

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3492 of 2013
and
Cross Objection No.13 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram,
Kancheepuram Region. ...Appellant/Respondent

...vs...

1.Jayapriya
2.Kanniammal
3.Krishna Pillai ...Respondents/Petitioners
Cross Objection No.13 of 2014:
1.Jayapriya
2.Kanniammal
3.Krishna Pillai ...Cross Objectors/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Villupuram,
Kancheepuram Region. ...appellant/Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 25.07.2012 made in MCOP.No.724 of 2009 on the file of the Motor Accident Claims Tribunal/Additional Judge, Villupuram.

Cross Objection: 13/2014: Cross Objection filed U/s. XXXXXI, rule 22 of the CPC. praying that the compensation awarded by the lower court at Rs.7,00,856/- is to be enhanced to Rs.9,00,000/- with interest.

For Appellant : Mr.S.Sairaman

For Respondents : Mr.A. Abdhul Kani for R-2

JUDGMENT

Being aggrieved over the award passed by the Tribunal, dated 25.07.2012 made in MCOP.No.724 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Villupuram, the respondent state transport corporation has come forward this present appeal.

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 25.07.2012 made in MCOP.No.724 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Villupuram, the present Cross Objection has been filed by the petitioners/claimants to enhance the award amount.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 21.09.2009, at about 11.00 a.m., while the deceased Arumugam was riding his Motor Cycle bearing Registration No.PY-01-AP-4635 from Chithamoor to Cheiyur Road, near Nallamoor Bus Stop, Nallamoor Village, the respondent State Transport Corporation bus bearing Registration No.TN-21-N-0587 came at high speed dashed against the two wheeler in which the deceased was proceeding resulting in his death on the spot. The accident occurred only due to the rash and negligent driving of the respondent corporation bus driver. The deceased was aged about 28 years and he was working as Insurance Inspector and also doing agriculture work earning a sum of Rs.30,000/- per month. The petitioners, who are the wife and parents of the deceased are depending on his income. Hence, they sought for a sum of Rs.60,00,000/- as compensation from the respondent corporation.

4. On the other hand, opposing the claim petition, the respondent corporation filed counter contending that the accident does not occur in the manner alleged by the petitioner. The petitioners ought to have implead the owner and insurer of the two wheeler as parties to the petition. The accident occurred only due to the negligence of the deceased and hence the respondent corporation is not liable to pay any compensation to the petitioners. Hence, the respondent corporation sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 to P.W.4 and produced documents Ex.P1 to Ex.P5 to substantiate their claim. On the side of the respondent, R.W.1 was examined, but no document was produced.

6. The Tribunal, on the basis of available evidence on record, found the respondent corporation bus driver negligence alone caused the accident awarded a sum of Rs.7,00,856/- as compensation to the petitioners. Aggrieved over the award passed by the Tribunal, the respondent corporation has come forward this present appeal, while the claimants/petitioners, on the ground that the award passed by the Tribunal is very low, has come forward with the Cross Objection No.13 of 2014 to enhance the award amount.

7. I have heard the learned counsel appearing for the appellant transport corporation and the learned counsel appearing for the petitioners/claimants and perused the materials available on record.

8. The learned counsel appearing for the respondent corporation contends that the Tribunal failed to consider the evidence properly and wrongly fixed the liability on the driver of the respondent corporation bus. The Tribunal ought to have concluded the negligence on the part of the deceased alone resulted in the accident. The amount awarded by the Tribunal under the different heads is on the higher side. Hence, the respondent corporation seeks to set aside the award passed by the Tribunal by allowing the appeal.

9. Per contra, the learned counsel appearing for the petitioners/claimants contends that the Tribunal while rightly fixing the liability on the respondent, failed to appreciate the evidence properly to award just and fair compensation. The Tribunal failed to consider Ex.P5 salary certificate and the evidence of the petitioner that the deceased was earning a sum of Rs.30,000/- per month and wrongly fixed the notional income at Rs.4,000/- per month. The Tribunal also failed to provide any amount towards future prospects. The amount awarded under the different heads is very low. Hence, the petitioner seeks to allow the Cross Objection and to enhance the quantum of award passed by the Tribunal. सत्यमेव जयते

10. According to the petitioners, the deceased is the husband of the first respondent. He was proceeding in his two wheeler on 21.09.2009 at about 11.00 a.m., he met with an accident. The eye witness to the occurrence who deposed as P.W.3 has clearly stated that the accident occurred only due to the rash and negligent driving of the respondent corporation bus driver. It is clear from Ex.P2 Motor Vehicle Inspector's report that there was no mechanical defect in the offending vehicle. Further, the police also registered the case against the driver of the respondent corporation bus only, as evidenced by Ex.P1 First Information Report. Even though, the respondent examined R.W.1, who deposed that the accident does not occur due to the

respondent driver negligence, he being an interested witness, his deposition cannot be given weightage when the third party eye witness account was given by P.W.3. Assuming that the respondent claim is true, the crew of the bus would have lodged the complaint with the police, but, no such complaint has been lodged. Thus, in view of the oral evidence of P.W.3 and Ex.P1 first information report, it is apparent that the negligence of the respondent bus driver alone caused the accident.

11. The petitioners states that the deceased was aged 28 years and by working as Insurance Inspector and by doing agriculture work was earning a sum of Rs.30,000/- per month. To prove the age of the deceased, no document is filed. Hence, on the basis of Ex.P3 Postmortem Certificate and Ex.P4 death certificate, his age is fixed at 28 years. For the said age group, the multiplier to be applied is 17.

12. To prove the avocation and income of the deceased, the petitioners produced Ex.P5 Salary Certificate. It is clear from Ex.P5 that the deceased was getting variable income during different periods. According to the petitioners, as the deceased was working as Insurance Inspector depending upon the volume of business done by him, there will be variation in the salary paid to him by way of Insurance commission. However, the petitioners failed to examine any one from the concerned Insurance Office which issued Ex.P5 Pay Slip. In such circumstances, it will not be appropriate to take the contents of the document Ex.P5 as such. However, considering the claim of the petitioners that the deceased was employed as Insurance Inspector and also for doing agriculture work, it will be appropriate to fix the notional income of the deceased at Rs.6,500/-. The Tribunal has not provided any amount for future prospects. As such it will be appropriate to award some amount towards future prospects. The deceased being a self employed person aged 28 years, it will be appropriate to add 40% of the income towards future prospects. Thus, his monthly income is calculated as follows. R.6,500/- + 40% added as future prospects as Rs.2,600/- and the total amount would be Rs.9,100/-. Since there are 3 dependents, 1/3rd amount is deducted towards the personal expenses of the deceased. Accordingly, the loss of dependency is calculated is as follows:-

Rs.9,100/-, 1/3rd amount is deducted towards personal expenses of the deceased at Rs.3033/ = Rs.6067/- x 12 = Rs.72,804/- x 17 = Rs.12,37,668/-.

13. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of Estate = Rs. 15,000.00
Funeral Expenses = Rs. 15,000.00
Loss of consortium = Rs. 40,000.00

14. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	5,75,856.00	12,37,668.00
2.	Loss of Estate	-	15,000.00
3.	Funeral Expenses	10,000.00	15,000.00
4.	Transport charges	5,000.00	5,000.00
5.	Loss of love and affection	1,10,000.00	-
6.	Loss of consortium		40,000.00
	Total	7,00,856.00	13,12,668.00

Accordingly, the compensation awarded by the Tribunal is modified and the same is enhanced to Rs.13,12,668/-.

15. C.M.A.No.3492 of 2013:

In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

16. Cross Objection No.14 of 2013:

In the Result, the Cross Objection No.14 of 2013 is partly allowed. No costs. The amount of Rs.7,00,856/ awarded by the Tribunal, dated 25.07.2012 made in MCOP.No.724 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Villupuram, is enhanced to Rs.13,12,668/-. The appellant/State Transport Corporation is directed to deposit the entire enhanced award amount of Rs.13,12,668/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first petitioner/first claimant is entitled to 60% of the award amount and the petitioners 2 and 3/claimants 2 and 3 each entitled to 20% of

the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The respondents/claimants are directed to pay the required Court fee for the enhanced award amount before getting the copy of Judgment.

Sd/-
Assistant Registrar(CS)

//True Copy//
Sub Assistant Registrar

rrg

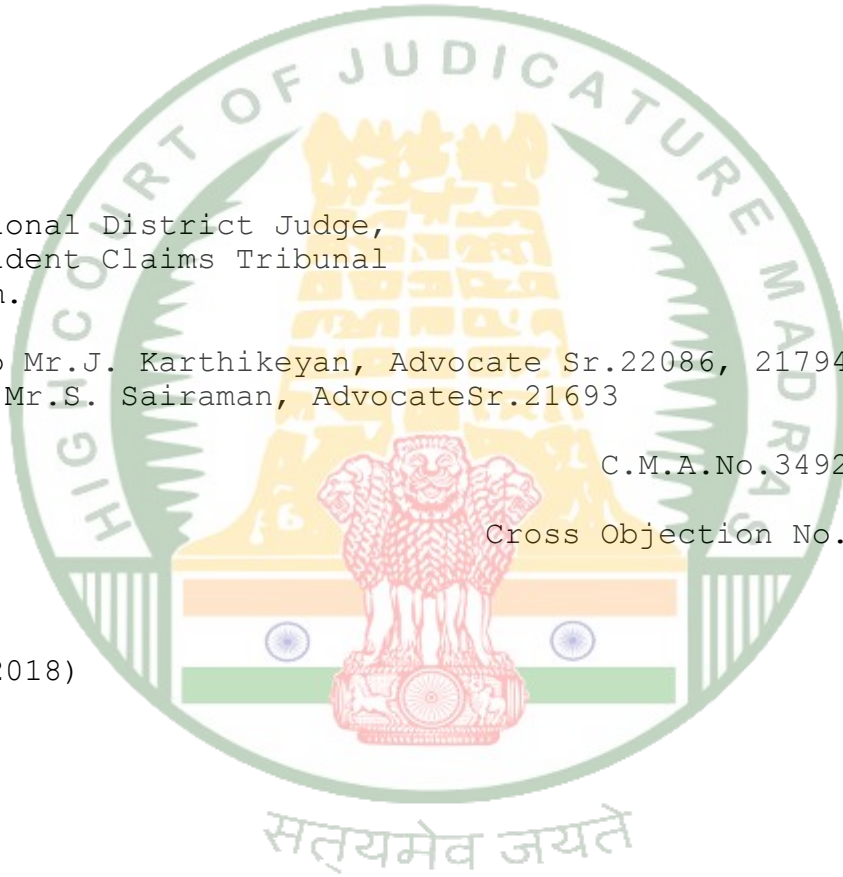
To

The Additional District Judge,
Motor Accident Claims Tribunal
Villupuram.

+ 2 ccs to Mr.J. Karthikeyan, Advocate Sr.22086, 21794
+ 1 cc to Mr.S. Sairaman, AdvocateSr.21693

C.M.A.No.3492 of 2013
and
Cross Objection No.13 of 2014

CA(CO)
EU(08/05/2018)



WEB COPY