

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3072 of 2012

1.Thirupurasundari  
2.Karunaimani  
3.Nithiyanandam (Deceased)  
4.Veeran (Deceased)  
5.Nagammal (Deceased) .. Appellants/Petitioners

vs.

The Managing Director,  
Tamil Nadu Govt., Transport Corporation,  
Division - I, Villupuram. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 23.09.2008 in M.C.O.P.No.3131 of 1998 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court - III, Chennai.

Appellants : Mr.P.Selvaraj

Respondent : Mr.S.Sairaman

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.3131 of 1998 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court - III, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the death of one Munusamy, husband of the first claimant, father of the claimants 2 & 3 and son of the claimants 4 & 5 in a road accident on 20.04.1998.

2. The case of the claimants in nutshell is as follows:

On 20.04.1998, the deceased Munusamy was walking along G.S.T. Road, near Singaperumal Kovil and at about 06.30 a.m, a speeding bus bearing Registration No. TN 32 N 0839 hit him, as a result whereof, he sustained grievous injuries all over his body and died on 22.04.1998.

3. According to the claimants, the rash and negligent

driving of the driver of the bus belonging to the Tamil Nadu State Transport Corporation was the cause of the accident and therefore they are liable to pay compensation.

4. The learned Additional District Judge / Motor Accident Claims Tribunal, Fast Track Court - III, Chennai after analysing the evidence on record awarded a compensation of Rs.50,000/- to the claimants under no fault liability, since the claimants did not adduce any evidence to show that the driver of the bus was rash and negligent in driving his vehicle. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.P.Selvaraj, learned counsel appearing for the appellants would contend that though the claimants examined an eyewitness to the occurrence, the Tribunal did not consider the same and awarded a very meagre amount of Rs.50,000/- under no fault liability.

6. Per contra, Mr.S.Sairaman, learned counsel appearing for the respondent contended that the Tribunal after analysing the oral and documentary evidence adduced on both sides, concluded that the deceased was responsible for the accident and awarded a sum of Rs.50,000/- under Section 140 of the Motor Vehicles Act, under no fault liability and the same need not be disturbed at this stage.

7. The claimants examined one Karunaimani (P.W.2) eyewitness to the occurrence and the Tribunal did not consider his evidence mainly on the following grounds:

- I. There is no evidence to show that Karunaimani (P.W.2) is an eyewitness to the occurrence.
- II. There are lot of discrepancies in the evidence of P.W.2 and the rough sketch (Ex.P8).
- III. The driver of the bus (R.W.1) has deposed that the deceased Munusamy suddenly crossed the road, unmindful of the vehicular traffic.
- IV. The First Information Report was registered against the deceased.

Such an observation made by the Tribunal cannot be sustained for the following reasons.

- I. No independent witness was examined by the respondent to show that the deceased suddenly crossed the road, unmindful of the vehicular traffic and merely based on the interested testimony of R.W.1, the driver of the bus, it cannot be held that the deceased suddenly crossed the road.

- II. Singaperumal Kovil bus stop on GST road is a busy bus

stop and the driver of a Heavy Motor Vehicle must drive his vehicle, taking into consideration the pedestrians and other Motor Vehicles on the road. There is no evidence to show that the driver of the bus drove his vehicle carefully.

III. The eyewitness account is also clear that the driver of the bus was rash and negligent

IV. Merely based on the First Information Report lodged by the driver of the bus it is wrong to hold that the deceased alone was responsible for the accident.

Therefore the orders passed by the Tribunal is liable to be set aside.

8. As far as quantum of compensation is concerned, the contention of the claimants is that the deceased was a mason, earning a sum of Rs.150/- per day. No proof of income has been adduced by the claimants. It is pertinent to point out that the accident took place in the year 1998 and in the facts and circumstances, this Court is of the opinion that fixing a sum of Rs.3,000/- as notional monthly income of the deceased would meet the ends of justice. The Tribunal did not also award any amount towards "future prospects" of the deceased, especially, when the deceased was aged 50 years on the date of the accident. As per the decision of the Supreme Court of India in National Insurance Co. vs Pranay Sethi and others reported in 2017 (2) TNMAC 601, 25% should be added towards future prospects of the deceased and 1/4th of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 13 as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.3,000/-

25% Future Prospects = Rs.3,750/-

After 1/4 deduction = Rs.2,812/-

Loss of dependency

= Rs.2,812/- x 12 x 13

= Rs.4,38,672/-

9. Apart from the above said amount, the appellants / claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of consortium" and "funeral expenses" respectively, as per the decision rendered in National Insurance Co. vs Pranay Sethi and others reported in 2017 (2) TNMAC 601 (SC). The award passed by this Court under various heads is extracted hereunder:

| S.No. | Head               | Amount granted by this court |
|-------|--------------------|------------------------------|
| 1.    | Loss of dependency | Rs.4,38,672/-                |
| 2.    | Loss of estate     | Rs.15,000/-                  |
| 3.    | Loss of consortium | Rs.40,000/-                  |
| 4.    | Funeral expenses   | Rs.15,000/-                  |
| Total |                    | Rs.5,08,672/-                |

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.50,000/- to Rs.5,08,672/- which would carry interest at the rate of 7.5% per annum.

11. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.50,000/- to Rs.5,08,672/-

(iii) The appellants / claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The respondent / Tamil Nadu State Transport Corporation is directed to deposit the enhanced compensation amount i.e., Rs.5,08,672/- (less the amount 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.3131 of 1998 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court - III, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellants 1 and 2 / claimants 1 and 2 are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mtl

To

The Additional District Judge,  
The Motor Accidents Claims Tribunal,  
Fast Track Court - III,  
Chennai.

+1cc to Mr.K.Varadhakamaraj, Advocate SR.94033

C.M.A.No.3072 of 2012

SSD (CO)  
CB (20/02/2020)