

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.754 of 2018
and
C.M.P.No.6378 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division)Ltd.,
Chennai-malai Road,
Erode Taluk, Erode District
Erode - 638 001. ... Appellant/Respondent

Versus

1.G.Kalaiyarasi
2.G.Santhiya
3.G.Dhivya
4.Kannammal @ Lakshmi
5.Eswaran
6.K.Mathiyarsan ... Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed against the order dated 31.03.2016 made in M.C.O.P.No.447 of 2015 on the file of the Motor Accident Claims Tribunal, The Special District Judge, Erode.

For Appellant : Mr.K.J.Sivakumar
For Respondents : Mr.M.Guruprasad [for R1 to R5]

सत्यमेव जयते
J U D G M E N T

The 2nd respondent/Transport Corporation has filed this appeal against the order dated 31.03.2016 made in M.C.O.P.No. 447 of 2015 on the file of the Motor Accident Claims Tribunal, The Special District Judge, Erode.

2. By consent of both the parties, this appeal is taken up for final disposal at the admission stage itself.

3. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

4. The case of the petitioners is that on 20.07.2015 at about 4.00p.m., while the deceased Gopal was proceeding in Erode to Kangeyam road in his bicycle near Avalpoondurai Town near Town Panchayat office in front of Christian Church, the 2nd respondent/Transport Corporation bus bearing Registration No.TN-33-N-1760 came in the same direction driven in a rash and negligent manner by the 1st respondent driver, dashed against the two wheeler, which the deceased was riding, causing him multiple grievous injuries and resulting in his death, subsequently on 07.08.2015. The accident occurred due to the rash and negligent driving by the 1st respondent driver. The deceased was aged 49 years and by doing Carpenter work, he was earning Rs.20,000/- per month. The petitioners who are the wife, daughters and parents of the deceased Gopal were depending on his income. Thus, the petitioners seek a sum of Rs.20,00,000/- as compensation from the respondents.

5. On the other hand, opposing the claim petition, by filing counter, the 2nd respondent/Transport Corporation contends that the accident did not occur in the manner alleged by the petitioners. On the occurrence day, the 1st respondent driver was proceeding in slow speed from Erode to Pannaikinaru Main road and at that time near the Avalpoondurai, the driver saw a cycle going in a zig-zag manner and the rider of the bicycle fell down in front of the left wheel of the bus, resulting in the accident. It was only due to negligence of the driver of the bicycle, the occurrence took place. Thus, the 2nd respondent/Transport Corporation sought for dismissal of the petition, as the claim of the petitioners is not sustainable.

6. Before the Tribunal, the petitioner examined P.W.1 to P.W.3 and produced document Exs.P.1 to P.10 to prove their claim. The respondent examined the driver of the bus as R.W.1, but did not produce any documents. The Tribunal, after analysing the evidence available on record, found negligence of the 1st respondent driver alone caused the accident and passed an award of Rs.11,48,857/- payable by the respondents. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Transport Corporation has come forward with the present appeal.

7. The learned counsel for the 2nd respondent/Transport Corporation contends that the Tribunal failed to appreciate the evidence properly and wrongly fixed the negligence on the part of the respondent bus driver as the cause for the accident. The Tribunal ought to have held that the deceased riding his bicycle under influence of alcohol, fell down in the rear side of the bus, inviting the accident. The age, avocation and income of the deceased claimed by the petitioners is not true and the same was also not established before the Tribunal. The Tribunal wrongly fixed the monthly income of the deceased at Rs.6,500/- and

awarded a higher amount under different heads. Thus, the 2nd respondent/Transport Corporation sought to set aside the award passed by the Tribunal by allowing the appeal.

8. Per contra, the learned counsel for the petitioners/claimants contends that the Tribunal correctly appreciated the evidence on record and fixed the liability on the respondents, on the basis of available evidence. Further, fixation of monthly income and other amounts awarded by the Tribunal under different heads is just and proper and no ground is made out to interfere with the same. Thus, the petitioners sought for dismissal of the appeal.

9. Heard both sides and perused the available evidence on records.

10. The 1st petitioner, who is the wife of the deceased stated that the accident occurred on 20.07.2015 at 4.00p.m., resulting in the death of her husband, subsequently, on 07.08.2015. The P.W-2, an eye-witness to the occurrence deposed that the deceased was riding his bicycle from North-South in front of the saloon at Avalpoondurai, the respondent bus driven by the 1st respondent came at high speed, dashed against the bicycle, which the deceased was riding, causing him multiple injuries. The police registered Ex.P.1 - F.I.R against the 1st respondent only. The observation mahazar and the rough sketch of the place of occurrence prepared by police are marked as Exs.P.3 and P.4. Subsequently, on the death of the deceased, the police altered the section in the F.I.R and the same is evidenced by Ex.P.5 - Alteration report. It is further contended by the petitioners that negligence of the respondent bus driver alone caused the accident and the same is established by the oral evidence of P.W.2. It is contended by the 2nd respondent that the driver of the bus, who deposed as R.W.1, clearly stated that the rider of the bicycle lost balance and fell down on the left rear side wheel of the bus, inviting the accident. Even though R.W.1 stated that the deceased was under influence of alcohol, there is no proof to that effect. As R.W.1 is a interested witness, in the absence of any supportive material to substantiate his version, the same cannot be relied upon. P.W.2, an eye-witness to the accident is a 3rd party and the same being substantiated by Ex.P.1 - F.I.R. It is clear that the petitioners established through acceptable evidence, the fact of negligence on the part of the 1st respondent alone caused the accident. The conclusion arrived at by the Tribunal to that effect is just and proper. The 1st respondent driven bus involved in the accident belongs to the 2nd respondent/Transport Corporation and the accident occurred only due to the negligence of the 1st respondent. As such, the Tribunal is justified in holding that the 2nd respondent/Transport Corporation is liable to pay compensation.

11. The petitioners claimed that the deceased was aged 49 years and by working as Carpenter was earning Rs.20,000/- per month. However, there is no proof for the avocation and income of the deceased. As far as the age of the deceased is concerned, it is stated as 50 years in the claim petition. In Ex.P.5 - Alteration Report and Ex.P.6 - Post mortem report also the same age is mentioned. In the absence of other document regarding the age of the deceased, on the basis of Exs.P.5 and P.6 his age is fixed as 50 years. Thus, the multiplier to be applied is '13'.

12. The petitioners claimed that all of them are the dependents of the deceased, as per Ex.P.10 - Legal heir certificate. The 1st petitioner to 4th petitioner are stated to be legal heirs, while the father of the deceased who is the 5th petitioner is not included in the said certificate. However, as he is aged about 70 years, the 5th petitioner may not have any income on his own to meet his expenses. Therefore, he is to be treated as dependent. Even though the 2nd and 3rd petitioners who are the daughters of the deceased are shown as legal heirs, it is clear from the averments in the petition, that both of them are married and living with their husband. As such, the 2nd and 3rd petitioners are not to be considered as dependents of the deceased. In such circumstances, the number of dependents should be only 3 and therefore, 1/3rd of the income is to be deducted towards personal expenses of the deceased. Further, considering the fact that the accident took place in 2015 and the deceased was stated to be working as a carpenter, he would have easily earned more than the amount fixed by the Tribunal. Hence, the notional income is increased to Rs.7,500/- per month. Considering the age of the deceased was 50 years, it will be appropriate to give 25% of the income towards future prospects. Thus, loss of dependency is calculated as follows. The monthly income and future prospects will be,

Rs.7,500 * 25% = Rs.1,875/-

Rs.7,500 + Rs.1,875 = Rs.9,375/-

By deducting 1/3rd towards personal expenses,

Rs.9,375 * 1/3 = Rs.3,125/-

Rs.9,375 - Rs.3,125 = Rs.6,250/-

Correct multiplier to be applied is 13,

Rs.6,250 * 12 * 13 = Rs.9,75,000/-

Thus, a sum of Rs.9,75,000 /- is granted as compensation under the head "Loss of Dependency".

13. As per Ex.P.9 - Series, medical bills, a sum of Rs.5,285/- is awarded towards medical expenses. The Tribunal has awarded Rs.10,000/- for transportation. As the deceased met with the accident on 27.07.2015 and thereafter, he was under treatment in the hospital and died only on 07.08.2015, he would have undergone Pain and Suffering and as such it will be

appropriate to award Rs.40,000/- towards pain and suffering. Further he would have been in need of attender during the period of treatment. Hence, Rs.15,000/- is awarded under the head for attender charges and Rs.2,000/- towards damages of clothes.

14. In respect of awarding compensation under conventional heads, as per the judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation has to be awarded towards loss of estate, loss of consortium and funeral expenses and thus, this court is inclined to grant a sum of Rs.15,000/- each towards loss of estate and funeral expenses and for loss of consortium a sum of Rs.40,000/- is awarded.

15. Accordingly, the compensation awarded by the Tribunal stands modifies as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of Dependency	9,88,572.00	9,75,000.00
2	Funeral Expenses	25,000.00	15,000.00
3	Loss of Consortium	50,000.00	40,000.00
4	Loss of Estate	-	15,000.00
5	Love and Affection	50,000.00	-
6	Medical Bills	5,285.00	5,285.00
7	Transportation	10,000.00	10,000.00
8	Pain and Suffering	20,000.00	40,000.00
9	Attender Charges	-	15,000.00
10	Damages of Clothes	-	2,000.00
11	Total	11,48,857.00	11,17,285.00

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

(i) The award of the Tribunal is reduced to Rs.11,17,285/- from Rs.11,48,857/-.

(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 modified award amount, the Appellant/Transport Corporation 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 judgment.

(iv) The 1st petitioner is allotted 40% of the award amount, even though the 2nd and 3rd petitioners are married daughters of the deceased, they are given 20% each and for 4th and 5th petitioners 10% each.

(v) On such deposit, petitioners/claimants are 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.

Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bri

To

1. The Special District Judge,
Erode.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.27813
+1cc to Mr.M.Guruprasad, Advocate, S.R.No.27470

C.M.A.No.754 of 2018

KS(CO)
CS/11/05/18

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