

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1388 of 2014

and

M.P No.1 of 2014

The Managing Director,
The Tamil Nadu State Transport
Corporation Ltd.,
Nambiyur Branch,
Erode District. ... Appellant/2nd Respondent

vs.

1.Palanisamy (died) ...Respondent-1/Claimant-1
2.P.Vijaya ...Respondent-2/Claimant-2
(Amended as per order in I.A No.2029 of 2010
dated 12.01.2011)
3.Ramakrishnan .. Respondent 3/1st Respondent

PRAYER: Civil Miscellaneous Appeals filed under Section 173
of the Motor Vehicles Act, 1988 against the decree and
Judgment dated 04.09.2012 passed in MCOP.No.273 of 2008 on the
file of the Motor Accidents Claims Tribunal / Subordinate
Judge, Bhavani.

For Appellant : Mr.S.V.Vasanthakumar

For Respondents : Mr.P.M.Duraisamy for R2
R1 -Died
No Appearance - R3

JUDGMENT

The appellant Tamil Nadu State Transport Corporation Limited, Nambiyur Branch, Erode District is the 2nd respondent in MCOP.No.273 of 2008 on the file of the Motor Accidents Claims Tribunal / Subordinate Judge, Bhavani and they have filed the present appeal under Section 173 of the Motor Vehicles Act, questioning the quantum of compensation awarded by the Tribunal. The respondents 1 and 2 filed the above said claim petition under Section 166 (1) (c) of the Motor Vehicles Act seeking compensation of Rs.15,00,000/- for the death of their son Paramasivam in a road accident that took place on 11.05.2007.

2. The case of the claimants is that on 11.05.2007 at 12.45 p.m, the deceased Paramasivam was riding his two-wheeler TVS XL bearing Registration No.TN 36 J 4015 on Avinashi - Gobi Main Road and when he was nearing Pappankula junction, a speeding bus bearing Registration No.TN 33 N 0926 belonging to the appellant / Tamil Nadu State Transport corporation hit the two-wheeler, as a result of which, he fell down from his two wheeler and sustained injuries all over his body. According to the claimants, though the deceased was immediately admitted in Sri Kumaran Hospital, Tirupur, he succumbed to injuries on 15.05.2007. According to them, the rash and negligent driving of the driver of the bus (1st respondent) in MCOP No.273 of 2008 was the cause of the accident and that the present appellant should pay compensation to them.

3. The appellant contested claim petition and the learned Motor Accidents Claims Tribunal / Subordinate Judge, Bhavani, after analysing the evidence on record, awarded a compensation of Rs.6,22,807/- together with interest at the rate of 7.5% per annum to the claimants. Aggrieved over the quantum of compensation awarded by the Tribunal, the Tamil Nadu State Transport Corporation Limited, Coimbatore has filed the present appeal.

4. A perusal of the orders passed by the Tribunal shows that the Tribunal should not have fixed the multiplier as 13, eventhough the deceased was aged only 25 years on the date of accident. The actual 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. The Tribunal has also not awarded any amount towards future prospects of the deceased.

5. It is relevant to point out that the claimants have not filed any appeal against the quantum of compensation awarded by the Tribunal. However, the Division Bench of this Court in M/s.Bharathi Axa General Insurance Company Limited vs. Jayalakshmi @ Panchalai and others in CMA.No.3629 of 2013, dated 02.12.2014, held that even though the appellant / Insurance Company has not challenged the quantum of compensation awarded by the Tribunal and in the absence of any appeal or cross objection filed by the respondents / claimants, 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. Applying the principles laid down in the decision, award amount is enhanced.

6. The Tribunal after analysing the evidence on record had fixed the monthly income of the deceased as Rs.4,500/- per month and also assigned cogent reasons for arriving at the same. Therefore, the income of the deceased is fixed at Rs.4,500/-, to which 40% is added towards future prospects as per the decision rendered in National Insurance Co. vs Pranay Sethi and others reported in 2017 (2) TNMAC 601 (SC). Since the deceased died as a bachelor, 50% of the income should be deducted towards his personal expenses and a sum of Rs.3,150/- is taken up for calculating loss of dependency. As already observed, proper multiplier to be adopted in the instant case as 18, as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.4,500/-
 40% Future Prospects = Rs.1800/-
 Total = Rs.4,500/- + Rs.1800/- = Rs.6300/-
 After 50% deduction = Rs.3150/-

Loss of dependency

= Rs.3,150/- x 12 x 18
 = Rs.6,80,400/-

7. Apart from the above said amount, the 2nd respondent /claimant is entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of love and affection", "funeral expenses" respectively as per the decision in National Insurance Company 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
1.	Loss of dependency	Rs.6,80,400/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.7,50,400/-

Thus the compensation awarded by the Tribunal in MCOP.No.273 of 2008 is enhanced from Rs.6,22,807/- to Rs.7,50,400/- which would carry interest at the rate of 7.5% per annum.

8. In the result,

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

(ii) The quantum of compensation awarded by the

Tribunal is enhanced from Rs.6,22,807/- to Rs.7,50,400/- together with interest at the rate of 7.5% per annum.

(iii) The 2nd respondent, mother of the deceased is directed to pay the court fee for the enhanced compensation amount, 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 appellant / Tamil Nadu State Transport Corporation Limited is directed to deposit the enhanced compensation amount ie., Rs.7,50,400/- (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 MCOP.No.273 of 2008 on the file of the Motor Accidents Claims Tribunal/ Subordinate Court, Bhavani within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the II respondent / claimant is at liberty to withdraw the same after following due process of law.

(vi) Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AR-Admn II)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Subordinate Court,
Bhavani.

2.The Section Officer, सत्यमेव जयते
VR Section,
High Court, Madras-104.

+1cc to Mr.P.M.Duraisamy, Advocate SR.80383

CMA.Nos.1388 of 2014
and
M.P No.1 of 2014

VBA (CO)
CB(27/02/2020)