

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.07.2018

Pronounced on : 13.08.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P. (NPD) .No.425 of 2002

and

C.M.A.No.570 of 2002

1.S.Pushpa ... Petitioner/Petitioner
in C.R.P.(NPD)No.425 of 2002 &
1st appellant
in C.M.A.No.570 of 2002

2.G.Shanmugam ... 2nd appellant/Petitioner
in C.M.A.No.570 of 2002

Vs

Tamil Nadu State Transport Corporation Limited
rep. by its Managing Director,
Villupuram Division - I
(formerly known as Thanthai Periyar
Transport Corporation Limited
rep. by its Managing Director)
No.3/137, Salamedu,
P.B.No.56, Vazhuthareddi Post,
Villupuram - 605 602. ... Respondent in both cases

Prayer in C.R.P.(NPD).No.425 of 2002: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Award of the learned Principal Sub Judge, Motor Accidents Claims Tribunal, Chengalpet in M.C.O.P.No.360 of 1989 dated 07.11.2000.

Prayer in C.M.A.No.570 of 2002: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award passed by the learned Principal Sub Judge, Motor Accidents Claims Tribunal, Chengalpet in M.C.O.P.No.361 of 1989 dated 07.11.2000.

For Appellants : Mr.T.G.Balachandran
in C.R.P.(NPD)No.425 of 2002 &
C.M.A.No.570 of 2002

For Respondent : Mr.K.J.Sivakumar
in C.R.P.(NPD)No.425 of 2002
and C.M.A.No.570 of 2002

COMMON JUDGMENT

The Civil Revision Petition is filed against the Award of the learned Principal Sub Judge, Motor Accidents Claims Tribunal, Chengalpet in M.C.O.P.No.360 of 1989 dated 07.11.2000.

2.The Civil Miscellaneous Appeal is filed against the Judgment of the learned Principal Sub Judge, Motor Accidents Claims Tribunal, Chengalpet in M.C.O.P.No.361 of 1989 dated 07.11.2000.

3.M.C.O.P.No.360 of 1989 is filed by the 1st petitioner claiming a sum of Rs.10,000/- as compensation for the injuries sustained by her in a Road Traffic Accident on 26.04.1989 involving the respondent's bus and the van in which she was travelling.

4.M.C.O.P.No.361 of 1989 is filed by both the petitioners, claiming compensation of Rs.30,000/- for the death of their minor daughter, Bhavani aged 4 years in the said road accident that had occurred on 26.04.1989 involving the respondent's bus and the van in which the deceased was travelling.

5.The respondent/Transport Corporation had resisted the above claims by contending inter alia that the driver of the bus was not negligent and the accident had occurred only on account of the rash and negligent driving of the driver of the van in which the petitioner was unauthorizedly travelling. The counter would further narrate that the van was not in possession of a valid insurance and the driver was also not in possession of the valid driving license.

6.The Tribunal heard both the claim petitions and passed a Common Award. The Tribunal had given a finding that the drivers of both the vehicles were negligent and therefore, the compensation had to be apportioned equally between the owners of the two vehicles namely the respondent herein and the owner of the van. The Tribunal had awarded a sum of Rs.5,000/- to the claimant in M.C.O.P.No.360 of 1989, taking into account the fact that the claimant had sustained injuries and delivered a

premature baby two months after the accident and directed the respondent to pay their share of Rs.2,500/-. The Tribunal had also directed the respondent to pay the said compensation with interest from the date of petition till the date of payment.

7.For the death of the minor daughter Bhavani, aged 4 years, compensation was claimed in M.C.O.P.No.361 of 1989 (The 1st claimant is the claimant in M.C.O.P.No.360 of 1989). The learned Principal Sub Judge (Motor Accident Claim Tribunal) Chengalpet, granted compensation of Rs.25,000/- for the death of the appellants' daughter Bhavani, who was aged 4 years as per Ex.P.3 and directed the respondent to pay their share of the compensation being a sum of Rs.12,500/-.

8.Aggrieved by the Common Award the petitioners/appellants have come forward with this Civil Revision Petition and Appeal.

9.Heard Mr.T.G.Balachandran, learned counsel appearing for the petitioner in C.R.P.(NPD).No.425 of 2002 and appellants in C.M.A.No.520 of 2002 and Mr.K.J.Sivakumar, learned counsel appearing for the respondent/Transport Corporation.

10.The learned counsel for the petitioner would first address his arguments with reference to the finding of the Tribunal that being a composite negligence, the liability has to be apportioned equally between the respondent and the driver of the van and thereby, awarding only 50% of the compensation to the petitioners.

11.The learned counsel would rely upon the Judgment of the Hon'ble Supreme Court in the case of Pawan Kumar and another etc., v. M/s.Harkishan Dass Mohan Lal and others reported in 2014-2-L.W.870. This Judgment follows an earlier Judgment of the Hon'ble Supreme Court reported in (2008) 3 SCC 748 [T.O.Anthony V. Karvarnan and others]. In this Judgment, the Hon'ble Supreme Court has discussed the difference between composite negligence and contributory negligence and Para 6 succinctly draws the distinction which reads as follows:

"6."Composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the

court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence."

12.It is this Judgment that has been referred to by three members Bench of the Hon'ble Supreme Court in Pawan Kumar's case. Therefore, the petitioners/appellants are well within their rights to claim compensation only from the respondent to the exclusion of the owner of the Van, since they are the third parties in relation to the accident.

13.The learned counsel appearing for the petitioner would argue that in C.R.P.(NPD).No.425 of 2005, the Tribunal has not taken into account the factum that the petitioner was pregnant at the time of accident and she had delivered a premature baby which was a direct result of the accident and had not awarded any compensation towards this as well as for the injuries that she had sustained.

14.On perusing Ex.P.1 -26.04.1989- Copy of Accident Register and Ex.P.2 -24.06.1989- Discharge Summary, it is seen that the petitioner had sustained abrasions on her forehead and had multiple abrasions over her both lower limbs, apart from suffering bleeding. Ultimately, the petitioner had delivered a male baby within 36 weeks of pregnancy on 24.06.1989.

15.The Tribunal ought to have taken note of this fact that the accident could have been fatal for the baby in the womb and should have also taken note of the shock and mental agony that the petitioner as a mother would have suffered on account of losing a female child aged 4 years and going through the fear of retaining a baby in her womb. The Award of a paltry sum of Rs.5,000/- is totally inadequate. Although she has claimed only a sum of Rs.10,000/- as compensation, considering the fact that she has suffered injuries as well as pain and agony on account of the death of her child and the fear of losing the one that she was carrying in the womb, this Court feels that a sum of Rs.25,000/- would be a just compensation. In view of the earlier discussions regarding the liability to pay compensation, the said sum will be paid by the respondent herein.

16.C.M.A.No.570 of 2002 has been filed claiming compensation for the death of the four year old daughter of the appellants in the very same accident. What a minor contributes to the family is beset with doubts and uncertainties and the amount of compensation to be awarded is only within the realm of the speculation as the appellants have not been able to let in any evidence whatsoever to show the reasonable expectation of pecuniary benefit that has been lost to them on account of the death of the minor daughter in such tragic circumstances. It is needless to state that an accident cannot be turned into a windfall for the appellants and therefore, the Courts should be circumspect while awarding compensation which is all the more baffling with the deceased is a child, who only possesses the prospect of earning and income.

17.The Courts of Law have tried to arrive at a methodology for awarding compensation in cases of accident involving the death of minors. In the Judgment reported in 2001 (8) SCC 197 [Lata Wadhwa v. State of Bihar], the Hon'ble Supreme Court, while deciding the compensation payable to two children below the age of 10 years who died on account of an accident that had occurred during the 150th birth anniversary Celebrations of Sir Jamshedji Tata, had appointed the retired Chief Justice of India Shri Y.V. Chandrachud, to submit a report regarding the criteria for awarding compensation. The appointment was made on account of the fact that several persons had been injured and some had died in this unfortunated incident. The injured and dead also included children. On receipt of the said report, the Hon'ble Supreme Court insofar as it related to compensation that was payable to the death of the children between the age group of 5 to 8 had held that the children would be entitled to a sum of Rs.1,50,000/- and a sum of Rs.50,000/- under the conventional heads should be added to the said sum and ultimately, a sum of Rs.2,00,000/- was awarded to each of the children. This Judgment has been quoted with approval in the Judgments reported in AIR 2007 SC 1912 [Kousalya Devi v. Sri Karan Arora and others], AIR 2008 SC 103 [Oriental Insurance Company v. Sayed Ibrahim and others and also followed in the Judgment reported in 2009 (1) TN MAC 593 (SC) [R.K.Malik and another v. Kiran Pal and others] and to a recent Judgment reported in 2013 (2) TN MAC 358 (SC) [Kishan Gopal and another v. Lala and others].

18.In the Judgment reported in 2009 (1) TN MAC 593 (SC) [R.K.Malik and another v. Kiran Pal and others], the Hon'ble Supreme Court has adopted the following method for arriving at a compensation. The Hon'ble Supreme Court has taken into account the notional income i.e., provided in the Second Schedule to the Motor Vehicles Act, the multiplier of 15 provided therein has been taken and to this, a sum of Rs.50,000/- under the

conventional heads and loss of love and affection, funeral expenses and last rites, etc., is added. Adopting the above formula, in the instance case, the notional income of Rs.15,000/- is taken into account and considering the fact that the deceased minor was 4 years old, the multiplier of 15 is adopted and the loss of income of Rs.2,25,000/- is arrived at. To this, a sum of Rs.50,000/- under the conventional heads should also be added. As a result, the appellants are entitled to compensation of Rs.2,75,000/- for the death of their minor daughter Bhavani.

19. Though the petitioner has claimed only a sum of Rs.30,000/- as compensation relying upon the Judgment reported in (2003) 2 Supreme Court Cases 274 [Nagappa .vs. Gurudayal Singh and others], wherein the Hon'ble Supreme Court has held that

"In the Motor Vehicles Act, 1988 there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is - it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This is clear from Sections 166(1) & (4), 158 (6) and 168."

this Court has awarded the compensation over and above their claim.

20. In the result, this Civil Revision Petition is allowed. The Award passed in M.C.O.P.No.360 of 1989 on the file of the learned Principal Sub Judge, Motor Accidents Claims Tribunal, Chengalpet, is modified from a sum of Rs.5,000/- to Rs.25,000/- with interest @ 9% per annum from the date of claim till the date of deposit. The entire sum is payable by the respondent herein to the petitioner/claimant.

21. With regard to M.C.O.P.No.361 of 1989, the Award of the learned Principal Sub Judge, Motor Accidents Claims Tribunal, Chengalpattu, is modified from a sum of Rs.25,000/- to a sum of Rs.2,75,000/- with interest @ 9% per annum from the date of claim till the date of deposit. The Civil Miscellaneous Appeal is allowed and the entire compensation is payable by the respondent/Transport Corporation to the appellants/claimants.

22. In C.R.P.(NPD).No.425 of 2002, the Transport Corporation is directed to deposit the entire amount with proportionate accrued interest with costs, less the deposit already made, in this Court, to the credit of M.C.O.P.No.360 of 1989 on the file

of learned Principal Sub Judge, Motor Accidents Claims Tribunal, Chengalpattu, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the entire amount by making necessary applications. No costs.

23.In C.M.A.No.570 of 2002, the Transport Corporation is directed to deposit the entire amount with proportionate accrued interest with costs, less the deposit already made, in this Court, to the credit of M.C.O.P.No.361 of 1989 on the file of learned Principal Sub Judge, Motor Accidents Claims Tribunal, Chengalpattu, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw their share, as apportioned by the Claims Tribunal with proportionate accrued interest and costs, by making necessary applications. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mps

To

The Principal Sub Judge,
Motor Accidents Claims Tribunal,
Chengalpet.

+2cc to Mr.T.G.Balachandran, Advocate Sr.55982,55983

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C.R.P. (NPD) .No.425 of 2002
& C.M.A.No.570 of 2002

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