IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.08.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

CM.A.No.1033 of 2015
and
M.P.No.1 of 2015

The Managing Director,
TNSTC, Salamedu, Vazhudhareddy,
Villupuram. ... Appellant/Respondent

..Vs..

1.S.Tamilzharasi
2.A. Shanmugam
3.Minor Saran @ Sarankumar ... Respondents/petitioners
(Minor rep.by mother/Tamilzharasi)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 23.06.2014 in M.C.O.P.No.129 of 2013 on the file of the Motor Accident Claims Tribunal, Judge, I Additional District Court, Tindivanam.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Mr.Kanagendran

JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 23.06.2014 in M.C.O.P.No.129 of 2013 on the file of the Motor Accident Claims Tribunal, Judge, I Additional District Court, Tindivanam.

2. On 13.02.2012 at about 05.30 p.m., the deceased who was aged about 16 years, returning from the school, on the respondent's bus bearing Regn.No.TN-32-N-2660. When he was boarding the bus at the back side, the driver of the bus drove it negligently without noticing the passengers boarding into the bus, due to which, the deceased fell down sustained injuries. He was taken to PIMS Hospital, Pondicherry and succumbed to the injuries on the same day. Since the said accident was due to the negligent driving of the driver of the bus, which was insured with the appellant herein, the parents and brother of the deceased filed a claim petition against the insurer, claiming a sum of Rs.25,00,000/- as compensation.

https://hcservices.ecourts.gov.in/hcservices/

3. The appellant/Insurance Company, contested the claim petition by filing a counter statement, denying their liability by contending that the accident occurred solely due to the negligent act of the deceased. It is further contended that all the school going students who have already boarded on the roof of the bus, were asked by the conductor to get down from the bus. After all the students got down from the bus, the driver started the trip. The deceased once again boarded to the roof of the bus, as a result, the Cable wires pushed him down, he fell down and sustained injuries and succumbed to the injuries. Further, they denied the age, educational qualification and income of the deceased and prayed for dismissal of the claim petition.

4. Before the Tribunal, PW1(father of the deceased) and PW2/ Jeya(Eye-witness) were examined and Exs.P1 to Ex.P5 were marked. Ex.P1 – Xerox copy of FIR in Cr.No.45/2012, Ex.P2 – Xerox copy of Post Mortem Certificate of deceased issued by JIPMER, Pondicherry, Ex.P3-Copy of Ration Card, Ex.P4-Xth Std., Mark Sheet, Ex.P5-Tailoring Certificate. On behalf of the Insurance Company, three witnesses were examined as R.W.1 to RW3 but no document was marked.

5. The Claims Tribunal, on the basis of both oral and documentary evidence, held that the facts stated in the FIR corroborates the evidence of PW2 and the accident was due to the rash and negligent driving of the driver of the bus, insured with the appellant, being the insurer of the offending vehicle, they were liable to pay the compensation. By coming to such conclusion, the Tribunal has made calculation under different heads and passed an award for a total compensation amount of Rs.3,30,000/- with interest at 7.5% p.a. from the date of filing the claim petition and till the date of realization. The breakup details of the compensation are as follows:-

| S.No | Head | Amount granted |
|---|---|---|
| 1. | Pecuniary Damages (10000x15) | Rs.1,50,000/- |
| 2. | Non-pecuniary damages | Rs.75,000/- |
| 3. | Loss of Future prospects | Rs.75,000/- |
| 4. | Funeral expenses | Rs. 5,000/- |
| 5. | Ambulance Charges | Rs.5,000/- |
| 6. | Love and Affection | Rs.20,000/- |
| Total | | Rs.3,30,000/- |

https://hcservices.ecourts.gov.in/hcservices/

6. Aggrieved by the finding rendered by the Tribunal with regard to the liability fastened on the Insurance Company, they have come out with the present appeal to set aside the award passed by the Tribunal.

7. The learned counsel appearing for the appellant/Insurance Company disputed the liability fastened on the appellant/Insurance Company by contending that the deceased travelled on the roof of the said bus. Even after warning made by the conductor not to travel on the roof of the bus, the deceased once again boarded the roof of the bus. Cable wire pushed him down and he fell down and succumbed to injuries. Hence, the accident occurred due to the negligence of the deceased and not due to the driver of the bus. They also denied the age, educational qualification and income of the deceased. Therefore, the learned counsel submitted that the Court should interfere with the findings rendered by the Tribunal with regard to the liability aspect and prays for setting aside the same. Hence, the claimants cannot seek any compensation from the Insurance Company.

8. Per contra, the learned counsel appearing for the respondents /claimants contended that the deceased had died while he was returning from school in the bus and hence, his dependents are entitled for compensation and the Insurance Company cannot make a submission that they are not liable to pay the compensation to the dependents of the deceased.

9. Heard the learned counsel for the appellant/Insurance Company and the learned counsel for the claimants/respondents and gone through the records placed before this Court.

10. On perusal of records, it is observed that the Tribunal has fixed the negligence on the driver of the bus based on FIR which corroborates with the deposition of PW2 that only the driver of the bus is responsible for his negligent driving and caused the said accident. The Tribunal has also observed the fact that the deceased was only a student and the documents relating to his education were placed before Tribunal and his age was also observed by the Tribunal as 16 years by verifying the school certificates and awarded a sum of Rs.3,30,000/- as compensation against the claim of Rs.25,00,000/-.

11. It is also seen from the evidence that the deceased was travelling as a last student, who was accommodated in the said bus insured with the appellant. The driver and the conductor did not pay any attention towards the passengers getting into the bus and drove the bus in a rash and negligent manner and caused the accident. There were two different versions for accident,

https://hcservices.ecourts.gov.in/hcservices/

one attributed on the deceased and other attributed on the driver and conductor of the bus whereas the FIR and evidence placed before the Tribunal says that it is the negligence on the part of the driver of the bus that caused the accident. When the FIR is lodged against the driver of the bus, it appears that no step has been taken either by the driver or conductor to dispute their recitals and the complaint made against him. Hence, these documents proved that the negligence was on the driver of the bus. The evidences and documents placed before Tribunal proves the lethargic attitude on the part of the driver who never made any steps to dispute the recitals in the complaint or a manner of the accident. Hence the Tribunal relied upon on the said evidences and documents, fixed the negligence on the driver of the bus.

12. In respect of the compensation awarded by the Tribunal, the respondent contended that the sum awarded by the Tribunal after verifying the status of the deceased and also the probable loss to the family and the future prospects of the deceased who was only a student are very much reasonable. Hence, it does not warrant interference by this court.

13. On the other hand, the appellant contended that apart from the liability, it was the deceased who himself has invited the accident and the determination of the Tribunal by taking monthly income and also the sum awarded under other heads are all highly excessive.

14. By verifying the qualification of the deceased student placed before the Tribunal, it is clear that his age has been taken as 16 years and the Tribunal has also discussed the same and relied upon number of judgments wherein the income of a person who is a student has to be considered properly. Hence, the Tribunal has taken the notional income at Rs.15,000/-p.a., and has appropriately deducted one-third towards his personal expenses and arrived his annual income as Rs.10,000/- p.a. (Rs.15000/--Rs.5000/-=Rs.10000/-). The claimants are parents and brother of the deceased since the claimants are dependants who have lost the bright future as well as the support that would have been extended by the elder deceased son to his family and the deduction made by the Tribunal at one-third towards personal expenses and the annual loss of income as well as the contribution to the family has been properly assessed by the Tribunal at Rs.10000/- p.a., The award of the Tribunal towards loss of future prospects at Rs.75000/- is also not on the higher side and the sum awarded for funeral expenses is proper.

15. With regard to the arguments of the respondents/claimants that the sum awarded under the head of 'Love and Affection' and 'loss of future prospects' are very

https://hcservices.ecourts.gov.in/hcservices/

much on the meagre side when the claimants' lost their son and brother who have lost the bright future as well as the support that would have been extended by the deceased, since the above said compensation has been assessed by the Tribunal by relying upon the judgment of the Supreme Court, the compensation under the said head are proper and reasonable and does not require any modification. Hence, this court is of the view that the sum awarded by the Tribunal at various heads are very much reasonable. This Court is not inclined to interfere with the order passed by the Tribunal and the findings of the Tribunal with regard to the liability aspect is hereby confirmed.

16. In the result, the award passed by the Tribunal in M.C.O.P.No.129 of 2013 dated 23.06.2014 is confirmed. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal, after deducting the amount already deposited, if any, together with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount to the claimants' bank account through NEFT or RTGS within a period of two weeks thereon. On such deposit, the claimants are permitted to withdraw their respective share of the award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn after following due process of law. The share of the minor respondent shall be deposited in anyone of the nationalised banks till he attains majority. Till then, the mother of the minor is entitled to receive quarterly interest on the deposited share of the minor.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

gv

To

1. The Motor Accident Claims Tribunal, Judge,
I Additional District Court, Tindivanam.

https://hcservices.ecourts.gov.in/hcservices/

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

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.68849

CM.A.No.1033 of 2015
and
M.P.No.1 of 2015

RSV(CO)
GMY(14/02/2020)

https://hcservices.ecourts.gov.in/hcservices/