

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2281 of 2007

1.Vijayakumari
2.Anandakumar (Minor)
rep. By next friend and first petitioner
Vijayakumari
3.Alamelu
4.Subramani ..Appellants/Petitioners

VS

Metropolitan Transportation
Corporation Limited,
Rep. By its Managing Director
Pallavan Salai, Chennai-2 ..Respondents

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act against the judgment and decree dated
27.04.2006 made in MCOP.No.1286 of 2005 on the file of the Motor
Accident Claims Tribunal, Small Causes Court, Chennai.

For appellants :: Mr.M.Selvam
for M/S.V.Parivallal

for Respondent :: Mr.S.S.Swaminathan

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the
appellants/Petitioners, challenging the judgment and decree
dated 27.04.2006 made in MCOP.No.1286 of 2005 on the file of the
Motor Accident Claims Tribunal, Small Causes Court, Chennai.

2. For the sake of convenience, the parties are referred to
as per their litigative status before the Tribunal. It is a
fatal case. The case of the Petitioners is that on 03.07.1991 at
about 7.15 p.m., while the deceased Chandran was proceeding as a
passenger in the respondent-Transport Corporation bus bearing
Reg.No.TML-1915 and as he was getting down from the bus in the
GST Road, opposite to DCM Toyoto Office, the driver of the bus
suddenly moved the bus even before the deceased got down from

the bus resulting in his fall and suffering fatal injuries and subsequently he died. The accident occurred due to rashness and negligence of the crew of the bus. The deceased was aged 33 years and he was earning Rs.1500 per month. Due to the accident, the Petitioners who are the wife, children and parents of the deceased have lost the bread winner of the family. Thus, the Petitioners sought for Rs.4,00,000/- as compensation from the respondent/Transport Corporation.

3. On the other hand, opposing the claim of the Petitioner by filing counter, the respondent-Transport Corporation contends that the accident does not occur as alleged by the Petitioners. The negligence of the deceased alone caused the accident. While the respondent bus was proceeding from Kamarajapuram to Broadway at normal speed while the bus was slowly proceeding due to heavy traffic, the deceased suddenly got down from the bus and in the process, fell down, suffered injuries resulting in his death. The deceased tried to get down from the bus where no stopping was provided. The deceased alone contributed to the accident due to his negligence. The claim of the Petitioners about the age, avocation and income of the deceased is not true. The amount claimed by the Petitioners is exorbitant. Thus the respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.5 to prove their claim. On the side of the respondent, R.W.1 was examined, but no document was produced. The Tribunal, on the basis of available material on record, found negligence of the respondent bus driver alone caused the accident and passed award for a sum of Rs.1,32,400/- payable by the respondent to the Petitioners. Being not satisfied with the quantum of the award, the Petitioners have come forward with the present appeal as appellants.

5. The learned counsel for the appellants/Petitioners contended that the Tribunal erred in fixing 50% negligence on the deceased. There is no material to support the version of R.W.1 who deposed that the deceased jumped from the moving bus resulting in the accident. The amount awarded by the Tribunal under different heads is very low. Thus the Appellants/Petitioners sought for enhancement of the award amount.

6. Per contra, the learned counsel for the respondent-Transport Corporation contended that the accident occurred due to negligence of the deceased who got down from the bus while it was moving slowly and that too where no stopping is provided for, resulting in the accident. As the deceased himself is a tortfeasor, the Petitioners/claimants are not entitled for

compensation. Further, the award passed by the Tribunal is on the higher side. Thus, the respondent-Transport Corporation sought for dismissal of the appeal.

7. The 1st petitioner/wife of the deceased who deposed as P.W.1 stated that the accident occurred on 03.07.1991 at about 7.15 p.m. However, P.W.1 is not the eyewitness to the occurrence. The person who witnessed the occurrence deposed as P.W.2 and according to him, while he got down from the respondent bus at Cement Road Bus Stop in GST Road and as the deceased was getting down from the front entrance, the bus was suddenly moved by the driver resulting in the deceased falling down from the bus and he was ran over by the rear side wheel of the bus resulting in his death subsequently.

8. On the other hand, the respondent examined the conductor of the bus as R.W.1 and he stated that he was issuing ticket at that time and the deceased suddenly jumped down from the front entrance and sustained injuries. According to R.W.1, there was no bus stop near the place of accident and as the house of the said passenger was near by, in a hurry to reach home, the deceased suddenly got down from the moving bus. Thus, while P.W.2 stated that even before the deceased got down from the bus, the vehicle was moved, the conductor of the bus stated that the deceased jumped from the moving bus. Admittedly, the occurrence happened near the bus stop only. Neither side has come forward to produce the copy of the FIR registered by the Police. In the counter, the occurrence is admitted, but it is only submitted that the deceased jumped out from the moving bus resulting in the accident. Even though R.W.1 stated that there was no bus stop near the occurrence place and he has sent report to the Higher Official in this regard, there is no such report produced either before the Tribunal or before this court. The respondent has not chosen to examine the driver of the bus. Further R.W.1 stated that there was about 50 to 60 passengers in the bus and he was issuing tickets at that time. In such circumstances, R.W.1 the conductor of the bus could not have noticed the deceased getting down from the bus. Nothing is elicited from P.W.2 evidence to disbelieve his version of the occurrence. However, the Tribunal has fixed negligence equally on the driver of the bus as well as the deceased. In the present case on hand, nothing is stated about the FIR registered by the Police. However, as stated above, the occurrence is admitted. In the light of the above said discussion, it is mandatory for the crew members of the bus to prevent any person from getting down or getting in of the moving bus. Even assuming the version of R.W.1 is true, there is negligence on the part of the conductor who allowed the person to get down from the moving bus. In such circumstances, keeping in mind the attendant circumstances and the evidence of P.W.2 eyewitness to the

occurrence, it will be appropriate to fix 30% negligence on the deceased while the driver of the respondent bus contributed to the extent of 70% to the occurrence.

9. The wife of the deceased who deposed as P.W.1 stated that her husband was working in Agila Castings, earning Rs.1,500/- per month . It is clear from Ex.P.4-Salary Certificate that the deceased was paid Rs.60/- per day. The deceased was stated to be 33 years at the time of the accident. The SSLC Book as well as Post Mortem Certificate of the deceased are produced as Ex.P.3 and Ex.P.1 respectively. In Ex.P.3-SSLC Certificate the Date of Birth of the deceased is mentioned as 12.04.1956. Thus the age of the deceased was 35 years at the time of the accident. For that age group, the multiplier to be applied is '16' and not '17' as adopted by the Tribunal.

10. The Petitioner sated that the deceased was earning Rs.1800/- per month. As stated above, it is clear from Ex.P.4 Salary Certificate that the claim of the Petitioner is true. As the deceased was aged 35 years, and he was working as a moulder, it would be appropriate to add 40% towards Future Prospects. Considering the number of dependants in the family of the deceased, it will be appropriate to deduct 1/3rd towards personal expenses of the deceased. The calculation for the loss of dependency is as shown below:-

Monthly Salary : 1800

Add: 40% towards future Prospects (720)

1800 + 720 = 2520

1/3rd deduction towards personal expenses of the deceased (840)

2520 - 840 = 1680

1680 x 12 x 16 = 3,22,560/-.

11. Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is as under:-

Loss of consortium -15,000/-

Funeral expenses -15,000/-

Loss of estate -15,000/-

12. The learned counsel for the Appellants/Petitioners contended that the 2nd Appellant being son of the deceased and the 3rd and 4th Appellants being aged father and mother of the

deceased, they lost love and affection of their father and son respectively and sought for higher amount as compensation towards loss of love and affection. By following the Ruling reported in 2017 SCC Ker 23174 [1.Valsamma and othrs Vs. V.A.Baiju, 2.REv.F.R.Joseph Vattakalam, and 3. The National Insurance Co.Ltd.,] and the Ruling reported in 2018(1) TN MAC 289 [Branch Office, New India Assurance Co.Ltd., Vs. Meenkashi and others], it will be appropriate to grant Rs.5,000/- each as compensation amount totalling Rs.15,000/- under the head "loss of love and affection".

The modified award amount is as shown below:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of dependency	2,44,800	3,22,560
2.	Loss of consortium	5,000	40,000
3.	Loss of love and affection	5,000	15,000
4.	Funeral expenses	5,000	15,000
5.	Loss of estate	5,000	15,000
	Total	2,64,800	4,07,560

In total, a sum of Rs.4,07,560/- is arrived as compensation to the Petitioners. As this court fixed 30% negligence on the part of the deceased, deducting 30% of Rs.4,07,560/- (1,22,268), Rs.2,85,292/- is awarded as compensation payable to the Appellants/Petitioners.

13. In the result,
- This Civil Miscellaneous Appeal is Allowed;
 - The award amount is enhanced to Rs.4,07,560/- and the award amount payable to the appellants is Rs.2,85,292/-;
 - The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;
 - The respondent/Transport Corporation is directed to deposit the entire award amount along with proportionate interest and cost, as ordered by this court, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order.
 - The Appellants 1 to 5 are entitled to the award amount on the following apportionment:- 1st and 2nd Appellants/ -40% each
3rd and 4th Appellants/Parents - 10% each

The Appellants are entitled to withdraw their respective shares of the award amount along with accrued interest. It is seen from the claim petition filed before the tribunal that the 2nd petitioner Anandkumar was minor and aged 1 ½ years and the claim petition was filed in the year 2005 for the accident dated 03.07.1991. The award was passed by the Tribunal on 27.04.2006. Hence, in respect of 2nd Petitioner/2nd appellant-Anandkumar

share is concerned, necessary application shall be filed for disbursal of his share. In view of the enhancement of the award amount, Court fee if any to be paid, shall be paid by the Appellants. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

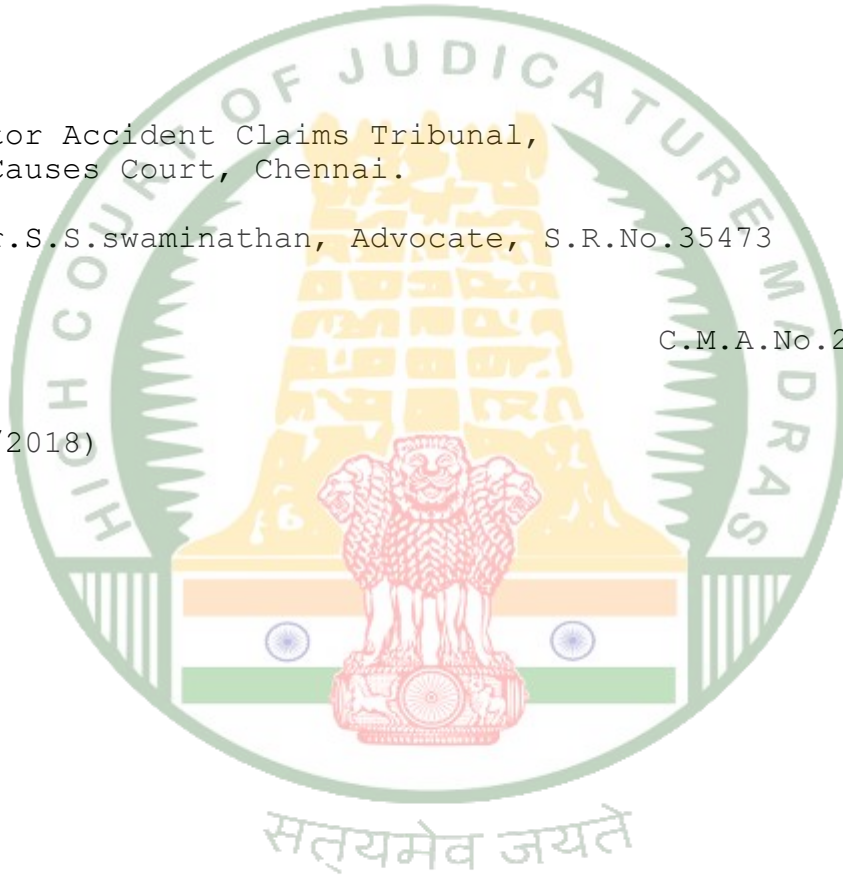
To

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

+1cc to Mr.S.S.swaminathan, Advocate, S.R.No.35473

C.M.A.No.2281 of 2007

SS(CO)
GSP(02/11/2018)



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