

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2192 of 2018
and
CMP.No.17058 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Trichirapalli-620 001. Appellant/Respondent

Vs

1.Ganesh
2.Suseela ...Respondents/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 09.02.2016 passed in M.C.O.P.No.174 of 2013 by the Motor Accidents Claims Tribunal (Sub-Court), Gudiyatham.

For Appellant : Mr.D.Venkatachalam

JUDGMENT

Being aggrieved by the award of compensation of Rs.11,33,000/- awarded by the Tribunal for the death of the deceased Murali in the accident occurred on 5.9.2009, the Tamil Nadu State Transport Corporation has filed this appeal.

2. Brief facts, which are necessary for disposal of the appeal are as follows:

On 5.9.2009 at about 1.30 hours, the deceased was travelling in a van bearing registration No.TN-43 B 0162 as cleaner and when the van was proceeding towards Chennai on Tindivanam by-pass road near T.V.Nagar, a bus bearing registration No.TN-45 N 2449 belonging to the appellant driven by its driver in a rash and negligent manner dashed against the van. Due to the impact, the driver of the van and the deceased sustained grievous injuries. Immediately, the deceased was taken to Government Hospital, Tindivanam where from he was taken to Government General Hospital, Chennai and succumbed to injuries on 9.9.2009. Stating that the accident occurred due to rash and negligent driving of the driver of the bus, the parents of the deceased filed the claim petition claiming compensation of Rs.25 lakhs.

3. Opposing the claim, the appellant - Transport Corporation filed counter stating that the driver of the bus after giving signals turned the bus and crossed the NH-45 road to Tindivanam branch road to proceed towards Tindivanam bus stand. At that time the Tata van, coming from the south to north in a rash and negligent manner at uncontrollable speed. Despite the appellant driver's sound horn and switched the headlight of the bus ON and OFF, the driver of the van proceeded in the same fashion and dashed on the left side rear body of the bus. Thus, the accident occurred only due to rash and negligent driving of the driver of the van. Without prejudice to the contentions, the appellant also denied the age, occupation, monthly income of the deceased and that the total compensation claimed by the respondents is excessive and exorbitant.

4. Before the Tribunal, the first respondent examined himself as P.W.1 and the driver of the van was examined as P.W.2 and Exs.P1 to P6 were marked. On the side of the appellant, R.W.1 was examined and no document was marked.

5. Rejecting the defence plea of the appellant, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the bus and held that the appellant Transport Corporation is liable to pay the compensation to the respondents. Taking the monthly income of the deceased at Rs.9,000/- and adopting multiplier 14, the Tribunal awarded loss of dependency of Rs.10,08,000/-. Adding conventional damages, the Tribunal awarded total compensation of Rs.11,33,000/- payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

6. Challenging the impugned award, the learned counsel for the appellant Transport Corporation submitted that the Tribunal ought to have fixed contributory negligence against the driver of the van who drove the van in a rash and negligent manner and dashed against the bus. He would submit that the Tribunal ought not to have fixed the monthly income of the deceased at Rs.9,000/- in the absence of proof of income. The learned counsel further submitted that the total compensation awarded by the Tribunal is highly excessive.

7. Per contra, the learned counsel for the respondents contended that the Tribunal having found the rash and negligent driving of the driver of the appellant's bus rightly held that the accident occurred due to rash and negligent driving of the driver of the appellant's bus and there is no perversity in the said finding of the Tribunal. As far as the quantum of compensation awarded by the Tribunal is concerned, the learned counsel submitted that the total compensation of Rs.11,33,000/- awarded by the Tribunal is reasonable and just and prayed for

dismissal of the appeal.

8. I have heard Mr.D.Venkatachalam, learned counsel for the appellant and also perused the materials available on record.

9. It is to be noted that though the appellant Transport Corporation has questioned the negligence fastened on the driver of the bus, it has not produced any material to establish the same. On the other hand, the respondents examined the driver of the van as P.W.2, who has categorically deposed that the accident occurred due to the rash and negligent driving of the driver of the bus. The evidence of P.W.2 is strengthened by the contents in Ex.P1-FIR. Further, Exs.P2 and P3-Motor Vehicle Inspector's report clearly show that in the accident both the vehicles got damaged. The Tribunal after taking into consideration the oral and documentary evidence adduced on both sides came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the appellant bus. Since the said finding of the Tribunal is based on oral and documentary evidence, there is no need to interfere with the same. The theory of contributory negligence stated by the appellant is not supported by any documents. Therefore, the plea of the appellant that the accident occurred due to contributory negligence is not acceptable and the same is rejected.

10. In so far as the quantum of compensation awarded by the Tribunal is concerned, the learned counsel for the appellant contended that the total compensation awarded by the Tribunal is highly excessive.

11. At the time of accident, the deceased was working as cleaner and was earning Rs.6,000/- per month. By referring to the decision in Universal Sompo General Insurance Co. Ltd. v. Uma and others, reported in 2015 (2) TN MAC 721, the Tribunal has fixed the monthly income of the deceased, after adding future prospects, at Rs.9,000/- per month. No rebuttal evidence was adduced on the side of the appellant that the deceased was not working as cleaner at the time of accident. From the oral evidence adduced on the side of the respondents, it is clear that at the time of accident, the deceased was working as cleaner and was earning Rs.6,000/- per month. Adding future prospects of Rs.3,000/-, the Tribunal was right in fixing the monthly income of the deceased at Rs.9,000/-. After deducting one-third towards personal expenses, the deceased would have contributed a sum of Rs.6,000/- per month, i.e., Rs.72,000/- per annum to the family. Adopting multiplier 14, the Tribunal calculated the loss of dependency at Rs.10,08,000/-. This Court is of the considered view that an amount of Rs.10,08,000/- awarded by the Tribunal towards loss of dependency is reasonable and the same is maintained.

12. As far as the conventional damages are concerned, the Tribunal awarded Rs.50,000/- each towards loss of love and affection and Rs.25,000/- towards funeral expenses. Since the amounts awarded under the aforesaid heads are reasonable, the same are maintained. Thus, the total compensation of Rs.11,33,000/- awarded by the Tribunal is just and reasonable and there is no need to interfere with the same. No valid grounds have been made out to interfere with the award passed by the Tribunal and therefore, the appeal filed by the appellant Transport Corporation is liable to be dismissed.

13. In the result, the appeal is dismissed and the award passed by the Tribunal is confirmed. The appellant Transport Corporation is directed to deposit the award amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment. The respondents 1 and 2 are entitled equal share with accrued interest. On such deposit, the respondents are permitted to withdraw their respective share with accrued interest on filing appropriate application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

vs
To

The Motor Accident Claims Tribunal,
Sub-Court, Gudiyatham.

+1 CC to Mr.D.Venkatachalam, Advocate sr 66253.

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C.M.A.No.2192 of 2018 and
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RK (CO)
SP (21/03/2019)