

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.579 of 2007  
and  
M.P.No.1 of 2007

The Managing Director,  
Tamilnadu State Transport Corporation Limited,  
Division - I, Villupuram.

...Appellant/Petitioner

Versus

1.Settu  
2.Ananthan  
3.Arumugham  
4.Chinnadurai

...Respondents/Respondents

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.07.2006 made in M.C.O.P.No.1844 of 2004 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Cuddalore.

For Appellants : Mr.P.G.Padmanabhan  
For Respondents : Mr.R.Sreedhar for R1 to R4.

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J U D G M E N T

The Appellant/Transport Corporation has filed this appeal against the judgment and decree dated 07.07.2006 made in M.C.O.P.No.1844 of 2004 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Cuddalore.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the petitioners/claimants is that on 27.05.2004 at about 7.30 p.m., while the deceased was travelling in a tyre cart along with 4 friends in Cuddalore to Virudhachalam Main road and while going near Angalamman koil, Karaikadu bus stop, the respondent's bus bearing Registration No.TN-32-N-1766 came from behind at high speed dashed against the tyre cart causing fatal injuries to the

deceased-Veeramani. The petitioners/claimants who are the parents and brothers of the deceased were dependants on the earnings of the deceased. The deceased was aged 25 years and by doing agricultural work and by way of driving bullock cart he was earning Rs.7,500/- per month. Thus, the petitioners/claimants sought for a sum of Rs.15,00,000/- as compensation from the respondent.

3. On the other hand, opposing the claim petition by filing counter, the respondent/Transport Corporation contends that the accident did not occur in the manner alleged by the petitioners/claimants. On 27.05.2004, the respondent's bus was proceeding at normal speed and while going near Karaikudi village, the driver of the bus saw the tyre cart coming in a zig-zag manner, sounded horn and stopped the bus on the road itself. However, the bullock cart dashed against the bus. It was only due to negligent driving by the tyre cart driver, the accident had occurred. The claim of the petitioners/claimants about the age, avocation and income of the deceased is denied. Thus, the respondent/Transport Corporation sought for dismissal of the petition.

4. Before the Tribunal, the said M.C.O.P.No.1844 of 2004 was taken up for joint trial along with M.C.O.P.No.1840, 1841, 1842 and 1843 of 2004. The petitioners/claimants examined P.Ws'.1 to 5 and produced documents Exs.P.1 to P.12 in support of their claim. On the side of the respondent, R.W.1 conductor of the respondent's bus was examined, but no document was produced. The Tribunal after carefully analysing the evidence on record, found that due to the negligence on the part of the respondent's bus driver alone, the accident had occurred and thus, passed an award for a sum of Rs.8,49,600/- payable by the respondent to the petitioners/claimants. Aggrieved over the said finding of the Tribunal, the respondent/Transport Corporation has come forward with the present appeal.

5. Heard both sides.

6. The learned counsel for the respondent/Transport Corporation contended that the Tribunal erred in fixing the age of the deceased as 25 years and also wrongly fixed the monthly earning of the deceased at Rs.4,500/- without any proof for the same. The Tribunal wrongly applied multiplier '17' to pass an award for a sum of Rs.7,44,000/- towards the loss of income. The Tribunal failed to deduct 1/3<sup>rd</sup> of the income towards personal expenses of the deceased. The Tribunal also failed to consider the age of the parents and other dependants and the amount awarded under different heads is excessive. Thus, the respondent/Transport Corporation/Appellant sought to set aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the petitioners/claimants contends that the deceased was the only bread winner of the family, who has suddenly demised and that had caused loss of income to the petitioners/claimants. The accident occurred only due to the negligence of the bus driver. The Tribunal after carefully analysing the evidence on record found that the respondent's bus driver alone is the cause for the accident and thus awarded compensation, which is just and reasonable. There is no ground to interfere with the same. Thus, the petitioners/claimants sought for dismissal of the appeal.

8. The petitioners/claimants examined an eye-witness to the occurrence as P.W.1 who is the petitioner in one of the claim petition in M.C.O.P.No.1841 of 2004. According to P.W.1 while the deceased along with 4 friends were going in the tyre cart belonging to one Veeramani in Cuddalore - Vridhachalam Main Road at about 7.30 p.m., on 27.05.2004, the respondent's bus came at high speed dashed against the tyre cart causing injury to all of them. Another person who deposed as P.W.4 corroborated the version given by P.W.1. The police also registered Ex.P.1 - F.I.R against the respondent's bus driver only. The respondent has not examined the driver of the bus, but only the conductor of the respondent's bus was examined as R.W.1. He being engaged in issuing tickets at the time of accident is not a proper person to depose about the negligence aspect. As stated above, the eye-witness account P.Ws.1 to 4 is categorical. Ex.P.1 - F.I.R also is registered against the respondent's bus driver only. In such circumstances, on the basis of P.W.1 evidence as well as the contents of Ex.P.1 - F.I.R, it is clear that the accident occurred due to the negligence of the respondent's bus driver only.

9. The father of the deceased who deposed as P.W.3 stated that his son by doing agricultural works and also by operating tyre cart was earning Rs.7,500/- per month. The deceased was stated to be 25 years old as per Ex.P.7 - Postmortem report. In the absence of any other age proof produced by the petitioners/claimants on the basis of Ex.P.7 the deceased age is fixed at 25. The petitioners/claimants has not produced any proof of the earning of deceased. In such circumstances, the Tribunal keeping in mind, the date of accident as well as the avocation carried on by the deceased fixed the monthly income at Rs.4,500/-. The Tribunal keeping in mind that there are 5 dependents has deducted 1/4<sup>th</sup> towards the personal expenses of the deceased and fixed the contribution to the family at Rs.3,650/- per month. The Tribunal has analysed the materials available on record and has arrived at the said figure. The Tribunal has also by applying the multiplier of 17, fixed the loss of income to the petitioners/claimants at Rs.7,44,500/-. The Tribunal has awarded the following amount under different

heads " For Pain and Suffering" Rs.1,00,000/- and "For Funeral expenses" Rs.5,000/-. Thus, in total a sum of Rs.8,49,600/- is awarded.

10. Considering the fact that the accident occurred during the year 2004 and other attendant circumstances, the Tribunal has correctly assessed the loss of income and awarded a sum of Rs.8,49,600/- payable by the respondents. Thus no ground is made out by the respondent/Transport Corporation to modify or to interfere with the findings of the Tribunal. As such after considering the evidence on record, this court finds no merit in the appeal and the same cannot be entertained. Accordingly it deserves to be dismissed.

11. In the Result, the appeal in C.M.A.No.579 of 2007 is dismissed. The respondent/Transport Corporation is directed to deposit the balance amount as awarded by the claims Tribunal less the amount already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants/petitioners are entitled to withdraw the award amount confirmed by this Court in equal share along with accrued interest, on filing appropriate application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bri

To

1. The Additional Subordinate Judge,  
Cuddalore.

2. The Section Officer,  
V.R.Section, High Court,  
Madras. (2 Copies)

+1cc to Mr.P.G.Padmanabhan, Advocate, S.R.No.36790  
+1cc to Mr.R.Sreedhar, Advocate, S.R.No.36562

C.M.A.No.579 of 2007

GP(Co)  
CS/27/08/18