

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.3008 of 2017 and
CMP.No.17962 of 2017 and
CMP.Nos.2178 & 15198 of 2018

The Chief Engineer,
Agricultural Engineer Department,
Bagayam,
Vellore.

...Appellant/Respondent

Vs

1.D.Usha
2.D.Selva Sundar
3.D.Muralidharan

...Respondents/Petitioners

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 09.03.2017 passed in M.C.O.P.No.739 of 2015 by the Motor Accidents Claims Tribunal (I Additional District and Sessions Court), Vellore.

For Appellant : Mr.M.Venkadesh Kumar
Government Advocate (CS)

For Respondents: Mr.C.Prabakaran

JUDGMENT

Calling into question the award dated 09.03.2017 passed in M.C.O.P.No.739 of 2015 by the Motor Accidents Claims Tribunal (I Additional District and Sessions Court), Vellore, the present civil miscellaneous appeal is filed.

2. The facts in a nutshell are as under: The claimants are respondents herein. It is the case of the respondents that on 04.8.2015 at 12.45 P.M., the deceased Devaraj was driving his two wheeler at Vellore Annasalai Road towards Thorapadi and when he was nearing Darling Hotel, the driver of the appellant's lorry bearing registration No.TN-23 G 0720 driven in a rash and negligent manner, dashed back side of the deceased. Due to the impact, the deceased sustained fatal injuries and died on the

spot. Regarding the accident, a criminal case in Crime No.463 of 2015 was registered by South Police Station against the driver of the lorry. The respondents are daughter and sons of the deceased. At the time of accident, the deceased was doing real estate business and was earning Rs.32,000/- per month. Stating that the accident occurred due to the rash and negligent driving of the driver of the lorry, the respondents have filed the claim petition claiming compensation of Rs.20,00,000/-.

3. Resisting the claim petition, the appellant filed counter stating that on 4.8.2015 at 12.45 P.M., the driver of the lorry bearing registration No.TN-23 G 0720 drove the same by following the traffic rules. While so, near Hotel Darling inner gate where the deceased aged about 80 years old drove the two wheeler in the same direction and lost his balance and fell down on the left side of the road near back wheel of the lorry and sustained injuries. Therefore, the accident happened purely on the negligence of the deceased and no question of rash and negligent driving of the appellant's driver. The appellant also denied the age, occupation and monthly income of the deceased and prayed for dismissal of the claim petition.

4. Before the Tribunal, the respondents examined 2 witnesses and marked Exs.P1 to P6. The driver of the lorry was examined as RW.1 and Ex.R1 was marked.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident was due to rash and negligent driving of the driver of the lorry and that the respondent being the owner of the lorry is liable to pay compensation. Taking the monthly income of the deceased at Rs.6,500/- per month and deducting one-third towards personal expenses and adopting multiplier '5', the Tribunal awarded total compensation of Rs.4,17,040/- under various heads. Challenging the same, the appellant has preferred this appeal.

6. The learned counsel for the appellant contended that the Tribunal has failed to note that the accident occurred only because of the negligent act of the deceased and also failed to note that there is no direct evidence for age proof. He would submit that the Tribunal erred in awarding compensation which is highly excessive, arbitrary and the same is liable to be set aside.

7. Per contra, the learned counsel for the respondents submitted that upon analysing materials produced by the respondents, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the lorry and also the Tribunal was right in awarding total compensation of Rs.4,17,040/-. Therefore, no interference is required and prayed

for dismissal of the appeal.

8. I have heard Mr.M.Venkadesh Kumar, learned counsel appearing for the appellant and Mr.C.Prabakaran, learned counsel appearing for the respondents and also perused the materials available on record.

9. The points arise for consideration are:

- (1)Whether the accident occurred due to rash and negligent driving of the driver of the lorry bearing registration No.TN-23 G 0720?
- (2)Whether the compensation awarded by the Tribunal is reasonable?

10. Point No.1:

The case of the respondents is that the appellant is the owner of the offending lorry bearing registration No.TN-23 G 0720. On 4.8.2015 at 12.45 P.M., when the deceased was riding his two wheeler, the lorry bearing registration No.TN-23 G 0720 driven by its driver in a rash and negligent manner dashed against the deceased and caused fatal accident. In his evidence, P.W.1, who is the third respondent in the claim petition deposed that the accident was due to rash and negligent driving of the driver of the lorry.

11. As rightly observed by the Tribunal, the accident was admitted by the appellant and the manner of accident alone disputed. The eye-witness to the accident viz., Sheik Farid was examined as P.W.2, who deposed that on 4.8.2015 at 12.45 P.M., while the deceased was riding his two wheeler at the extreme left side of Vellore Annasalai road to Thorapadi, near Darling Hotel, the lorry belonging to the appellant driven by its driver in a rash and negligent manner dashed against the deceased and caused the accident. According to P.W.2, the accident was due to rash and negligent driving of the driver of the offending lorry.

12. The respondents have produced Ex.P1-FIR and on perusal of the same, it is seen that the accident was due to rash and negligent driving of the driver of the lorry. In his evidence, R.W.1-driver of the offending lorry admitted laying of charge sheet against him by the police. No material has been produced by the appellant to disprove the case of the respondents in respect of accident. However, on the other hand, the respondents have proved that the accident was due to rash and negligent driving of the driver of the lorry and that the Tribunal has also rightly held so. Since the finding of the Tribunal that the accident was due to rash and negligent driving of the offending lorry is based on documentary evidence, the same is liable to be confirmed and accordingly, Point No.1 is answered.

13. Point No.2:

In respect of quantum of compensation, the learned counsel for the appellant contended that the Tribunal erred in taking the age of the deceased as 73 years at the time of accident. In fact, the deceased crossed the age 80 years at the time of accident and that multiplier '5' adopted by the Tribunal is on the higher side. Further, it is the say of the appellant that the total compensation of Rs.4,17,040/- awarded by the Tribunal is excessive.

14. The appellant contended that at the time of accident, the deceased was aged more than 80 years, however, the Tribunal erred in fixing the age of the deceased as 73 years. Though the respondents in their claim petition stated that the deceased was aged 70 years, Ex.P2-postmortem certificate reveals that the deceased was aged 73 years. Since no documentary evidence was produced by the appellant to disprove the age of the deceased, this Court finds that the age of the deceased fixed by the Tribunal as 73 years is based on documentary evidence.

15. Admittedly, in the present case, there was no proof to show the income of the deceased. In the absence of proof, the Tribunal has taken the monthly income of the deceased at Rs.6,500/- and deducting one-third towards personal expenses, the Tribunal fixed the monthly contribution to the family at Rs.4,334/- per month.

16. Since the deceased was aged 73 years at the time of accident, the Tribunal has taken multiplier '5' and awarded total compensation Rs.2,60,040/- towards loss of dependency, which in my considered view is reasonable. Adding conventional damages, the Tribunal awarded total compensation of Rs.4,17,040/-.

17. As far as conventional damages are concerned, the Tribunal awarded Rs.1,00,000/- towards loss of love and affection. It is admitted that the wife of the deceased is pre-deceased and the respondents are married persons. Considering the facts and circumstances of the case and also the status of the respondents, Rs.1,00,000/- awarded by the Tribunal for loss of love and affection is reduced to Rs.50,000/-.

18. The Tribunal awarded Rs.25,000/- towards loss of estate and another sum of Rs.25,000/- towards funeral expenses, Rs.5,000/- towards transport charges and Rs.2,000/- towards damages to cloths and articles. Since amounts awarded by the Tribunal under the aforesaid heads are reasonable, the same are maintained. In view of the above discussion, the total compensation of Rs.4,17,040/- awarded by the Tribunal is reduced to Rs.3,67,040/- as under:

Heads	Rs.
Loss of dependency	2,60,040.00
Loss of love and affection	50,000.00
Loss of estate	25,000.00
Funeral expenses	25,000.00
Transport charges	5,000.00
Damages to cloths and articles	2.000.00
Total	3,67,040.00

19. In the result, the appeal is partly allowed. The compensation of Rs.4,17,040/- awarded by the Tribunal in M.C.O.P.No.739 of 2015, dated 09.3.2017 on the file of the Motor Accident Claims Tribunal, Vellore is reduced to Rs.3,67,040/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation. The respondents are equally entitled to get the reduced compensation amount with accrued interest.

It is stated that the appellant has deposited the entire award amount with interest before the Tribunal. The respondents are directed to withdraw their respective shares of reduced compensation along with accrued interest on filing proper cheque application before the Tribunal. The appellant is entitled to get refund of the excess amount with interest lying in the credit of M.C.O.P.No.739 of 2015. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

vs

To

1.The Motor Accidents Claims Tribunal,
I Additional District & Sessions Judge,
Vellore.

2. The Section officer

VR Section, High Court, Madras 104.

+1 CC to Mr.C.Prabakaran, Advocate sr 68254.

+1 CC to The Additional Govt. Pleader sr 68298.

Civil Miscellaneous Appeal No.3008 of 2017 and
CMP.No.17962 of 2017 and
CMP.Nos.2178 & 15198 of 2018

NMI (CO)

SP(09/01/2019)