

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.3726 of 2013

1.G.Premkumar
2.Aswini
3.Revathi
4.Minor. Sangeetha
5.Minor. Keerthi
6.Minor. Rukesh Kumar ... Appellants/Petitioner

(Minor appellants 4 to 6 are represented by their father and next friend G.Premkumar)

Vs.

The Managing Director,
Andhra Pradesh State Transport Corporation Limited,
Hyderabad. ... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 31.01.2012 passed in M.C.O.P.No.1149 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court No.III, Tiruvallur.

For Appellants : Ms.A.R.Sudaamani

For Respondent : Mrs.G.V.Shoba

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.1149 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court No.III, Tiruvallur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/- for the death of one Lalitha, wife of the first claimant and mother of claimants 2 to 6, in a road accident on 19.05.2007.

2.The case of the claimants is that on 19.05.2007, the deceased Lalitha was traveling as a passenger in a bus bearing Registration No. AP 11 Z 949 belonging to the respondent on

Nellore-Mumbai road and when the bus was nearing Nellore check post bridge, the driver of the bus drove the vehicle rashly and negligently and applied sudden brakes as a result where of, the bus toppled and the deceased Lalitha died on the spot. According to the claimants, the rash and negligent driving by the driver of the bus belonging to the respondent/ Andhra Pradesh State Transport Corporation Limited was the cause of the accident and therefore the respondent / Andhra Pradesh State Transport Corporation Limited is liable to pay compensation.

3.The learned Additional District Judge/ Motor Accidents Claims Tribunal, Fast Track Court No.III, Tiruvallur, after analysing the evidence on record, awarded a compensation of Rs.3,50,000/- together with interest at the rate of 7.5% per annum to the claimants. Not being 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.Ms.A.R.Sudaamani, learned counsel appearing for the appellants / claimants contended that the deceased was aged 45 years on the date of accident and the Tribunal fixed the age of the deceased as 58 years, though the postmortem certificate shows the age of the deceased as 45 years and also did not award any amount towards future prospects. Therefore, she prayed for enhancement of compensation.

5.Per contra, Mrs.G.V.Shoba, learned counsel appearing for the respondent / Andhra Pradesh State Transport Corporation Limited contended that the age of deceased was fixed by the Tribunal based on the legal heirship certificate (Ex.P4). Her specific contention is that the legal heirship certificate was filed by the claimants and based on their informations alone, the Tahsildar had issued the certificate and therefore the Tribunal was right in fixing the age of the deceased as 58 years and prayed for dismissal of the appeal.

6.A perusal of the records shows that in the claim petition and in the postmortem certificate, the age of the deceased is mentioned as 45 years. The Tribunal had merely based on the legal heirship certificate, fixed the age of the deceased as 58 years. It is pertinent to point out that the age of the first child of the deceased was 22 years on the date of accident and it is possible for a woman to deliver a child at the age of 19. Therefore, based on the postmortem certificate (Ex.P2), the age of the deceased is fixed as 45 years. The claimants further contended that the deceased was a tailor by profession earning a sum of Rs.10,000/- per month. No income proof was adduced by the claimants. The accident took place in the year 2007 and therefore the notional monthly of the deceased can be fixed as

Rs.7,500/-. The Tribunal did not award any amount towards future prospects and as per the decision rendered in National Ins. Co. Vs. Pranay Sethi reported in 2017(2)TNMAC 609 (SC), 25% should be added towards future prospects. There are six persons depending on the income of the deceased and 1/5 is deducted from her income towards personal expenses of the deceased and the proper multiplier is '14' as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The "loss of dependency" is calculated as follows:

Calculation:

Notional Income = Rs.7,500/-
25% Future Prospects = Rs.1,875/-
Total = Rs.7,500/- + Rs.1,875/- = Rs.9,375/-
After 1/5 deduction = Rs.7,500/-

Loss of dependency:

= Rs.7,500/- x 12 x 14
= Rs.12,60,000/-

Apart from the above said amount, the claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of love and affection" and "funeral expenses" respectively. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.12,60,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.13,30,000/-

7. In the result, सत्यमेव जयते

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,50,000/- to Rs.13,30,000/-.

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

(iv) The Andhra Pradesh State Transport Corporation Limited is directed to deposit the enhanced compensation amount i.e., Rs.13,30,000/- (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.1149 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court No.III, Tiruvallur within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the claimants 1 to 3 are at liberty to withdraw the same as per the ratio of apportionment fixed by the Tribunal, after following due process of law.

(vi) The share of the minor claimants 4 to 6 is directed to be deposited in any one of the Nationalized Bank, till they attain majority. On such deposit being made, the first claimant, being the father of the minor claimants 4 to 6 is at liberty to withdraw the accrued interest once in three months for the welfare of the minor claimants 4 to 6.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
The Additional District Judge,
Fast Track Court No.III,
Tiruvallur.

Copy to

The Section officer,
VR Section, High Court, Madras-104.

+1cc to Mrs.G.V.Shoba, Advocate Sr.90968
+1cc to Mr.A.R.Sudaamani, Advocate Sr.91816

C.M.A.No.3726 of 2013

gmr[co]
srg 03/02/2020