

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.03.2019
CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.593 of 2013
and M.P.No.1 of 2013

Managing Director,
Tamil Nadu State Transport Corporation
Villupuram (Division) Limited,
Villupuram. ... Appellant/ Respondent

...Vs...

- 1.Deepa
- 2.Minor Viswa
rep by his mother & natural
guardian Mrs.Deepa
- 3.Poongothai
- 4.Kalliaperumal ... Respondents/ Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 31.01.2012 in M.C.O.P.No.260 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Chidambaram.

For Appellant : Mr.S.V.Vasantha Kumar
For Respondents : Mr.B.Ram Prabu

JUDGMENT

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 31.01.2012 passed by the Motor Accident Claims Tribunal, Sub Court, Chidambaram in M.C.O.P.No.260 of 2010. सत्यमेव जयते

2. On 14.05.2010, at 8.15 hours, when the deceased Muthukumaran was standing on the Manalur bus stop, a bus bearing Registration No. TN 32 N 2494, came in the opposite direction at a very high speed, in a rash and negligent manner and hit against the deceased, and thus, caused the accident. In the said accident, the deceased sustained grievous fatal injuries. Immediately, he was taken to Government Hospital, Chidambaram and died there. Hence, the legal representatives of the deceased, i.e., wife, son and parents of the deceased, made a claim in a sum of Rs.15,00,000/- as compensation.

3. The Transport Corporation contested the claim by filing a counter statement, denying their liability and also disputed the age, occupation, income of the deceased and prayed for dismissal of the claim petition.

4. Before the Tribunal, in order to prove the claim on the side of the claimants, the first claimant examined herself as P.W.1 and marked 5 documents as Ex.P.1 to Ex.P.5. On behalf of the Transport Corporation, one witness driver of the bus was examined as R.W.1, but no document was marked.

5. The Tribunal, after analyzing the entire evidence both oral and documentary, has come to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the bus, belonging to the appellant/Transport Corporation and held that Transport Corporation is liable to pay the compensation. By coming to such conclusion, the Tribunal has made the calculation under different heads and passed an award for a total compensation amount of Rs.10,84,000/-. The breakup details of the compensation are as follows:-

S.No	Heads	Amount granted
1	Loss of income	Rs.8,64,000/-
2	Love and Affection (Rs.1,00,000/- each 1 st and 2 nd respondents)	Rs.2,00,000/-
3	Transportation	Rs.10,000/-
4	Funeral expenses	Rs.10,000/-
	Total	Rs.10,84,000/-

6. Aggrieved by the finding rendered by the Tribunal with regard to the liability fastened on the appellant as well as the quantum of compensation awarded by the Tribunal as excessive and exorbitant, the appellant-Transport Corporation has come out with the present appeal.

7. The learned counsel appearing for the appellant submitted that the Tribunal wrongly fixed the liability on the part of the driver of the bus belonging to the appellant/Transport Corporation. He further submitted that on behalf of the Transport Corporation only the R.W.1 driver was examined, and no other independent witness was examined. He also fairly submitted that the deceased was a mason, earning a sum of Rs.15,000/- per month. However, there was no proof produced by the respondents/claimants before the Tribunal with regard to the income of the deceased. Therefore, the Tribunal while determining compensation towards loss of income, fixed a sum of Rs.6,000/- per month as the notional income of the deceased, but the Tribunal did not provide any justification for the same and hence, learned counsel submitted that loss of income fixed by the Tribunal is on the higher side. The learned counsel further submitted that the compensation awarded by the Tribunal under other heads are also excessive

and exorbitant and therefore, prayed for appropriate reduction.

8. Per contra, learned counsel appearing for the respondents/claimants submitted that the accident occurred only due to the negligence on the part of the driver of the bus. The Tribunal also found that the accident had occurred purely due to the negligence of the driver of the bus, as he drove the bus at a high speed. He submitted that even the Honourable Supreme Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008, whereas, in the present case accident occurred in the year 2010. Further, in the present case, the claimants were not able to produce any evidence in support of the age of the deceased and in the claim petition, the age of the deceased was mentioned as 26 years. However, the Post Mortem Report (Ex.P.3), the age of the deceased is mentioned as 28 years and the same was confirmed by the Tribunal. The deceased was married and he has minor son/2nd claimant. In the facts and circumstances of the case, the amount fixed by the Tribunal towards loss of income is just and fair, and requires no reduction/modification. The learned counsel further submitted that the Tribunal has failed to award any compensation towards (i) Pain and sufferings (ii) Loss of consortium (iii) Loss of estate and (iv) Attender's charges.

9. Heard, learned counsel appearing for the appellant/Transport Corporation and as well as learned counsel appearing for the respondents/claimants.

10. Considering the facts and circumstances of the case, this Court is of the view the findings of the Tribunal is just and fair. The Tribunal has rightly fixed the liability on the part of the driver of the bus, since he drove the bus in a rash and negligent manner and caused the accident. A perusal of the records shows that the deceased had one minor child, wife and parents as his dependents. However, the Tribunal has deducted 1/3 towards the personal expenses of the deceased and the same is set aside and this Court is inclined to deduct 1/4 towards personal expenses of the deceased.

11. The Tribunal has not awarded any amounts towards future prospects, especially, when the deceased was aged just 28 years on the date of accident. As held by the Hon'ble Apex Court in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, for the age group of 28 years, 40% should be added towards future prospects and the monthly income after adding the future prospects would be Rs.8,400/- (Rs.6,000/- + Rs.2,400/-) and 1/4th should be deducted towards the personal expenses of the deceased. The Tribunal has applied the multiplier as 18, for the age group of 28 years. The age of the deceased was confirmed by the Post Mortem Report (Ex.P.3). Therefore, this court is inclined to fix the

multiplier as 17, as per the ratio laid down by the Hon'ble Apex Court in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The loss of income of the deceased is as follows:

Calculation:

Notional Income = Rs.6,000/-
 40% Future Prospects = Rs.2,400/-
 Total = Rs.6,000/- + Rs.2,400/-
 = Rs.8,400/-

Loss of dependency

= Rs.8,400/- x 17 x 12 x 3/4
 = Rs.12,85,200/-

12. As held by the Hon'ble Apex Court in Pranay sethi (supra), the wife is entitled to a consortium, but the Tribunal has failed to award any amounts towards 'loss of consortium' and therefore, this Court is inclined to fix a sum of Rs.40,000/- towards 'loss of consortium'. The Tribunal has awarded a sum of Rs.1,00,000/- towards love and affection to both 1st and 2nd claimants, wife and son of the deceased and the compensation under the head of love and affection can be awarded only to the second claimant/son of the deceased. Accordingly, this court inclined to reduce the compensation awarded by the tribunal towards love and affection is from Rs.1,00,000/- to Rs.70,000/- to the 2nd claimant. The Tribunal also failed to award any amount towards loss of estate. Therefore, this Court inclined to award a sum of Rs.15,000/- towards loss of estate. In view of the settled law by the Hon'ble Apex in Pranay sethi (supra), the loss of funeral expenses awarded by the Tribunal is increased from Rs.10,000/- to Rs.15,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards transportation and the same is confirmed by this Court. Thus, the revised compensation awarded by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of income	Rs.12,85,200 /-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
5.	Love and affection to the 2 nd claimant	Rs.70,000/-
6.	Transportation	Rs.10,000/-
Total		Rs.14,35,200/-

Thus, the claimants are entitled to a sum of Rs.14,35,200/- together with interest at the rate of 7.5% per annum.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is

closed.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.10,84,000/- to Rs.14,35,200/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The Tamil Nadu State Transport Corporation is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any, failing which, they shall appear before this Court on 31.07.2019. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered.

(v) On such deposit being made, the claimants are at liberty to withdraw the same as per the apportionment given below after following due process of law.

(a) The 1st claimant is entitled to a sum of Rs.6,35,200/- together with accrued interests and costs.

(b) The 2nd claimant is entitled to a sum of Rs.6,00,000/-.

© The 3rd and 4th claimants are entitled to a sum of Rs.1,00,000/- each.

(d) So far the minor share is concerned, the same shall be deposited by the Tribunal in any of the Nationalized Bank, in a interest bearing FD Account and claimant's mother shall authorize the interest once in three months.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vr

To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Subordinate Court,
Chidambaram.

Copy to:

The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.SV.Vasanth Kumar , Advocate SR.No. 29661

+1cc to Mr.B.Ram Prabhu , Advocate SR.No. 29300

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