

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CMA.No.2464 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore.

... Appellant

Vs.

1. Mohan
2. Saratha

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 24.07.2012 passed in MCOP.No.842 of 2010 on the file of the VI Additional District Judge/Motor Accident Claims Tribunal, Coimbatore at Tiruppur.

For Appellant : Mr.S.V.Vasanthakumar

For Respondents : Mr.Ma.P.Thangavel

J U D G M E N T

The Managing Director, Tamil Nadu State Transport Corporation, Coimbatore, the respondent in MCOP No.842 of 2010 on the file of the VI Additional District Judge/Motor Accident Claims Tribunal, Coimbatore at Tiruppur has filed the present appeal under Section 173 of the Motor Vehicles Act.

2. The respondents/claimants filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.9,00,000/- for the death of their son Vignesh Kumar in a road accident that took place on 04.07.2010.

3. The case of the respondents/claimants in nutshell:

On 04.07.2019, the deceased Vignesh Kumar was riding his motorcycle bearing Registration No. TN-39-HM-0718 on Pollachi-Valparai Road. At about 8.30 hours, when the deceased was nearing Rottikadai Punitha Vanathu Chinnappar Koil, a speeding bus bearing Registration No.TN-38-N-1640 belonging to the appellant hit the motorcycle, as a result of which, he sustained

injuries all over his body and he was rushed to the Government Hospital at Valparai. However, he succumbed to injuries on the same date. According to the claimants, the rash and negligent driving of the driver of the bus belonging to the respondent was the cause of accident and hence the respondent is liable to pay compensation to them.

4. The VI Additional District Judge/ Motor Accident Claims Tribunal, Coimbatore at Tirupur, after analysing the evidence on record awarded a compensation of Rs.4,95,000/- together with interest at the rate of 7.5% per annum to the claimants. The Tribunal further held that the driver of the bus belonging to the appellant was responsible for the accident and directed the respondent to pay compensation to the claimants. Aggrieved over the orders passed by the Tribunal, the Tamil Nau State Transport Corporation, Coimbatore has filed the present appeal.

5. Mr.S.V.Vasanthakumar, learned counsel appearing for the appellant contended that though sufficient evidence was adduced on the side of the respondent to show that the deceased was also responsible for the accident, the Tribunal did not fix the negligence on the part of the deceased and directed the appellant to pay the compensation amount to the claimants. He also contended that the Award passed by the Tribunal is on the higher side, since the Tribunal had deducted 1/3 towards personal expenses of the deceased, though the deceased died as a bachelor. He therefore prayed for scaling down the compensation awarded by the Tribunal.

6. Per contra, Mr.Ma.P.Thangavel, learned counsel appearing for the respondent contended that Mr.Mohanraj (PW2), the eyewitness to the occurrence had clearly deposed that the driver of the bus belonging to the appellant was rash and negligent in driving his vehicle. He further contended that the manner in which the accident took place would go to show that the driver of the bus was responsible for the accident and therefore, the Tribunal was right in fixing negligence on the part of the driver of the bus belonging to the appellant.

7. A perusal of the First Information Report (Ex.P1) shows that the driver of the bus was the wrong doer. In fact, he was examined as RW1 before the Tribunal. However, a perusal of the evidence of PW2, who was the eyewitness to the occurrence shows that the bus belonging to the appellant hit the two wheeler of the deceased from behind and the manner of the accident speaks for itself. In fact, the Tribunal has gone into the aspect of negligence in extenso and had clearly come to the conclusion that the driver of the bus was the cause of accident.

Therefore, I do not see any reason to interfere with the findings recorded by the Tribunal.

8. Mr.Ma.P.Thangavel, learned counsel appearing for the respondents / claimants contended that the award passed by the Tribunal cannot be said to be just in the light of the decision rendered in National Insurance Co. vs. Pranay sethi and others reported in 2017 (2) TNMAC 601(SC). He also relied on the decisions in (i) Bajaj Allianz General Insurance Co. Ltd., Bangalore Vs. Konappan and another reported in 2016(1) TN MAC 184 (Division Bench), and (ii) M/s.Bharathi Axa General Insurance Company Limited vs. Jayalakshmi @ Panchalai and others in CMA.No.3629 of 2013 and contended that even though the claimants have not challenged the quantum of compensation awarded by the Tribunal by way of filing an appeal or cross-objection, this Court has got powers and jurisdiction under Order 41 Rule 33 and Section 151 of the Code of Civil Procedure and Article 227 of the Constitution of India to enhance the compensation, if it is found that just compensation was not awarded. His specific contention is that though in the claim petition it is stated that the deceased was earning a sum of Rs.10,000/- per month, the Tribunal has fixed the notional income of the deceased as Rs.4,500/- per month, which is very meagre. He also drew the attention of this court to the orders passed by the Tribunal and contended that though the deceased was aged 25 years on the date of accident, the Tribunal had wrongly adopted multiplier '13'. He further contended that no amount was added towards future prospects of the deceased, especially, when the deceased was aged 25 years on the date of accident and prayed for enhancement of compensation.

9. It is pertinent to point out that the claimants did not adduce any documentary evidence to show that the deceased was actually earning a sum of Rs.10,000/- per month. In the absence of proof of income, monthly income of the deceased is fixed at Rs.7,500/-, since the accident took place in the year 2010. The age of the deceased was 25 years on the date of accident. Hence, as per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% should be added towards future prospects. Since the deceased died as a bachelor, 50% should be deducted towards personal expenses of the deceased. Proper multiplier to be adopted in the instant case is ' 18 ', as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 and 1/3 should be deducted towards personal expenses of the deceased. Accordingly, loss of

dependency is calculated as follows.

Monthly income	- Rs.7,500
Add: 40% future prospects (7500+3000)	- Rs.10,500
Less 50% (10,500/2)	- Rs.5,250
Proper multiplier	- 18
Loss of dependency (5250 x 12 x 18)	- Rs.11,34,000

10. Apart from this amount, the claimant is also entitled to Rs.15,000/- Rs.15,000/- and Rs.40,000/- towards "loss of estate", "funeral expenses" and "loss of love and affection" respectively, as per the decision in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC) (cited supra). The revised compensation awarded under various heads is extracted below.

Sl.No	Heads	Amount
1	Loss of dependency (5250x12x18)	11,34,000
2	Loss of estate	15,000
3	Funeral expenses	15,000
4	Loss of love and affection	70,000
	Total	12,04,000

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition.

11. In the result,

(i) The civil miscellaneous petition is allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from 4,95,000/- to Rs.12,04,000/-.

(iii) The claimants are directed to pay necessary court fees for the enhanced compensation amount awarded by this court, within three months from the date of this order.

(iv) compensation of Rs.12,04,000/- together with interest at the rate of 7.5% per annum (less the amount already deposited by them), within four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the respondent, the claimants can withdraw the same as detailed below.

First claimant (Mohan) - Rs.4,04,000/- only.

Second claimant (Saratha) - Rs.8,00,000/-
with interest and costs
of total award.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The VI Additional District Judge,
Motor Accident Claims Tribunal,
Coimbatore at Tiruppur.
2. The Managing Director,
The Tamil Nadu State Transport Corporation Limited,
Coimbatore.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.Ma.Pa.Thangavel, Advocate Sr.No. 83311
+1 cc to Mr.S.V.Vasantha Kumar, Advocate Sr.No.83307

AKM/10.01.2020/5P-6C /

CMA.No.2464 of 2013



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