

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1628 of 2006
and CMP.No.7244 of 2006

Metropolitan Transport Corporation Ltd.,
(Chennai-Division I)
rep. By its Managing Director
Pallavan Salai,
Chennai-2

..Appellant/
Respondent.

-Vs-

1.S.Chellammal (died)

2.M.Radhika

3.Thirumathi Pazhaniammal

R1-died; R2 and R3 recorded as LRs
of deceased R1 as per memo filed dated 27.7.2018
vide court order dated 26.07.2018 made in
CMA.No.1628 of 2006.

..Respondents.

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, against the Judgment and decree dated 27.06.2005
made in MACT.O.P.No.875 of 2001 on the file of Motor Accident
Claims Tribunal, III Judge, Court of Small Causes, Chennai.

For appellant : : Mr.N.Krishnamoorthy

For Respondents : : Mr.S.Gangaram Prasad for R2 and R3.

J U D G M E N T

The Appellant is the Transport Corporation, who is the
respondent before the Tribunal, has filed this appeal
challenging the Judgment and decree dated 27.06.2005 made in
MACT.O.P.No.875 of 2001 on the file of Motor Accident Claims
Tribunal, III Judge, Court of Small Causes, Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 01.12.2000 at about 20.00 hours, while the deceased Subramaniam was boarding the respondent corporation bus at Anand Theatre bus stop, Anna Salai, Chennai, the driver of the bus suddenly moved the bus even before the deceased entered the bus, resulting in the victim falling down from the bus, causing him fatal injuries resulting in his death subsequently. The accident occurred only due to negligence of the respondent bus driver. The deceased was aged 49 years and by working in a Private Limited Company, was earning Rs.7902/- per month. The Petitioners, who are wife, daughter and mother of the deceased were depending on his earnings. Due to sudden demise of the bread winner of family, the Petitioners are suffering due to loss of income. Thus, the Petitioners seek a sum of Rs.12,50,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the respondent Transport Corporation contends that on 01.12.2000, as their bus bearing Reg.No.TN-01-N-3282 which was going from Thiruvottriyur to Tambaram, stopped at Anand Theatre bus stop, after the passengers boarded the bus, the driver slowly moved the bus; at that time, the deceased suddenly tried to enter the bus through the middle entrance, lost his grip and fell down, resulting in his death. The accident occurred due to negligence of the deceased. The respondent is not liable to pay any compensation. Hence, they seek dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined P.W.1 to P.W.4, produced documents Ex.P.1 to Ex.P.11, to prove their claim. The respondent examined R.W.1, but no document was produced. On the basis of the evidence available on record, the Tribunal found negligence of the respondent bus driver alone caused the accident, passed an award for a sum of Rs.6,60,400/-, payable by the Respondent Transport Corporation. Aggrieved over the said finding and award, the respondent Transport Corporation has come forward with the present appeal.

5. The learned counsel for the appellant/respondent contends that the Tribunal ought to have concluded that negligence of the deceased alone caused the accident as he attempted to board the moving bus. The alleged eyewitness account of P.W.4 should not be accepted. The amount claimed by the Petitioners is highly excessive. The multiplier adopted by the Tribunal is not correct. The amount awarded under different heads is

speculative and highly excessive. Thus, the respondent/appellant-Transport Corporation seeks to set aside the award passed by the Tribunal, by allowing the appeal.

6. Per contra, the learned counsel for the claimants contends that it is clearly concluded by the Tribunal that the negligence of the bus driver, who suddenly moved the bus without noticing that the deceased was getting into the bus caused the accident and the award passed by the Tribunal fixing negligence on the respondent bus driver is perfectly in order. The quantum of the award provided by the Tribunal is also just and proper. There is no need to interfere with the same. Thus, the Petitioners/claimants seeks dismissal of the appeal.

7. The Claimants/Petitioners examined P.W.4-Veeraraghavan who witnessed the accident in person. According to him, he was working with the deceased and on 01.12.2000, as he was standing along with one Ramasamy in Anand Theatre bus stop, at about 8 p.m., the respondent bus bearing Reg.No.TN-01-N-3282 came and stopped in the said bus stop. After the bus stopped, the deceased Subramaniam was boarding the bus, but the conductor gave signal to move the bus, even before Subramaniam got into the bus. Since the bus was suddenly moved, the deceased Subramaniam fell down and the left rear side wheel ran over the deceased causing him fatal injuries. The Police also registered Ex.P.1-FIR against the respondent bus driver only.

8. The Petitioners also examined P.W.3 who was working as Head Constable in Tamil Nadu Police and he stated that on 01.12.2000, the injured Subramaniam died. The provisions of offence mentioned in the FIR was altered to Section 304 A IPC and charge sheet was filed against the driver of the respondent bus only. A copy of the charge sheet is marked as Ex.P.10, while Rough sketch is marked as Ex.P.3.

9. On the other hand, R.W.1 who is the bus driver stated that as he was driving the respondent bus, on 01.12.2000 at about 6.10 p.m., at Anna Salai Anand Theatre Bus stop, after the passengers boarded the bus, he moved the bus and at that time, the deceased tried to get into the bus, fell down and suffered injuries. Pointing it out, the learned counsel for the appellant/respondent contends that the bus driver was no way responsible for the accident. However, if really the accident had occurred in such a manner, the respondent bus driver who deposed as R.W.1 would have lodged the complaint with the Police, but no such complaint was lodged before the Police. Further, after completion of investigation, the Police laid

charge sheet against the respondent bus driver only. As such, the contention of R.W.1 cannot be accepted. It is therefore clear from the eyewitness account of P.W.4, the contents of Ex.P.2-FIR, Ex.P.10-charge sheet and Ex.P.3-Rough Sketch that negligence of the bus driver alone caused the accident. Thus, the Tribunal has correctly concluded and fixed negligence on the respondent bus driver.

10. The Petitioners state that the deceased was aged 49 years and by working as Attender in Indian Petroleum Limited, was earning Rs.7902/- per month. It is clear from Ex.P.4-Post Mortem Report and Ex.P.6-Death Certificate that the averments about the age of the deceased is true. Further, a copy of the Service Extract is also produced as Ex.P.9. On the basis of the said documents, the age of the deceased is fixed as 49 years.

11. Before the Tribunal, the Administrative Manager of the Indian Petroleum Limited, wherein, the deceased was employed, deposed as P.W.2 and stated that the deceased was employed as Attender in their concern from 1981 and his salary certificate is Ex.P.8. P.W.2 further deposed that the deceased was getting Rs.4302/- after all deductions. He produced the salary Particulars Note as Ex.P.11.

12. Considering the above said evidence, the Tribunal fixed the monthly income of the deceased at Rs.3400/- and after deducting Rs.1200/- towards personal expenses, fixed contribution to the family at Rs.2200/-. Considering the age of the deceased and other attendant circumstances, adopting multiplier "21", fixed the loss of dependency at Rs.5,54,400/-. The same appears to be appropriate.

13. The Tribunal has awarded the following amounts under conventional heads.

Funeral expenses	- Rs.5000/-
Transportation	-Rs.6000/- [Rs.5000/- + Rs.1,000/-]
Loss of consortium	- Rs.50,000/-
Loss of love and affection to claimants 2 and 3	- Rs.50,000/-
Add: loss of dependency	- Rs.5,54,400/-

Total	- Rs.6,65,400/-

but awarded Rs.6,60,400/-.

In view of the above said discussion, there is no ground made out by the appellant/respondent-Transport Corporation to modify the same. Even though the Petitioners contended that future prospects is not provided, considering the multiplier adopted by the Tribunal and other attendant circumstances, this court is of the view that there is no need to alter the quantum of the award passed by the Tribunal. As such, the reasoning of the Tribunal for arriving at the conclusion to pass an award for a sum of Rs.6,60,400/- is just and proper and the same does not warrant any interference.

14. In the result, the Civil Miscellaneous Appeal fails and the same is dismissed. The award passed by the Tribunal in MCOP.No.875/2001 dated 27.6.2005 is confirmed. Since this court by order dated 18.10.2006 in CMP.No.7244 of 2006 in CMA.No.1628 of 2006 directed the appellant to deposit 50% of the award amount, together with accrued interest, the Appellant/Transport Corporation is now directed to deposit the balance award amount along with accrued interest and cost, within a period of six weeks from the date of receipt of a copy of this order. As the first claimant/wife of the deceased died subsequently, the remaining two legal heirs, R2 and R3 are entitled to withdraw the award amount in the ratio of 70% : 30%. No costs. Consequently, connected CMP is closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

nvsri
To

1. The III Judge, Court of Small Causes,
Motor Accident Claims Tribunal, Chennai.

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

+1 CC to Mr.S.Gangaram, Advocate sr 51578.

+1 CC to Mr.M. Krishnamoorthy, Advocate sr 51188.

C.M.A.No.1628 of 2006

VSNI I(CO)
SP(27/09/2018)