

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.850 of 2014

1. Joseph Dhadevs
2. Mary Judith Reene ... Appellants/Claimants

Vs.

1. Sundararaj
2. M/s Tamilnadu State Transport Corporation Ltd.,
Division -I
Mettupalayam Road,
Coimbatore ... Respondents/ Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Award of the Motor Accident Claims Tribunal (IV Addl. District and Sessions Court), Coimbatore in M.C.O.P.No.147 of 2012 dated 13.08.2013.

For Appellants : Mr.Kaithaimalai Kumaran

For R2 : Mr.V.Udayakumar
R1 Served - No appearance

Judgment

This Civil Miscellaneous Appeal has been filed against the award dated 13.08.2013 passed in M.A.C.T.O.P.No.147 of 2012 by the Motor Accident Claims Tribunal (IV Addl. District and Sessions Court), Coimbatore.

2. The case of the appellants is that on 24.09.2009 at about 8.40 p.m., their son was waiting for a bus in Suguna Broilers, near Masakkalipalayam Road. At that time, the 2nd respondent driven the bus bearing registration No.TN 38N 0635 at great speed in a rash and negligent manner by moving the bus towards extreme left and dashed against the appellants' son resulting in brutal accident causing severe Pelvic injury and severe hypovolemic shock to the appellants' son, further, after initial treatment at PSG Hospital, the appellants' son was declared dead at 3.15 a.m. The accident occurred only due to the negligent driving of the 2nd respondent's driver, and therefore, the

appellants have filed a Claim Petition before the Motor Accident Claims Tribunal (Principal District Judge), Coimbatore, claiming a sum of Rs.50,00,000/- as compensation under various heads.

3. Denying the mode of accident, the second respondent / Transport Corporation has contended that the accident happened solely due to the deceased, who tried to board the moving bus and voluntarily invited the accident and lost his life. Therefore, there is no negligence on the part of the driver of the 2nd respondent and also the claimants have not produced any proof to prove the age, nature of injuries and the alleged accident, and therefore, they are not entitled to claim any compensation from the Transport Company.

4. During the trial before the Tribunal, on the side of the claimants, Joseph Thawaz himself was examined as P.W.1 and one Dr.Dharmendran who is the eye-witness of the accident was examined as P.W.2 and the following documents were marked.

- Ex.P1 : FIR
- Ex.P2 : Kovai Medical Center and Hospital Limited - report
- Ex.P3 : Inquest Report
- Ex.P4 : Postmortem Certificate
- Ex.P5 : Death certificate
- Ex.P6 : Legal Heir Certificate
- Ex.P7 : Coimbatore Institute of Technology Grade Sheet of Deceased
- Ex.P8 : +2 Mark sheet
- Ex.P9 : 10th Mark sheet
- Ex.P10 : I.D.Card of Anthony Arun Savio.J
- Ex.P11 : Coimbatore Institute of Technology Certificate
- Ex.P.12 : Dr.Dharmendran Prakash Driving License
- Ex.P.13 and Ex.P.14: Tamilnadu dental Council BDS I.D.Card
- Passport of Dr.Dharmendran Prakash

The first respondent- driver of the bus was examined and no documents were marked on their side.

5. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded a sum of Rs.7,97,000/- as compensation under various heads. Aggrieved by the award, the appellants/claimants have preferred this appeal before this Court.

6. On perusal of the award dated 26.07.2011 passed in M.C.O.P.No.147 of 2012 by IV Additional District and Sessions Judge, Coimbatore, it is observed that P.W.2, who is the eyewitness to the accident has lodged a complaint. The FIR as well as the evidence of P.W.2 are on the same lines. The second respondent does not deny the accident but would say that the

deceased was trying to board the bus, however, taking note of the evidence of P.W.2, who is a eye witness to the accident, the Tribunal has come to the conclusion that the accident occurred only due to the negligent driving of the 2nd respondent-bus. P.W.1/1st appellant, who is the father of the deceased has stated that the deceased was aged about 19 years and was pursuing 2nd year mechanical engineering course in Coimbatore Institute of Technology, in order to prove the same, he has produced Ex.P.7, Mark sheet, Ex.P.11, Beneficiary certificate issued by the principal. The Tribunal, for the purpose of deciding loss of income, has followed the Judgment of Division Bench of this Court in Amrit Dhana Shali and others V. National Insurance Company Ltd., and fixed the monthly income as Rs.10,000/-, Since the deceased was a bachelor at the time of accident, the Tribunal has deducted 50% of the income i.e. Rs.5,000 for personal expenses of the deceased, thereby fixed Rs.7,80,000/- by applying multiplier 13 viz, [Rs.5,000x12x13 = Rs.7,80,000/-].

7. As per the case Sarla Verma and others vs Delhi Transport Corporation and another reported in 2009 ACJ 1298, the multiple to be adopted as '18' as the deceased was aged 19 years at the time of accident, whereas, the Tribunal has taken the multiplier as 13 in the impugned Award. Further, the amount awarded under the head of loss of love and affection for the appellants was Rs.10,000/- [at the rate of Rs.5,000/- per person] need not be modified and the amount awarded under funeral expenses Rs.5,000/- and transport to hospital Rs.5,000/- were not adequate, since the appellants would have spent large amount on transportation.

8. Therefore, this Court is of the view that the deceased at the time of death was studying Mechanical Engineering, definitely a person, who is doing the said course would have got a job and earned not less than Rs.25,000/- salary per month and since there was a boom in industrialisation and many motor vehicle production units have started in the State, the deceased after completion of course would have got a job for a monthly salary of Rs.25,000/- Also, the Tribunal has not considered the grades of marks obtained by the deceased, who has scored 'A', 'S' and 'B', which stands for A=9, S=10, B=8 and he has scored 1,101 marks in his 10th standard, hence the undisputed fact is, he is a brilliant student and would have got placement in the campus interview, therefore, a sum of Rs.25,000/- is fixed as monthly income of the deceased.

9. For the aforesaid reasons, this Court is of the opinion that the Award passed by the Tribunal shall be modified in the following manner:

Income to be taken

- Rs. 25,000/-

Deductions of 50% for personal expenses	
of the deceased (25000-12500x12x18)	- Rs.27,00,000/-
Funeral Expenses	- Rs. 10,000/-
Loss of Love and Affection	
[Rs.10,000/- per person X2=Rs.20,000/-	-Rs. 20,000
Transport to Hospital	- Rs. 5,000/-
	Rs.27,35,000/-

9. This Court is of the considered view that Rs.27,35,000/- shall be awarded to the Appellants instead of Rs.7,97,000/- awarded by the Tribunal under the impugned Award. Since the Appellants have paid Court fee only for Rs.7,97,000/- in this appeal, this Court directs the the Appellants to pay the Court fee for the balance amount of Rs.19,38,000/- (Rs.27,35,000/- Rs.7,97,000/-=Rs.19,38,000), which the Registry shall collect before drafting the decree.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,97,000/- is hereby enhanced to Rs.27,35,000/- with interest at the rate of 6% per annum from the date of petition till the date of deposit. The second respondent Transport Corporation is directed to deposit the enhanced award amount to the Credit of M.C.O.P.No.147 of 2012 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge and Sessions Court), Coimbatore, along with interest and costs as determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants are permitted to withdraw the amount, less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssd

To

Motor Accident Claims Tribunal (IV Addl. District and Sessions Court), Coimbatore

Copy to: The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.V.Udayakumar , Advocate SR.No. 64326

+1cc to Mr.S.Kaithaimalaikumaran , Advocate SR.No. 64543

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A.SK(13/02/2020)