

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.1030 & 2741 of 2013
and M.P.No.1 of 2013

C.M.A.No.1030 of 2013

The Managing Director,
Tamil Nadu State Transport
Corporation (VPM) Limited,
Kancheepuram.

..Appellant/Respondent

Vs.

1.K.Amsaa
2.Kumar

..Respondents/Petitioners

C.M.A.No.2741 of 2013

1.K.Amsaa
2.Kumar

..Appellants/Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport
Corporation (VPM) Limited,
Kancheepuram.

..Respondent/Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 18.09.2012, made in M.C.O.P. No.139 of 2009, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

(In C.M.A.No.1030/2013)

For Appellant : Mr. K.J. Sivakumar
For Respondents : Mr. F. Terry Chella Raja
for M/s. V. Velu

(In C.M.A.No.2741/2013)

For Appellants : Mr. F. Terry Chella Raja
for M/s. V. Velu
For Respondent : Mr. K.J. Sivakumar

C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing".

C.M.A. No.2741 of 2013 is filed for enhancement of the compensation and C.M.A. No.1030 of 2013 is filed against the award dated 18.09.2012, made in M.C.O.P. No.139 of 2009, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition, for the sake of convenience.

4.The claimants filed M.C.O.P. No.139 of 2009, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.10,00,000/- as compensation for the death of one Muruganandam, who died in the accident that took place on 30.09.2008.

5.According to the claimants, on the date of accident viz., 30.09.2008, while the deceased was driving his Auto bearing Registration No. TN-21-P-6327 on Madras to Chengalpattu road near Perumal Koil, driver of the Bus bearing Registration No.TN-21-N-1105 belonging to the respondent-Transport Corporation drove the same in a rash and negligent manner, dashed against the Auto driven by the deceased and caused the accident. In the accident, the deceased succumbed to fatal injuries. The accident occurred only due to rash and negligent driving by the driver of the Bus belonging to the respondent-Transport Corporation and hence, the claimants filed the claim petition, claiming compensation against the respondent.

6.The respondent-Transport Corporation filed counter statement and denied all the averments made by the claimants in the claim petition. According to the respondent, on the date of accident, when the Bus bearing Registration No.TN-21-N-1105 belonging to them was proceeding near Vengambakkam, a Share Auto bearing Registration No. TN-21-P-6327 trying to give way to the Bus, drove on the left side of the road, over the heap of sand and tilted to its right side. In the mean time, a Two wheeler bearing Registration No.TN-21-H-0936 which was coming close to the Bus hit on the left side body of the Bus, due to which the Bus dashed against the Share Auto. At the time of accident, almost 9 passengers traveled in the Share Auto and the claim petition is bad for non joinder of necessary parties. The claimants have to prove the age, avocation and income of the deceased to claim compensation. In any event, the total

compensation claimed by the claimants are excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st claimant examined herself as P.W.1, two eye-witnesses were examined as P.W.2 and P.W.3 and marked 7 documents as Exs.P1 to P7. The respondent examined the driver of the Bus as R.W.1, but did not mark any document.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Bus and directed the respondent-Transport Corporation to pay a sum of Rs.6,85,200/- as compensation to the claimants.

9. Against the said award dated 18.09.2012, made in M.C.O.P. No.139 of 2009, the respondent-Transport Corporation filed C.M.A. No.1030 of 2013 and not being satisfied with the amounts awarded by the Tribunal, the claimants have filed C.M.A.No.2741 of 2013, for enhancement of compensation.

10. Mr.K.J.Sivakumar, learned counsel appearing for the respondent-Transport Corporation contended that the Bus belonging to the respondent-Transport Corporation was proceeding slowly and cautiously at the time of accident. The Tribunal failed to consider the averments in the counter statement and evidence of the driver of the Bus as R.W.1. The witnesses examined on behalf of the claimants are interested witnesses. The Tribunal erred in relying on the FIR which was marked as Ex.P1, through witnesses examined by the claimant. The claimants failed to examine the complainant or Police to prove the negligence on the part of the driver of the Bus. The Tribunal ought to have fixed contributory negligence on the deceased. The Tribunal, in the absence of documentary evidence, erroneously fixed income and age of the deceased. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal and dismissing C.M.A.No.2741 of 2013 filed by the claimants.

11. Mr.F.Terry Chella Raja, learned counsel appearing for the claimants contended that the accident occurred only due to rash and negligent driving by the driver of the Bus. The claimants examined P.W.2 eye witness and proved the same. The Tribunal considering the evidence of P.W.2 and Ex.P1 - FIR, rightly rejected the evidence of R.W.1 and held that the accident occurred only due to rash and negligent driving by the driver of the Bus. The deceased, was an Auto driver, aged 23 years at the time of accident and was earning a sum of Rs.7,500/- per month and Rs.150/- per day as batta. The Tribunal erroneously fixed Rs.6,000/- per month as notional income and deducted 50% towards personal expenses of the deceased. The deceased was the only son

of the claimants and they have lost their son at his young age. The Tribunal ought to have granted more compensation towards loss of love and affection. The Tribunal erroneously taken into consideration the age of the mother and applied the multiplier '14'. The correct multiplier applicable is '18'. The total compensation awarded by the Tribunal is meagre and prayed for dismissal of C.M.A.No.1030 of 2013 filed by the respondent-Transport Corporation and for enhancement of the compensation.

12.Heard the learned counsel appearing for the claimants as well as the respondent-Transport Corporation and perused the materials available on record.

13.From the materials on record, it is seen that it is the contention of the claimants that while the deceased was driving the Auto, the driver of the Bus belonging to the respondent-Transport Corporation drove the Bus in a rash and negligent manner and dashed on the Auto driven by the deceased and caused the accident. The deceased sustained fatal injuries. To substantiate this contention, the claimants examined P.W.2 eye witness and marked FIR which was registered against the driver of the Bus as Ex.P1. On the other hand, it is the contention of the respondent that accident has occurred only due to negligence on the part of deceased, driver of the Auto. To substantiate this contention, the respondent examined driver of the Bus as R.W.1 and relied on Ex.P1 - FIR, which was registered against the driver of the Bus. The respondent has not given any complaint against the deceased or any objection to the FIR registered against the driver of the Bus, R.W.1. The Tribunal considering the evidence of P.W.2 and contents of FIR, did not accept the evidence of driver and held that accident has occurred only due to rash and negligent driving by driver of the Bus. There is no error in the said finding of the Tribunal, warranting interference by this Court.

14.As far as the quantum of compensation is concerned, the claimants contended that the deceased was an Auto driver and was earning a sum of Rs.7,500/- per month and Rs.150/- per day as batta. They failed to prove the same. In the absence of any materials with regard to avocation and income, the Tribunal fixed Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2008. The notional income fixed by the Tribunal is meagre. A sum of Rs.6,500/- per month is fixed as notional income of the deceased. The Tribunal has granted 30% enhancement towards future prospects of the deceased and applied multiplier '14', taking into consideration the age of the mother of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the claimants are entitled to 40% enhancement towards future prospects for the deceased

aged 24 years and age of the deceased is basis for adopting multiplier. In view of the same, 30% enhancement granted by the Tribunal towards future prospects is enhanced to 40% and multiplier '18' is applied, instead of '14'. The deceased was a Bachelor at the time of accident and Tribunal rightly deducted 50% towards personal expenses of the deceased. Hence, the amounts granted by the Tribunal towards loss of dependency is modified to Rs.9,82,800/- {[Rs.6,500/- + Rs.2,600/-(40% of Rs.6,500/-)] x 12 x 18 x 50%}. The Tribunal has awarded meagre amounts towards loss of love and affection and funeral expenses and hence, the same are enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal failed to award any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	6,55,200/-	9,82,800/-	Enhanced
2.	Loss of love and affection	20,000/-	40,000/-	Enhanced
3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Loss of estate	-	15,000/-	Granted
	Total	6,85,200/-	10,52,800/-	Enhanced by Rs.3,67,600/-

15. In the result, C.M.A.No.1030 of 2013 is dismissed and C.M.A.No.2741 of 2013 is partly allowed and the amount awarded by the Tribunal at Rs.6,85,200/- is enhanced to Rs.10,52,800/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-Transport Corporation is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.139 of 2009. On such deposit, the claimants are permitted to withdraw their share of the award amount, now determined by this Court alongwith proportionate

interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsa

To

1.(Motor Accident Claims Tribunal),
The Chief Judge,
Small Causes Court,
Chennai.

Copy to
The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.40238

+1cc to Mr.V.Velu, Advocate, S.R.No.40462

C.M.A. Nos.1030 & 2741 of 2013

KK(CO)
KKV/08/03/2021

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