

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3468 of 2013

1.M.Fathima Kani
2.S.A.Mohammed Yusuff
3.M.Barakkathnisha
4.M.Zenathulbazaria
5.M.Ahamed Ibramin (Minor)

Rep. By its father S.A.Mohammed Yusuff

..Appellants/Claimants

Versus

The Managing Director,
Metropolitan Transport Corporation Ltd,
Anna Salai, Chennai - 600 002.

..Respondent/Respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 18.06.2013 made in M.C.O.P.No.2765 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr.N.Manoharan

For Respondent : Mr.S.Sivakumar

J U D G M E N T

The petitioners/appellants have filed this appeal against the judgment and decree dated 18.06.2013 made in M.C.O.P.No.2765 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners/appellants is that on 10.02.2011 at about 8.40 hours when the deceased was riding a motorcycle bearing Registration No.TN-05-AF-9145 in Kamaraj Salai opposite to Ezhilagam Building from North-South, the bus belonging to the respondent/Transport Corporation bearing Registration No.TN-01-N8788 came in the opposite direction at high speed and dashed against the two wheeler, in which, the deceased was travelling causing instant death on the spot itself. The accident had occurred due to rash and negligent

driving of the respondent/Transport Corporation bus driver. At the time of the accident, the deceased was aged 22 years and was carrying on own business dealing in cellphones and electric items making a monthly earning of Rs.25,000/-. Due to sudden death of the said person, the petitioners/appellants who are the parents, married sisters and brother of the deceased are suffering due to monetary loss. Hence, the appellants/claimants seek Rs.25,00,000/- as compensation.

4. On the other hand, opposing the claim petition, by filing counter, the respondent/Transport Corporation contends that the claim of the petitioners/appellants about the nature and manner of the accident is not true; when the respondent/Transport Corporation bus bearing Registration No.TN-01-N8788 was proceeding from Avadi to Anna Square on 11.02.2011, on normal speed near Ezhilagam Building at about 7.40a.m., at that time, the deceased along with the pillion rider drove his two wheeler in rash and negligent manner, dashed on the front wheel mudguard of military lorry bearing Registration No.06-D-129240-H, coming in the opposite direction and due to the said impact he was thrown out and fell down on the right side wheel of the respondent/Transport corporation bus; thus, the accident occurred only due to the negligence on the part of the deceased and driver of the military lorry; the driver of the respondent corporation bus is not responsible for the accident; the petition is bad for non joinder of necessary parties, namely, the owner of the motor cycle and the owner of the military lorry and the respective Insurance Companies; the claim of the petitioners/appellants about the age, avocation and income of the deceased is denied; thus, the respondent/Transport Corporation seeks dismissal of the appeal.

5. Before the Tribunal, the petitioners/appellants examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.29 to prove their claim. On the side of the respondent, the conductor of the bus deposed as R.W.1, but no document was produced. The Tribunal, after considering the materials available on record found that the 1st respondent driver was negligent and caused the accident, awarded a sum of Rs.4,66,300/- as compensation to the petitioners/appellants. Being not satisfied with the quantum of the award, the petitioners/appellants have come forward with the present appeal.

6. According to the petitioners/appellants while the deceased was proceeding in his two wheeler from North-South in the Kamaraj Salai, Chepauk near Ezhilagam Building, the respondent's bus bearing Registration No.TN-01-N-8788 came in the opposite direction at high speed dashed against the motorcycle and in the impact, the deceased fell down and he was run over by the respondent's bus, resulting in his death on the spot. The eye-witness to the occurrence who deposed as P.W.2

clearly stated about the high speed in which the respondent/Transport Corporation bus came resulting in the accident. The police also registered Ex.P1-F.I.R, against the driver of the respondent/Transport Corporation bus. The police, after completing investigation, lodged Ex.P6-Charge sheet against the driver of the respondent bus. It is, thus, clear from the above documents that the negligence of the respondent's bus driver had resulted in the accident. The petitioners/appellants also produced Rough Sketch of the accident spot as Ex.P2 and the same corroborates the claim of the petitioners/appellants.

7. Even though on the side of the respondent/Transport Corporation, the conductor of the bus was examined as R.W.1 to contradict the claim of the petitioners/appellants, the deposition of R.W.1 is of no use to prove the claim of the respondent, because R.W.1, in his evidence has stated that while he was issuing ticket to the passengers, he heard a big sound and then only, he knew about the accident. The respondent has not chosen to examine the driver of the bus and as such there is nothing on record to show that the two wheeler dashed against another military vehicle and in that impact the deceased fell before the respondent's bus, which ran over the deceased.

8. On the other hand, the eye-witness account of P.W.2 as well as Ex.P.1 - F.I.R, Ex.P.2 - Rough Sketch and Ex.P.6 - Charge Sheet, clearly established the claim of the petitioners/appellants that the accident occurred only due to rash and negligent driving of the 1st respondent bus driver. The conclusion of the Tribunal that the 1st respondent driver alone is responsible for the accident is based on proper appreciation of the available materials on record and the same is just and proper.

9. The crux of the appeal, i.e the grievance of the appellants/claimants is that the quantum of award passed by the Tribunal is on the lower side.

10. The deceased was stated to be 22 years at the time of the accident and he was carrying on business dealing with cellphones and electric items in Shop No.775, Evening Bazar Road, Chennai. According to the petitioners/appellants, the deceased was earning Rs.25,000/- per month. In proof of the age of the deceased, the petitioners/appellants have produced Ex.P.10 - Pan card of deceased, wherein, his date of birth was shown as 11.08.1988. Therefore, the age of the deceased at the time of the accident was 22 years. Even though the petitioners/appellants produced Exs.P.11 to P.16 documents, the Tribunal, having found that the petitioners/appellants have not produced any assessment order or returns but only filed the pan card and bank pass book, has fixed the monthly income at the

rate of Rs.4,500/- and added 30% towards future prospects. Considering the fact that the accident had occurred on 11.02.2011 and the deceased was carrying on business dealing with cellphones and electronic items and considering Ex.P.16 - E.B card in the name of the deceased in Shop No.775, Evening Bazar Road, Chennai and Ex.P17 - Bank Passbook in the name of the deceased and other documents available on record and the oral evidence of P.W.1, it will be appropriate to fix the notional income of the deceased at Rs.8,000/- per month. As the deceased was aged 22 years at the time of the accident and as he was a self employed person, the future prospects has to be calculated at 40% of the income, which is calculated as under:-

Rs.8,000 x 40% = Rs.3200/-

Rs.8,000 + 3200 = Rs.11,200/-

As per the standard norms prescribed, the deceased being Bachelor, 50% of the income has to be deducted towards his personal expenses and if the same is deducted the monthly contribution to the family would be [Rs.11,200 * 50%] = Rs.5,600/-.

11. The correct multiplier to be applied for the deceased aged 22 will be 18. Hence, the loss of income is calculated as follows:-

Rs.5,600 x 12 x 18 = Rs.12,09,600/-

Thus, a sum of Rs.12,09,600/- is granted as compensation under the head "Loss of Income". Further, Rs.15,000/- is granted as compensation under the head "Funeral Expenses".

12. The petitioners/appellants who are the parents, married sisters and brother of the deceased claim themselves to be the dependents of the deceased. The 1st and 2nd petitioners/appellants are the parents of the deceased, the 3rd and 4th petitioners/appellants are married sisters and the 5th petitioner/appellant is the un-married brother of the deceased. The Tribunal found 3rd and 4th petitioners/appellants are married and not dependents on the deceased and held the 1st petitioner/appellant alone is entitled for compensation. However, considering the fact that the 1st and 2nd petitioners/appellants are the parents of the deceased and lived with their son, both of them are treated as dependents and entitled for the compensation in equal proportionate.

13. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Pecuniary Loss	Rs.4,56,300.00	Rs.12,09,600.00

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
2	Funeral Expenses	Rs. 10,000.00	Rs. 15,000.00
	Total	Rs.4,66,300.00	Rs.12,24,600.00

14. In the result, the Civil Miscellaneous Appeal is Partly Allowed with the following directions:-

- (i) The award of the Tribunal is enhanced to Rs.12,24,600/- from Rs.4,66,300/-.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) In view of the above enhanced award amount, the respondent/Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.
- (iv) Since there is enhancement in the award amount the 1st petitioner/appellant would be entitled to 60% and the 2nd petitioner/appellant would be entitled to remaining 40%.
- (v) On such deposit, the appellants 1 and 2 are permitted to withdraw their respective shares by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.
- (vi) Petitioners/appellants 1 and 2 shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.
- (vii) There will be no order as to cost in this appeal.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

bri

To

1.The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes,
Chennai.

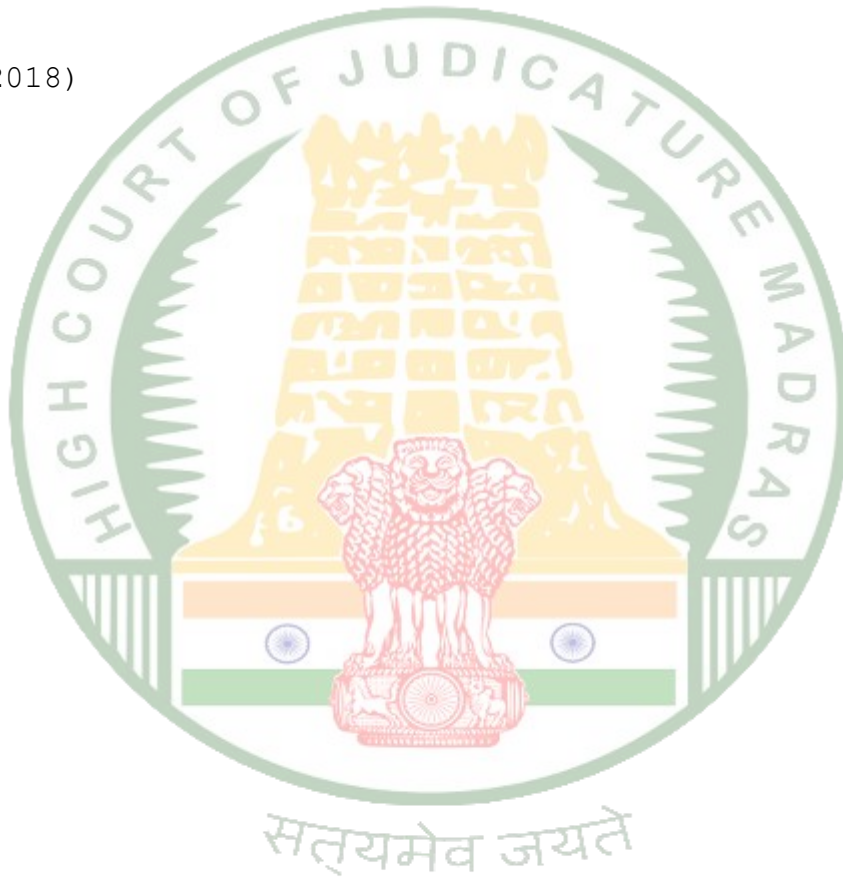
2.The Section Officer,
V.R.Section, High Court, Madras.

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+2 Ccs to Mr.P. Natarajan, Advocate sr 12754.

C.M.A.No.3468 of 2013

NRI (CO)
SP (28/04/2018)



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