

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.85 of 2018

1.Ranganayaki
2.Rangasamy
3.Prakash

..Appellants/Petitioners

Vs

The Managing Director
Tamil Nadu State Transport Corporation
Kovai Division, 37 Mettupalayam Road
Coimbatore.

..Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 13.07.2017 in M.C.O.P.No.451 of 2012 on the file of Motor Vehicle Accident Claim Tribunal/Principal District Judge, Namakkal.

For Appellants :Mr.I.Abrar MD Abdullah

For Respondent :Mr.K.J.Sivakumar

For Deputy
Commissioner of Police:Mr. Mohamed Riyaz
Coimbatore Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by N.KIRUBAKARAN, J]

The appeal has been preferred by the claimants against the award of Rs.3,59,400/- and also fixing 80% negligence on the part of the deceased. This is the reason for the cause of the action.

2. One Mr.Kanagaraj, 25 years old, a Software Engineer, working in a Software concern , earning about Rs.50,000/- per month, was traveling in his motorcycle from West to East and hit down by a Transport Corporation Bus, coming in the same direction, driven rash and negligently, fell down and died.

Therefore, the claim petition.

3. On contest, the Tribunal found that the accident occurred because of 80% contributory negligence on the part of the deceased and 20% on the part of the driver of the Transport Corporation Bus and awarded a sum of Rs.3,59,400/-. Aggrieved over the same, the claimants are before this Court.

4. Heard Mr.I.Abrar MD Abdullah, learned counsel appearing for the appellants and Mr.K.J.Sivakumar, learned counsel appearing for the respondent-Transport Corporation.

5. Mr.I.Abrar MD Abdullah, learned counsel appearing for the appellants would submit that even though Ex.P.1-F.I.R had been registered against the driver of the Transport Corporation Bus, the Tribunal based on Ex.R.1-Final Report filed against the deceased, determined the negligence at 80% on the deceased. Further, he would submit that when Ex.P.1-F.I.R., given by P.W.2, who gave evidence as eyewitness, the Tribunal should have appreciate the evidence of P.W.2 fixed the entire liability on the driver of the Transport Corporation Bus. Whereas, Mr.K.J.Sivakumar, learned counsel appearing for the respondent-Transport Corporation would submit that the Tribunal was right in fixing 80% liability on the deceased, as Ex.R1-Final Report was filed against the deceased. That apart, the version of R.W.1 is corroborated by Ex.P.3, Motor Vehicles Report.

6. It is evident that as soon as the accident occurred, Mr.Anandakumar, who was traveling behind the deceased gave Ex.P1-F.I.R. within 45 minutes of the accident. He categorically stated in Ex.P.1 that the deceased was riding his two wheeler, at the time, the Bus coming in the same direction hit behind Kanagaraj and thereafter, he fell down and crushed by the wheel of the Bus. P.W.2-eyewitness, who gave the F.I.R., categorically spoken about the accident. However, R.W.1, the driver of the Bus stated that the deceased was tried to take U turn in the middle of the road and in the process, he hit against the center median, fell down, sustained injuries on the head and died. Though R.W.1 stated so, P.W.2, categorically stated that because of the hitting of the bus on the deceased and the crush injuries due to ran over of the Transport Corporation Bus wheel, Mr.Kanagaraj died.

7. Ex.P.2-Postmortem report would also support the contention of P.W.2. The relevant portion of the Postmortem report, reads as follows:

"Head and face found deformed, on dissection sub scalp contusion noted over entire scalp. All facial and skull bones found fractured into multiple pieces with surrounding tissue contusion. Multiple lacerations of varying sizes and shapes

noted over all over the brain.”
From the above, it is clear that head and face of the deceased was crushed and deformed. It would not have been possible unless wheel ran over the deceased. It would also falsify the claim of R.W.1 that the victim himself dashed against the median and fell down and because of the falling down, has sustained injuries. If really he hits the median, definitely the head and face would not have been crushed and deformed. Therefore, in the light of P.W.2-eyewitness as confirmed by Ex.P.2-Postmortem Certificate, this Court has to necessary come to the conclusion that the accident occurred because of the rash and negligent driving of the driver of the Transportation Corporation bus, which ran over the deceased.

8. Because of the above reasons, this Court rejects the finding reached by the Tribunal that the deceased was negligent and responsible for the accident. By setting aside the finding reached by the Tribunal, this Court holds that the accident occurred solely due to rash and negligent driving of the driver of the Transport Corporation Bus.

9. Merely because, Ex.P.1, final report was filed against the deceased, it would not prove that the deceased alone was responsible for the accident. When in the light of the evidence of P.W.2, Which was given on oath before the Court, the value of the evidence deposed by P.W.2 is more higher in nature compared to Ex.R.1, Final report. Moreover, Ex.R-1 Final report is not testified before any of the Court and it is only a report filed by the Police. Therefore, this Court holds that the accident occurred because of the rash and negligent driving of the driver of the Transport Corporation Bus.

10. It is proved by claimants through Ex.P.6, MCA-Decree Certificate that the deceased was a MCA Postgraduate and also proved through Ex.P-7, Appointment Order dated 07.09.2011, that he was a Trainee at the time of accident. Ex.P.8, Salary Certificate would prove that he was earning about Rs.11,000/- as stipend, since he was a Trainee. The age of the deceased was proved as per Ex.P.6-Degree Certificate and Ex.P.2-Postmortem Certificate as 25.

11. Though a sum of Rs.11,000/- was taken by the Tribunal as monthly income, it has to be seen that it is only a stipend as a Trainee for M.C.A. Post Graduate. In case of successful completion, as per Ex.P.7-Appointment Order, he would have earned more approximately Rs.25,000/-. The Honourable Apex Court in Neeta and others Vs. Divisional Manager, M.S.R.T.C., Kolahapur reported in 2015 (1) TANMAC 161 fixed the monthly income at Rs.12,000/- for an Engineering Student In this case, the deceased was a Trainee and therefore, this Court fixes the monthly income of the deceased at Rs.15,000/-

12. As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added as future prospects, as the claimant is aged about 25 years. Along with 40%, the monthly income would be at *Rs.21,000/- (Rs.15,000/- + 40% of Rs.6,500/-).

13. Since the deceased was a bachelor, 50% has to be deducted towards personal expenses and after deduction, the monthly income would be at Rs.10,500/-. As the age of the deceased as per Ex.P.6-Postmortem Certificate is 25, the appropriate multiplier is '18' and the loss of income would be at Rs.22,68,000/- [10,500 X 12 X 18].

14. The Tribunal has awarded only a sum of Rs.3,000/- and Rs.5,000/- towards loss of estate and funeral expenses respectively, which are very low and therefore, the same are enhanced to Rs.15,000/- each.

15. The Tribunal has awarded a sum of Rs.5,000/- towards loss of love and affection, which is negligible and therefore, the same is enhanced to Rs.1 lakh.

16. The Tribunal has awarded a sum of Rs.2,000/- towards transportation, which is very low and therefore, the same is enhanced to Rs.10,000/-.

17. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The details of the modified compensation as per the above discussion are as under:

Head	Amount (Rs.)
Loss of income	22,68,000
Loss of estate	15,000
Funeral Expenses	15,000
Loss of love and affection	1,00,000
Transportation	10,000
Total	24,08,000

18. Hence, the total compensation comes to Rs.24,08,000/- rounded off to Rs.24,10,000/-. The claimants are directed to pay the additional court fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which, the enhancement made by this Court shall be automatically deleted.

19. The respondent/Transport Corporation is directed to deposit the entire amount along with interest and costs within a

period of twelve weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any failing which, the Chairman-cum-Managing Director and Financial Advisor cum Chief Accountant Officer shall appear before this Court. On such deposit being made, the Tribunal is directed to transfer the entire award amount to the respective bank accounts of the appellants 1 and 2/claimants 1 and 2 equally, with interest and costs through RTGS within a period of one week thereon.

20. Accordingly, this Civil Miscellaneous Appeal is partly allowed by enhancing the Compensation amount of Rs.3,59,400/- to Rs.24,10,000/-. No costs.

21. The Officials including Mr.Sujith Kumar, I.P.S., Deputy Commissioner of Police, Coimbatore are present before this Court and filed a report inconsonance with the report filed by the concerned Inspector. The report shows that in all the Road Accident cases, he had completed the investigation and filed the reports. If it is so, the officials need to be accordingly appreciated. The further appearance of the officials are dispensed with.

s/d-
Assistant Registrar(CS IV)
Dated: 29.08.2018

* Amended as per order
of this court dated
08.10.2018 and made
herein C.M.A.No.85 of 2018.
sd/- Assistant Registrar
Dated: 17.10.2018.

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

To

1. The Motor Accident Claims Tribunal/
Principal District Judge,
Namakkal.

2. The Chairman cum Managing Director
Tamil Nadu State
Transport Corporation,
Kovai Division
37, Mettupalayam Road, Coimbatore.

Amended order to be
substituted to the
order already
despatched on
06.09.2018.

3. The Financial Advisor cum Chief Accountant Officer
Tamil Nadu State Transport Corporation, Kovai Division
37, Mettupalayam Road, Coimbatore.

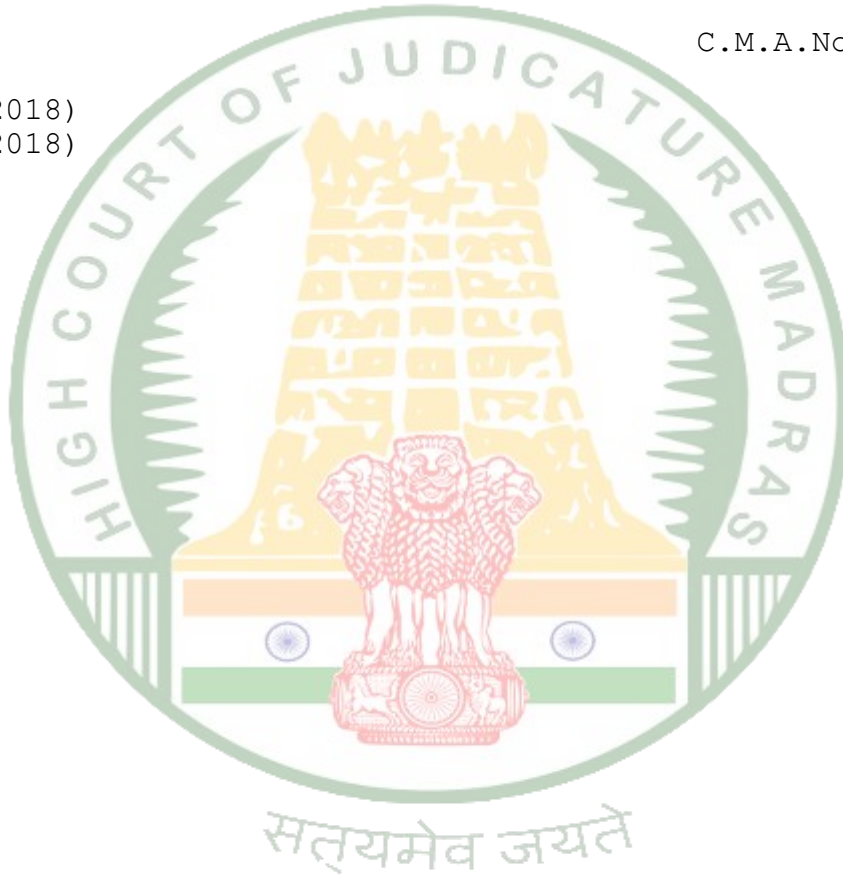
4. The Public Prosecutor
High Court, Madras 104.

+1 CC to Mr.K.J. Sivakumar, Advocate sr 69543.

+1 CC to Mr.I. Abrar Md. Abdullah, advocate sr 69270.

C.M.A.No.85 of 2018

SP(30/08/2018)
SP(17/10/2018)



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