

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.1029 of 2015

and

M.P.Nos.2 & 3 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram) Ltd,
Villupuram. .. Appellant/Respondent

Vs.

1.Lavanya
2.Minor Santhiya
3.Minor Sanjay
Minors rep by its guardian Mother,
first respondent
4.Dayanithi
5.Jothi ... Respondents/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and decree passed by the Motor Accident Claims Tribunal, Villupuram (In the Court of the Special District Judge, to deal with MCOP Cases, Villupuram) made in M.C.O.No.144/2013 dated 20.06.2014.

For Appellant : Mr.K.J.Sivakumar

For Respondents: Mr.A.Mohamed Ismail
(for R1 to R5)

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred by the Tamil Nadu State Transport Corporation aggrieved against the liability made by the Tribunal and also the same is awarded by the Tribunal.

2. The brief facts relating to the claim application are as follows:

On 13.09.2011 at about 10.30 pm, the deceased after dropping the 1st respondent in the bus bearing Reg.No.TN-32-N-3316, proceeded in front of the same bus. While, he reached near Sundaram Real Estate lay out, the driver of the said bus drove the same in a rash and negligent manner and dashed against the two wheeler driven by the deceased. Due to the said impact the deceased died on the spot. Hence, the claimant have filed a claim petition in M.C.O.P.No.169 of 2011 claiming a sum of Rs.20,00,000/- as compensation for the death of the deceased.

3.On the ground of an appeal it is stated that the Tribunal has failed to verify the details regarding criminal case registered and also evidence of R.W.3, the Inspector of Police, which are very much sufficient to prove that the accident was not due to the rash and negligent driving by the appellant's driver. The grievance of the appellant is that while deciding the liability the Tribunal has gone only on the aspect of the occurrence without relying on the proof. Further the appellant is aggrieved by the observation made by the Tribunal in awarding compensation, which is very much dis-proportionate and it does not have any relevance. The Tribunal without any evidence fixed the income of the deceased is at Rs.4,500/- which is on the high side. The sum awarded by the Tribunal towards loss of love and affection and loss of consortium respectively are also on the higher side.

4.Heard Mr.K.J.Sivakumar, the learned counsel appearing for the appellant as well as the Mr.A.Mohamed Ismail, the learned Counsel appearing for the respondents and perused all the materials available on record.

5.On perusal of the records, it is observed that the accident occurred on 13.09.2011. It is contended that the deceased took the first petitioner in motorcycle with Reg.No.PY-01-AY-1494 and after dropping her in the bus with Reg.No.TN-32-N-3316, he was traveling in the front of the same bus on the road leading to Gingee. When the deceased was riding his cycle in front of Sundaram Real Estate lay out before Thiruvamathur road towards north the respondent's driver drove the said bus in a rash and negligent manner and dashed against the said two wheeler rider and caused his death. The accident was due to the rash and negligent driving of the driver of the respondent.

6.The respondent Transport Corporation denied the mode of accident as stated by the claimants by stating that while the bus was coming near to the Papankulam Village the rider of the two wheeler bearing registration No.PY 01-AY-1494 was chatting with a women passenger seated in right side of the bus.

7.It is further stated that the driver of respondents bus instructed the two wheeler not to follow the bus, inspite of the instructions, the rider continued to do so and at the time an unidentified Suzuki Motor Cycle came from the side road and hit the above said two wheeler. Due to which, the rider of the vehicle fell down and sustained fatal injuries. Hence, the respondent Transport Corporation bus denied the negligent aspect by stating that the respondent bus did not hit the two wheeler and this is a false case made against the respondent driver. Hence, the respondent denied the sum claimed by the claimant is without any prove of the age, occupation and the injury sustained by the claimant. The Tribunal after analyzing false documents relevant to the injuries aspect and given finding that it is the driver of the Transport Corporation Bus for its rash and negligent driving and resulted in the accident and awarded a sum of Rs.6,67,000/- as compensation. Aggrieved against the said liability as well as quantum, the present appeal has been preferred.

8.It is seen from the records the appellant corporation was examined and he is not an eye witness. According to him when the unidentified Suzuki Motor Cycle hit the deceased Arul, the said Arul was fell down on his left side sustaining fatal head injuries and his motorcycle alone fell on the right side of the bus. However, during his cross examination he had deposed that he was giving evidence only based on the files. R.W.1 stated that the police after due enquiry has written a letter to the corporation informing that unidentified rider of the TVS Suzuki alone is the cause for the accident by his rash and negligent driving. Further, he had deposed that the said letter was addressed to the Branch Manager, Villupuram on 08.10.2011. The said letter was sent on 08.10.2011. However, the appellant/Transport Corporation had not chosen to produce the said letter before the tribunal to fortify the contents that the unidentified Suzuki Motor cycle alone has came the fatal accidents. It is also seen from the records the R.W.2. Driver of the alleged bus has categorically deposed that he has been issued memo by the corporation and even departmental enquiry were also conducted as against him. In view of the few evidence this Court is of the view that the liability fixed on the appellant/ Transport Corporation is proper and does not require any interference by this Court.

9.With regard to the quantum of compensation, it is seen from the award that the tribunal by observing that though the claimants averred that the deceased was earning Rs.10,000/- per month as a driver of the lorry, they have not chosen to produce

any document to substantiate the same, has fixed the monthly income of the deceased at Rs.4,500/- and applying multiplier 17, deducting 1/3 towards personal expenses, has calculated Rs.6,12,000/- towards loss of dependency. The tribunal has also awarded Rs.10,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses and Rs.40,000/- towards love and affection.

10.It is argued by the learned Counsel for the respondents/claimants that the compensation awarded by the tribunal under the above heads are very meager and the same is granted without considering the age of the avocation of the deceased. The learned Counsel has further submitted that even in the absence of any cross objection, this Court can enhance the compensation by relying upon the evidence and documents. This Court by considering the submissions made by the learned Counsel for the respondents/claimants and also the age of the deceased, who was only 26 years at the time of the accident and owned a lorry for his business is of the view that if he is alive, he could have live for long years and earn more money. Hence, this court enhances the monthly income fixed by the tribunal to some extent i.e., Rs.5000/- per month and since the multiplier and the deduction towards the personal expenses were properly adopted by the tribunal, this Court without modifying the said aspects, calculates the Loss of Dependency to Rs.6,80,000/-(5000X12X1/3X17). Similarly the sum awarded under heads 'Loss of consortium and Funeral expenses' is also enhanced to Rs.25,000/- and Rs.15,000/- respectively under the said head. Since the sum granted under the head 'Loss of Love and Affection' is found proper, the same is confirmed. Thus the compensation awarded by the tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	6,12,000/-	6,80,000/-	Reduced
2.	Loss of Consortium	10,000/-	25,000/-	Enhanced
3.	Love and Affection	40,000/-	40,000/-	Confirmed
4.	Loss of Funeral expenses	5,000/-	15,000/-	Enhanced
	Total	Rs.6,67,000/-	Rs.7,60,000/-	enhanced by Rs.93,000/-

11.In view of the above enhancement, the appeal filed by the Transport Corporation is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.The Appellants/Transport Corporation is directed to deposit the entire award amount modified by this Court along with interest at 7.5% per annum, less the amount if any deposited, within a period of six weeks from the date of receipt of copy of this Order. On such deposit is being made, the Tribunal is directed to transfer the amount to the claimants' bank account through RTGS within a period of two weeks thereafter as per apportionment ordered by the Tribunal.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Villupuram.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.K.J.Sivakumar, Advocate SR.63494

+1cc to Mr.K.Arunagiri, Advocate SR.63632

C.M.A.No.1029 of 2015
and
M.P.Nos.2 & 3 of 2015

NRL (CO)
CB(06/12/2019)

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