- per month and after deductions, the annual income was arrived at as Rs.36,000/-. Further, the Tribunal applied correct multiplier of 11 and arrived at Rs.3,96,000/- as loss of dependency. The Tribunal also awarded Rs. 15,000/- to the 1st petitioner/wife for loss of consortium, Rs.15,000/- each to the

Petitioners 1 to 3 for loss of love and affection totalling Rs.45,000/- under the head "loss of love and affection". The tribunal also awarded Rs.4000/- towards funeral expenses and thus granted total award amount of Rs.4,60,000/-. Therefore, I find that the award of Rs.4,60,000/- as compensation in respect of the fatal accident involving the bread winner of the family consisting of wife, son aged 18 years and daughter aged 14 years, cannot be said to of a high order.

8. Therefore, in fine, this court finds no justifiable ground to interfere with the Award passed by the Tribunal. Hence, the Civil Miscellaneous Appeal is dismissed. The Award passed by the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court.No.1,Tirupur, made in MCOP.No.1060 of 2007 dated 31.01.2011, is confirmed. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,

Additional District Judge, Fast Track Court.No.1,
Tirupur.

2.The Section Officer, V.R.Section, High Court, Madras.

3.The Managing Director, Tamilnadu State Transport Corporation
Ltd., Co. Ltd., Coimbatore

4.The Managing Director, Tamilnadu State Transport Corporation
Ltd., Chennai-2

5.Untited India Insurance Co.Ltd., Salem-4.

+1cc to Mr.Vasanthakumar, Advocate Sr.No.10353

+1cc to Mr.C.E.Pratap, Advocate Sr.No.10031

MG(CO)

sm:8.5.2018

C.M.A.No.3366 of 2014