

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.04.2019

PRONOUNCED ON : 02.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 790 of 2012

1.P.Vijayan

2.V.Thilagavathi

...Appellants/Petitioners

... Vs ...

The Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram Division - III) Limited,
Kanchipuram.

...Respondent/Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 27.11.2009 made in M.C.O.P.No.5786 of 2004, on the file of the Motor Accidents Claims Tribunal, learned V Judge, Small Causes Court at Chennai.

For Appellants : Mr.V.Ragunathan
for Mr.R.Kannan

For Respondent : Mr.S.V.Vasantha Kumar

JUDGMENT

The appellants herein/claimants are the parents of the deceased bachelor boy. Challenging the compensation awarded in MCOP.No.5786 of 2004, on the file of the Motor Accidents Claims Tribunal, learned V Judge, Small Causes Court at Chennai, for the death of their son, viz., V.Guru Balakrishnan, the appellants have come up with the present appeal.

2 The appellants herein/claimants filed claim petition alleging that on 19.10.2004, at about 1.45 a.m., while the deceased along with his parents were travelling as passengers in the bus bearing Registration No. TB 21 B 0572 at 100 feet road, near Periyar Pathai Junction, opposite to Implex India Company, from South to North direction towards Koyambedu, one unknown driver of the lorry drove from the opposite direction and hit the back side of the bus. As a result of which, the deceased

sustained severe injuries including head injuries and was admitted in Vijaya Hospital, subsequently, died on the same day. The driver of the unknown lorry and the respondent/ Transport Corporation are jointly and directly responsible for the accident. The lorry involved in the accident, driver of the above said unknown lorry and owner of the lorry is still not traced and hence, the respondent/ Transport Corporation as the owner of the bus, who is responsible for the safety of the passengers is jointly, severally and vicariously liable to pay the compensation to the petitioners.

3 The respondent/Transport Corporation filed counter statement, denying and disputing the averments and inter alia contended that on 19.10.2004, the respondent Corporation bus was driven by its driver at moderate speed with due care and caution. When the bus was proceeding near MMDA opposite to Implex India Company, Chennai, a Tipper Lorry which was coming from opposite direction with rash and negligent manner, changed its path and came directly opposite to the bus. On seeing the lorry, the bus swerved to its left by its driver. Even though the respondent Corporation driver tried to avoid the accident with the lorry, the lorry dashed with the bus near right corner and ran on its way without stopping. The accident was occurred only due to rash and negligent act of the lorry driver.

4 Before the Tribunal, father of the deceased boy viz., P.Vijayan was examined as PW1. Other two occurrence witnesses, who travelled in the Government Transport Corporation bus as passenger, were examined as PW2 and PW3 and Ex.P1 to P9 were marked. On behalf of the respondent/Transport Corporation, RW1 was examined and no document was filed.

5 On consideration of both oral and documentary evidence, the Tribunal has held that the accident has taken place due to the rash and negligence of the both driver of the unknown lorry and the respondent/Transport Corporation at the rate of 50% each and awarded a sum of Rs.1,26,500/- to be payable representing 50% by the respondent/Transport Corporation. Hence, the appeal by the appellants herein/claimants.

6 The factum of the accident, the manner of the accident and the rash and negligence on the part of the driver of the both unknown lorry and the respondent/Transport Corporation bus are not in dispute and the same is hereby confirmed.

7 On the point of quantum of compensation, both the parties were heard.

8 The Tribunal, taking into consideration the age of the deceased as 18, as per the Schedule II of the Motor Vehicle Act, by adopting multiplier 16, had arrived at the loss of income as
 $\text{Rs.}15,000 \times 16 = 2,40,000/-$

Further the Tribunal has awarded Rs.1,000/- towards transportation charges to hospital, Rs.2,000/- towards damage to clothes, Rs.10,000/- towards funeral expenses.

9 This Court, taking into consideration, the age of the deceased as 18 years and that the accident took place during the year 2004, the multiplier adopted by the tribunal is not proper and hence this Court, following the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC adopted the multiplier 18 and the loss of income is reassessed at

$\text{Rs.}15,000 \times 18 = 2,70,000/-$.

The Tribunal has not awarded any amount towards love and affection and hence it would be appropriate to award a sum of Rs.50,000/- each to the parents of the deceased. It would also be appropriate to award a sum of Rs.15,000/- towards loss of estate and to enhance funeral expenses from Rs.10,000 to Rs.15,000/-. Accordingly, the compensation awarded by the Tribunal is re-assessed as under:

Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (in Rs.)
Future loss of earning capacity	2,40,000.00	2,70,000.00
Love and affection	-	(50,000 to each) 1,00,000.00
Transportation	1,000.00	-
Damages to clothes	2,000.00	2,000.00
Funeral Expenses	10,000.00	15,000.00
Loss of estate	-	15,000.00
Total	2,53,000.00	4,02,000.00

Hence, the compensation is re-assessed and enhanced from Rs.2,53,000/- to 4,02,000/-.

10 In the result:

(i) Civil Miscellaneous Appeal filed by the appellants herein/claimants is partly allowed and award passed in M.C.O.P.No..5786 of 2004, is modified to the limited extent.

(ii) The award amount will carry interest at the rate of 7.5% per annum.

(iii) The Transport Corporation is directed to deposit 50% of the award amount as ordered by this court, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(iv) On such deposit, the claimants are permitted to withdraw the amount awarded by this Court with proportionate interest, less the amount already withdrawn, if any.

(v) The claimants shall pay necessary Court fee, if any, on the enhanced compensation.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Motor Accidents Claims Tribunal,
V Judge, Small Causes Court at Chennai.

+1cc to M/s.R.Kannan, Advocate Sr.66206

C.M.A.No. 790 of 2012

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