

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3383 of 2013
and M.P.No.1 of 2013

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam

...Appellant
/Respondent.

Vs

1.Senbagavalli

2.Balaji (Minor)

...Respondents 1&2/Petitioners 1&2

3.Banupriya (Minor)

R3 impleaded vide order dated 12.04.2018
in C.M.P.No.7380/2018.

...3rd Respondents/-

4.Pavithra (Minor)

R2, R3 and R4 rep by mother-guardian
1st Respondent-Senbagavalli

5.Sokkamal

...Respondents 4&5/Petitioner 3&4

Civil Miscellaneous Appeal filed against the award and decree dated 07.01.2013 passed in M.C.O.P.No.244 of 2012 on the file of Motor Accidents Claims Tribunal, Principal District and sessions Judge, Ariyalur.

For appellant
for Respondents

: : Mr.D.Venkatachalam
: : M/s.I.Arokiasamy
for R1 to R5.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Transport Corporation, challenging the judgment and decree dated 07.01.2013 passed in M.C.O.P.No.244 of 2012 on the file of Motor Accidents Claims Tribunal, Principal District and sessions Judge, Ariyalur.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of

the Petitioners is that on 11.07.2012, at about 7.30 p.m., when the deceased Egambaram was travelling in two wheeler bearing Reg.No.TN-61-B-4665 in Trichy-Chennai Main Road, from east to west, while going near Pudhuchavadi, the respondent Transport Corporation bus came at high speed, dashed against the two wheeler in which the deceased was going, resulting in causing fatal injuries leading to his death on the spot itself. The accident occurred due to rash and negligent driving of the 1st respondent bus driver only. The deceased was aged 40 years and by carrying on Hotel Business and doing agricultural work, was earning Rs.15,000/- per month. The Petitioners, who are the wife, children and mother of the deceased were dependant on the earnings of the deceased. Due to sudden death, the Petitioners lost the sole bread winner of the family. As such, the Petitioners claim a sum of Rs.25,00,000/- as compensation.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the respondent contends that the petition is bad for non-joinder of necessary parties viz., the owner and insurer of the two wheeler involved in the accident. The accident does not occur in the manner as alleged by the petitioners. While the respondent bus was proceeding at normal speed, the two wheeler bearing Reg.No.TN-61-B-4665 came at high speed in the opposite direction and as the rider was driving the two wheeler while talking in the cell phone lost control and dashed against the respondent bus resulting in his death. The accident occurred only due to the negligence of the rider of the two wheeler and not due to negligence on the part of the respondent bus driver. 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. Hence, the respondent sought for dismissal of the Petition.

4. Before the Tribunal, the petitioner examined P.W.1 to P.W.4, produced documents Ex.A.1 to Ex.A.17 to prove their claim. On the side of the respondent, driver of the bus involved in the accident deposed as R.W.1 but no document was produced. The Tribunal, on the basis of available evidence on record, found that the negligence of the respondent bus driver alone caused the accident, passed award for a sum of Rs.10,30,000/- payable by the respondents to the Petitioner. Aggrieved over the said finding of the Tribunal, the respondent-Corporation has come forward with the present appeal.

5. The learned counsel for the appellant/respondent-Transport Corporation contends that the Tribunal failed to appreciate the evidence on record properly and wrongly fixed the entire negligence on the bus driver. The respondent-Corporation further contended that the monthly income fixed by the Tribunal for the deceased and the multiplier applied by it is not correct. It is only due to the negligence of the rider of the

two wheeler, the accident occurred. Hence, the respondent is not liable to pay any compensation. The appellant-Transport corporation prays for setting aside the award and to allow the appeal.

6. Per contra, the learned counsel for the Petitioners/claimants contends that the negligent driving of the bus driver is the sole cause for the accident and the Tribunal by correctly appreciating the evidence on record, passed the just and reasonable award, which needs no interference. Hence, the Petitioners sought for dismissal of the appeal.

7. Issue regarding negligence:-

The 1st petitioner who is the wife of the deceased deposed as P.W.1 and stated that on 11.07.2012, at about 7.30 p.m., while her husband was riding the two wheeler along with one Manthirikumar as pillion rider, the respondent bus dashed against the two wheeler, resulting in the death of both persons on the spot itself. Admittedly P.W.1 is not the eyewitness to the accident. To prove their contention, the Petitioners examined one Dharmalingam, who witnessed the accident as P.W.3 and he stated that the two wheeler was proceeding on the left side of the road, but the respondent bus came at high speed, driven in a rash and negligent manner, dashed against the two wheeler in which the deceased was proceeding. It is clear from P.W.3 evidence that the negligence of the respondent bus driver alone caused the accident. The Police also registered a case against the driver of the respondent bus only as evidenced by Ex.A.1-Copy of FIR. Even though, the driver of the respondent bus deposed as R.W.1 and denied negligence on his part as the cause for the accident, he admitted that the police registered the case against him. It is also clear from R.W.1 evidence that departmental action was initiated against him. It is clear from the contents of Ex.A.1-FIR that negligence on the part of R.W.1 is the only cause for the accident. Further R.W.1 is an interested witness. On the other hand, P.W.3 eyewitness to the accident is third party witness, whose evidence is corroborated by the contents of Ex.A.1-FIR. If really the accident occurred due to the negligence of the two wheeler rider, the respondent bus driver would have lodged a complaint with the Police, but he has not done so. In such circumstances, considering P.W.3 evidence and the contents of Ex.A.1-FIR the Tribunal is justified in fixing the negligence on the part of the respondent bus driver alone caused the accident. There is nothing on record to find fault with the conclusion arrived at by the Tribunal. As such the same needs no interference.

8. Issue regarding Quantum of Award:-

8.1. Correct Multiplier :- The Petitioners contend that the deceased was aged 40 years and by doing Hotel business and agriculture work, was earning Rs.15,000/- per month. The driving

licence of the deceased Egambaram is produced as Ex.A.3 and the Post Mortem Certificate as Ex.A.2. It is clear from the said documents that the deceased was aged 42 years at the time of the accident. Thus his age is fixed at 42 years. For age group of 41 to 45, the multiplier to be applied is 14. The Tribunal has wrongly applied multiplier as 15. As such, the correct multiplier for the person aged 42 years is only 14.

8.2. Monthly income of the deceased:- The Petitioners claim that the deceased by carrying on hotel business and agriculture work, was earning Rs.15,000/- per month. The Petitioner produced Ex.A.7 series Professional Tax Receipts and also Ex.A.8 series of EB Bills in proof of deceased running Hotel business. Further the petitioner produced Ex.P.9 Series of bills showing purchase of grocery things for the hotel business carried on by the deceased. The Photo showing the deceased carrying on hotel business is marked as Ex.A.6. The Petitioner further stated that the deceased made lot of money in his business and the same is reflected in his Bank Account Pass book, a copy of which is marked as Ex.A.9. The Petitioner also claimed that the deceased owned agricultural property and in proof of the same, produced Ex.A.12 series - copy of Patta in the name of the deceased. However, there is nothing on record to show that the deceased was paying any amount towards income tax. As such, the Tribunal fixed the notional income at Rs.8000/- per month. However, considering the nature of business carried on by the deceased coupled with the agriculture land possessed by him, and the fact that accident occurred during 2012, it will be appropriate to fix the monthly income of the deceased at Rs.7000/- only.

8.3. Future Prospects:- The learned counsel for the petitioners/claimants contended that the Tribunal failed to provide for any amount towards future prospects of the deceased and the same is to be calculated. Further, he also relied upon the Ruling reported in CDJ 2015 MHC 6642 [Universal Sompo General Insurance Co.Ltd., Mumbai, Versus Uma and others] as well as CDJ 2016 MHC 5387 [The New India Assurance Company Ltd., Madurai Vs. S.Gnanaprakasm and others] to contend that it is a fit case this court can invoke Order 41 Rule 33 of Code of Civil Procedure to award just and fair compensation. In this connection, for the purpose of computation of just compensation, this court is inclined to look into the objective set out in the above cited decisions. In the case of Universal Sompo General Insurance Co.Ltd., Mumbai, Versus Uma and others] [CDJ 2015 MHC 6642], this Court has held as follows:-

" 8. Furthermore, the above excerpt also would reveal that without even relying upon any precedent, the Division Bench of this Court, simply enhanced the compensation and that too to the extent of double that of what the Single Judge of this Court ordered. It is also clear that when the Hon'ble Apex Court wanted a precedent in that regard, the learned

counsel for the appellant therein cited only the decision of the Hon'ble Apex Court in Banarsi v. Ram Phal , 2003 (2) SLT 258: 2003 (9) SCC 606. As such, in the peculiar facts and circumstances of that case, the Hon'ble Apex Court felt that the power under order 41, rule 33 of C.P.C., invoked by the High Court and that too in a case where such an enhancement was not at all warranted, looked askance at it. It is therefore explicit that the Hon'ble Apex Court in the cited decision has not laid down the law that even in a fit case, the High Court should not invoke order 41, rule 33 of c.p.c. in the absence of filing cross Appeal. Furthermore under order 41, rule 33, there are earlier decisions of the Hon'ble Apex Court, which could be cited as under:

(i) Municipal Board, Mount Abu v. Hari Lal , 1988 ACJ 281.

(ii) Dangir v. Madan Mohna , AIR 1988 SC. 54.

(iii) M.D. Pallavan Transport Corporation Ltd., v. Kalavathi , 1998 (1) ACJ 151.

(iv) State of Punjab v. Bakshish Singh , 1998 (8) S.C.C. 222.

9. The perusal of the aforesaid Judgments of the Hon'ble Apex Court would clearly highlight that without filing cross Appeal, the respondents in the Appeal could pray for reliefs and that the High Court under order 41, rule 33 could grant such reliefs also. This Court in several cases adhering to the aforesaid decisions of the Hon'ble Apex Court held that under order 41, rule 33 of c.p.c., this Court could enhance the compensation in appropriate cases."

In the case of The New India Assurance Company Ltd., Madurai Vs. S.Gnanaprakasam and others CDJ 2016 MHC 5387 [CDJ 2016 MHC 5387], in paragraph 8, it is held as follows:-

" 8. At the time of death, the deceased was working as Coast Guard Deputy Commanding Officer. The respondents 1 to 4/claimants have produced Ex.P.10 - Service Register, wherein, the income of the deceased and Dearness Allowance had been mentioned. The appellant did not dispute the fact that the deceased was working as Coast Guard Deputy Commanding Officer and Ex.P.10 was not genuine. No contra evidence was let in by the appellant. Therefore, the monthly income fixed by the Tribunal is correct. There are four dependants and therefore, as per the Judgment of the Hon'ble Apex

Court, 1/4th has to be deducted and the Tribunal is not correct in deducting 1/3rd from the income. The contentions of the learned counsel for the appellant that the Tribunal erred in taking into consideration the age of the deceased for applying multiplier instead of age of mother, is untenable. It is now well settled by various judgments of the Hon'ble Apex Court and this Court, the age of the deceased in the circumstances can be taken into account for applying multiplier. This is a fit case for enhancement of compensation invoking Order 41 Rule 33 C.P.C., even though the respondents 1 to 4 are not filing cross objection. Therefore, the respondents 1 to 4 are entitled to enhancement of compensation. "

Following the above Rulings, it will be appropriate to calculate the compensation towards loss of dependency to the petitioners by making addition of 25% towards future prospects.

8.4. Deduction towards Personal expenses:- Since there are 5 dependants of the deceased, 1/4th of the income has to be deducted towards expenses of the deceased. Therefore, the loss of dependency is calculated as follows:-

Monthly salary -Rs.7000/-

25% Future Prospects - Rs.1750.

Rs.7000/- + 1750 = Rs.8750/-.

1/4th deduction towards personal expenses of the deceased.

Rs.8750 - Rs.2187 = Rs.6563/-

Multiplier to be applied herein is 14.

Rs.6563 x 12 x 14 = Rs.11,02,584/-.

Thus, a sum of Rs.11,02,584/- is awarded under the head "loss of dependency" to the Petitioners/claimants.

8.5. Compensation towards conventional heads:-

By applying the Ruling of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the following amounts are awarded as compensation under conventional heads.

Funeral expenses - 15,000/-

Loss of estate - 15,000/-

Loss of consortium - 40,000/-

Add: Loss of dependency -11,02,584/-

Total = Rs.11,72,584/-

Accordingly, the compensation awarded by the Tribunal stands modified to Rs.11,72,584/-.

9. In the result,

(i) This Civil Miscellaneous Appeal is disposed of;

(ii) The award amount is enhanced from 10,30,000/- to 11,72,584/-;.

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The Appellant/Transport Corporation is directed to deposit the entire enhanced award amount along with proportionate

interest and cost, as ordered by this court, less the amount, if any already deposited.

(v) The apportionment of the enhanced award amount to the Petitioners 1 to 5 is as under:-

1st petitioner/1st respondent/wife - 30%;

2nd, 3rd and 4th petitioners/respondents 2, 3 and 4/minor children - 20% each;

5th petitioner/5th respondent/mother -10%

The Petitioners 1 and 5/Respondents 1 and 5 are permitted to withdraw their respective share of the award amount along with accrued interest. The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount. As far as Petitioners 2 to 4 are concerned, their share shall be deposited in Fixed Deposit in a Nationalised Bank, till they attain the age of majority. The interest accrued on the minor shares shall be withdrawn by their guardian/mother once in three months.

(vi) Since this court has enhanced the compensation, the claimants/respondents are directed to pay court fee for the enhanced award amount within one week from the date of receipt of copy of this Judgement.

(vii) No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal,
Principal District and Sessions Court, Ariyalur.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.28627

+1cc to Mr.I.Arokiasamy, Advocate, S.R.No.28501

C.M.A.No.3383 of 2013

GJII(CO)

GSP(26/06/2018)