

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on :04.03.2019

Judgment pronounced on :08.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2080 of 2011

1.Mrs.D.Usha
2.Mr.D.Rajesh Kumar
3.Mr.D.Christoper Appellants/Petitioners

Vs.

1.Mr.Jayachandran
2.The Managing Director,
Tamil Nadu State Transport Corporation,
Coimbatore. ... Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 10.01.2006 in M.C.O.P.No. 516 of 2004 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge) Fast Track Court No.I, Coimbatore.

For Appellant : Mr.Hajee P.K.Jamal Mohamed
For R1 : Not ready in notice

For R2 : Mr.S.V.Vasanth kumar

JUDGMENT

The appellants are the claimants in M.C.O.P.No.516 of 2004, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.I, Coimbatore. They have filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 questioning the contributory negligence fixed on the part of the deceased A.Dhayalan and also seeking for enhancement of compensation.

2. The brief case of the appellant/claimant is as follows:

On 05.06.2003 at about 11.30 a.m, when the deceased

A.Dhayalan was riding his TVS moped bearing Registration No.TN 38 B 9984 from Sarojini street, Ramnagar, Coimbatore in a slow speed and turned towards North along Dr.Nanjappa Road, the Tamil Nadu State Transport Corporation bus bearing Registration No.TN 37 N 0541 which came from South towards North along Dr.Nanjappa Road in a rash and negligent manner, dashed against the moped of the deceased. Due to the said impact, the deceased fell down. In the accident, the deceased Dhayalan sustained multiple injuries all over his body and the deceased was declared dead by the Doctor when he was brought to C.M.C. Hospital.

3. The Tribunal, after analysing the evidence on record, awarded a compensation of Rs.4,67,000/- together with interest at the rate of 7.5% per annum to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. The learned counsel appearing for the appellants/claimants submitted that the Tribunal has wrongly fixed the contributory negligence at the ratio of 50:50 on both the first respondent therein and the deceased A.Dhayalan. He would further contend that the compensation awarded by Tribunal under other heads is also meagre and therefore, it may be enhanced.

5. The learned counsel appearing for the Transport Corporation would contend that the scene of the crime as projected in the sketch (Ex.P2) clearly demonstrates that the deceased was negligent and contributed for the happening of the accident and the Tribunal has rightly fixed the contributory negligence at the ratio of 50:50, on both the first respondent therein and deceased A.Dhayalan. The deceased who was riding the moped TVS 50 wrongly came in the cross-section of the road from the main road and dashed on the left hand side corner of the bus and caused damage to the vehicle namely bus and hence, he is not entitled to pay any compensation.

6. On behalf of the claimant P.W.1, the widow of the deceased and other two witnesses P.W.2 and P.W.3 were examined and Exhibits P1 to P9 were marked and on behalf of the respondents, the driver of the Transport Corporation bus was examined as R.W.1.

7. It appears from the records that based upon the occurrence witness P.W.2 coupled with Exhibit P6 charge sheet, the Tribunal has come to the conclusion that the deceased namely Dhayalan, the rider of the moped TVS 50 was not diligent enough in driving the vehicle especially when he was coming from an narrow road to a main road in a cross junction and thereby, he

has contributed to the accident upto 50% and also taking note of the Motor Vehicle's Report of the bus Ex.P5 coupled with oral evidence of R.W.1, the driver of the bus has driven the bus in the cross section. After crossing the cross section, the rider of the two wheeler came and dashed on the rear left hand side of the bus below the foot-board, namely 3 feet from the ground and made a scratch.

8. It appears from the records that based upon the damage caused to the motor-cycle as per Exhibit P4 M.V. Report and also based on the damage caused to the transport bus as could be seen from Exhibit P5 M.V.Report for the bus, coupled with the oral evidence of R.W.1, the Tribunal has come to the conclusion that the rider of the moped was not diligent enough to drive the vehicle in a cross section road, especially when he was coming from East to West in the lane while the bus was travelling and moving from North to South and hence, the Tribunal has rightly come to the conclusion that both the driver of the bus as well as the rider of the moped 50 (the deceased have contributed to the accident) and accordingly, fixed the negligence at 50:50.

9. On re-appreciation of the evidence of P.W.2 coupled with Exhibit P1 and P6 and also taking note of the evidence of R.W.1 coupled with Exhibit P4 and P5, it is seen that the moped driven by the deceased has suffered front damage and had there been an accident as projected by P.W.2, the moped could not have suffered such a damage in a front portion and hence, the Tribunal has rightly held that the deceased has contributed to the accident 50% and also taking note of the fact that the damage that was reflected in Exhibit P5 M.V.Report is only to a limited extent of scratch, that too on the rear left side below the foot-board and hence, the Tribunal has rightly fixed the negligence at 50:50 and the same is hereby confirmed.

10. Taking into consideration the fact that the first claimant is a widow of the deceased and the other two claimants are the children of the deceased, they are entitled for Rs.40,000/- towards loss of consortium and the claimants/petitioners 2&3 are entitled for loss of love and affection Rs.40,000/- each and funeral expenses at Rs.15,000/- and loss to estate at Rs.15,000/- based on the income arrived by the Tribunal.

11. Taking note of the fact that he could have earned Rs.150 per day and Rs.4,500/- p.m, and after deducting 1/3rd, he could contribute Rs.3,000/- and taking into consideration these factors, and his age being 50 at the time of accident, the multiplier '12' is adopted. Accordingly, the loss of income is arrived at $4500 \times \frac{1}{3} = 3000 \times 12 = \text{Rs.}36,000/- \times 12 = \text{Rs.}4,32,000/-$

12. Accordingly, the award of the Tribunal in M.C.O.P.No. 516 of 2004 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of consortium	20,000	40,000
2.	Loss of love and affection	10,000	80,000 (40,000 x 2)
3.	Funeral expenses	5,000	15,000
4.	Loss of estate	-	15,000
5.	Loss of income	4,32,000	4,32,000
	Total	4,67,000/- (1/2 = 2,33,500)	5,82,000/- (1/2 = 2,91,000)

compensation awarded by the Tribunal is enhanced from Rs.4,67,000/- to Rs.5,82,000/-, 50% of which shall be deposited by the second respondent-Transport Corporation, which shall carry interest at the rate of 7.5% per annum.

13. In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.4,67,000/- to Rs.5,82,000/-.

(iii) The second respondent herein-Tamil Nadu State Transport Corporation is directed to deposit the compensation of Rs.2,91,000/- (being 50%) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 516 of 2004, dated 10.01.2006, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.I,Coimbatore within a period of twelve weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first appellant/claimant/wife is permitted to withdraw the entire amount after following the due process of law.

(v) As far as the share of the minor claimants 2 and 3 are concerned, the same shall be invested in any Nationalised Bank in an interest bearing fixed deposit and the interest thereon shall be withdraw by the first claimant for the welfare of the

minors and the said deposit shall be renewed periodically till they attain majority.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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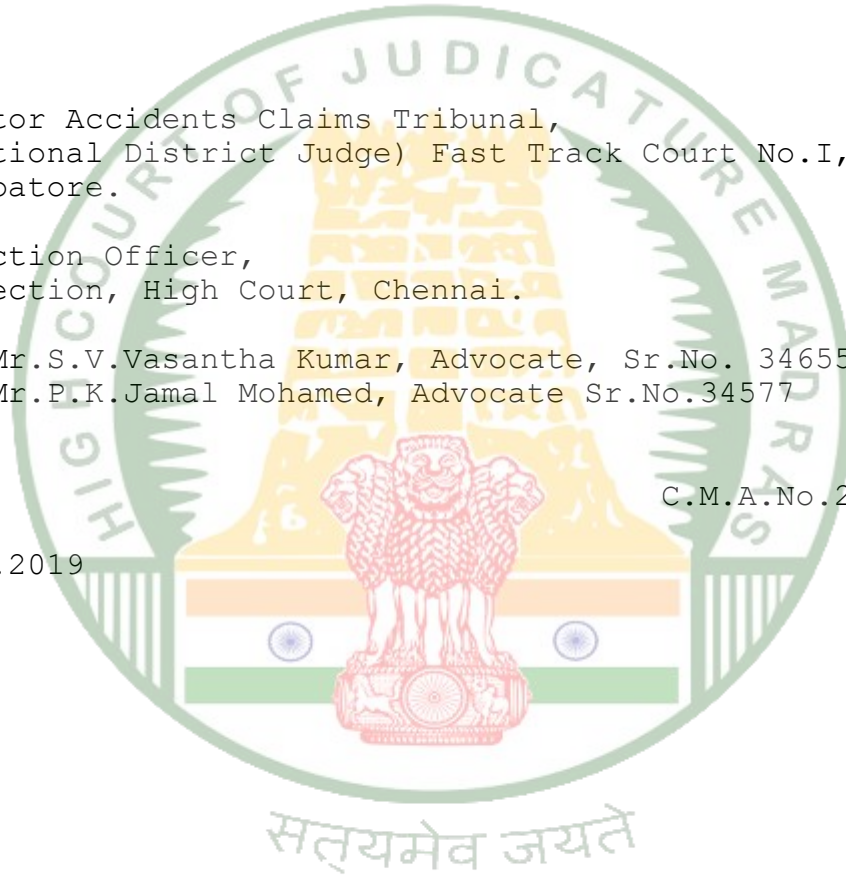
1. The Motor Accidents Claims Tribunal,
(Additional District Judge) Fast Track Court No.I,
Coimbatore.
2. The Section Officer,
V.R.Section, High Court, Chennai.

+1 cc to Mr.S.V.Vasantha Kumar, Advocate, Sr.No. 34655

+1 cc to Mr.P.K.Jamal Mohamed, Advocate Sr.No.34577

Judgment in
C.M.A.No.2080 of 2011

SSV(CO)
CSL/24.07.2019



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