

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1069 of 2013

(Through Video Conferencing)

1.R.Kamatchi

2.N.Ramachandran

... Appellants/Petitioners

Vs.

The Managing Director,
Tamilnadu State Transport Corporation,
Villupuram Division - I,
Villupuram District.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 22.03.2012, made in M.C.O.P.No.690 of 2009 on the file of the Motor Accident Claims Tribunal (Principal District Judge's Court), Vellore, Vellore District.

For appellants : Mr.C.Prabakaran

For respondent : Mr.C.S.K.Sathish

J U D G E M E N T

The claimants are the appellants in this Civil Miscellaneous Appeal. They are aggrieved by the impugned Judgment and Decree dated 22.03.2012 passed by the Motor Accidents Claims Tribunal, (Principal District Judge's Court), Vellore in M.C.O.P.No.690 of 2009.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.2,82,000/- as compensation together with interest at 7.5% p.a. from the date of claim petition till the date of deposit, to the appellants under the following heads:-

Heads and Calculation	Amount
Loss of Income of the family	Rs.2,64,000/-
Loss of Estate	Rs. 10,000/-

Heads and Calculation	Amount
Transportation	Rs. 3,000/-
Funeral Expenses	Rs. 5,000/-
Total	Rs.2,82,000/-

3. While awarding the aforesaid compensation, the Tribunal has awarded the amount of Rs.2,64,000/- as compensation under the head of loss of dependency to the appellants by applying:-

- i. multiplier 11 considering the age of the 1st appellant, mother of the deceased; and
- ii. a notional income of Rs.4,000/- per month of the deceased.

4. The learned counsel for the appellants submits that the notional income of the deceased ought to have been considered as Rs.15,000/- per month considering the fact that the deceased was on the verge of completing B.Tech (Information Technology).

5. The learned counsel for the appellants cited the following decisions of the courts to enhance the notional income of the deceased as Rs.16,000/- and Rs.20,000/-:-

- i. Royal Sundaram Alliance Insurance Co. Ltd., rep. by its Managing Director Vs. S. Lakshmi and two others, (2016) 1 TN MAC 490.
- ii. United India Insurance Co. Ltd. Vs. Velumyil and others, (2013) 2 TN MAC 846.
- iii. Lakshmi Chand Vs. Reliance General Insurance, (2016) 2 TN MAC 426 (SC).

6. The learned counsel for the appellants therefore submits that considering the fact that the accident is of the year 2009, the notional income of the deceased can be considered as Rs.15,000/- p.m.

7. It was further submitted that the Tribunal erred in adopting multiplier 11 with reference to the age of the mother (1st appellant) while awarding the compensation to the appellants. It was further submitted that the Tribunal ought to have awarded amounts towards future prospectus and also awarded higher amounts towards filial compensation due to the loss of their son.

8. The impugned Judgment and Decree of the Tribunal is defended by the learned counsel for the respondent State Transport Corporation. He submits that the deceased took a chance by traveling on the footboard of a crowded bus and

slipped and fell, as a result of which, he suffered injuries and died. He also submits that this is a fit case for invoking Latin maxim "Volenti Non Fit Injuria". He therefore submits that the award passed by the Tribunal may be confirmed considering the fact that the deceased was solely responsible for the accident.

9. He therefore submits that the respondent should not to have been held liable for the death of the deceased. He further submits that the Tribunal has awarded just compensation considering the plight of the appellants/claimants and therefore prays that the award amount may be confirmed by dismissing this appeal in absence of an appeal by the respondent State Transport Corporation.

10. I have considered the arguments advanced by the learned counsel for the appellants and the respondent State transport Corporation.

11. The facts are not in dispute. The deceased was aged about 21 years when he met with the fatal accident while traveling footboard in a overcrowded bus belonging to the respondent State Transport Corporation. He lost grip and fell from the moving bus and came under its wheels. The law on the subject has been discussed by this court in *The Managing Director, Marudhu Pandiyar Transport Corporation, Karaikudi Vs. Sundaram*, 2000 SCC OnLine Mad 333 : (2001) 2 LW 69, wherein it was held that footboard travel is prohibited statutorily under Section 123 of the Motor Vehicles Act, 1988 and therefore a partial responsibility has to be fixed on the injured or the deceased as the case may be for contributory negligence.

12. The above observation was made in the context of Section 123 of the Motor Vehicles Act, 1988. While dealing with a somewhat similar situation, the court ultimately concluded that the percentage of liability for contributory negligence would depend on the facts and circumstances of each case namely, whether the bus was overcrowded or not and whether there is evidence of the crew having warned the footboard passengers or not. The court there ultimately observed that it would be reasonable to fix proportionate deduction ranging from 25% to 50% of the total compensation and that it is also necessary to make the traveling public aware that footboard traveling would dis-entitle them from claiming full compensation.

13. The evidence on record indicates that the bus was overcrowded and the deceased traveled footboard on the front side of the bus and fell after he lost grip and therefore came under its wheels and thus died. Considering the fact that the respondent State Transport Corporation has a monopoly for transportation within the State, it is not only expected to ply

more number of buses to meet the rush hour crowd to obviate the risk of footboard travel by passenger but is also expected to provide for adequate safety measures for automatic/manual door locking system so as to ensure that footboard travel becomes an impossibility to rule out any untoward incident in the form of accident due to footboard travel by passengers.

14. The respondent State Transport Corporation is expected to be aware of the fact that during peak hours footboard, travel takes place and the passengers are charged for such travel even though Section 123 of the Act and Rule 79 expressly prohibits footboard travel or travel on the top or on the bonnet of motor vehicle.

15. Duty is thus cast upon the crew members of the bus to ensure that there is no footboard travel by passengers and/or board passengers beyond the seating capacity when the bus is on the move and thereby risk their safety and life. These aspects have neither been followed nor taken note of this Court in The Managing Director, Marudhu Pandiyar Transport Corporation, Karaikudi Vs. Sundaram, 2000 SCC OnLine Mad 333 : (2001) 2 LW 69.

16. In fact, Rule 79 of the Tamil Nadu Transport Rules, 1989 expressly stipulates that a Conductor of the bus should not allow passengers to board the bus more than its seating capacity. Same is reproduced below:-

79. Conductor's duties towards passengers.- The conductor of a stage carriage-

(i) shall not allow any person to be carried in any stage carriage in excess of the seating capacity specified in the permit of the vehicle;

(ii) shall not, save for good and sufficient reasons, refuse to carry any person tendering the legal fare;

(iii) shall, where goods are carried on the vehicle in addition to passengers, take all reasonable precautions to ensure that passengers are not endangered or unduly inconvenienced by the presence of the goods;

(iv) shall not, save for good and sufficient reasons require any person who has paid the legal fare to alight from the vehicle before the conclusion of the journey;

(v) shall not cause the driver to loiter or unduly delay on any journey;

(vi) shall, in the event of a stage carriage being unable to proceed to its destination on account of mechanical breakdown or other cause beyond the control of the driver or the conductor, arrange to convey passengers to their destination, in some other similar vehicle or, in unable so to arrange within a reasonable period after the failure of the vehicle, shall on demand refund to each passenger a proper proportion of the fare relating to the completion of the journey for which the passengers had paid the fare;

(vii) shall not, in the case of a stage carriage cause or allow anything to be placed in the vehicle in such a manner as to obstruct the entry or exit of passengers;

(viii) shall take all reasonable precautions to prevent luggage being miscarried or lost in the way;

(ix) shall not, while on duty, be under the influence of drink or of a drug rendering him incapable of discharging his duties properly;

(x) shall ensure that the time-table, fare-table are clearly and correctly exhibited in the vehicle and that the First Aid Box contains all the articles prescribed; and

(xi) shall, on demand by any passenger who intends to make a complaint against him, give his name, address and the authority which issued him the licence.

17. Therefore, it would be fair to infer that there was negligence on the part of the bus crew, namely the driver and the conductor of the respondent State transport Corporation alone. However, this Court has already held that contributory negligence has to be inferred in the case of foot board travel in The Managing Director, Marudhu Pandiyar Transport Corporation, Karaikudi Vs. Sundaram, 2000 SCC OnLine Mad 333 : (2001) 2 LW 69 .

18. Therefore, I do not wish to depart from the views expressed therein. Ultimately, just compensation is to be awarded as has held by the Hon'ble Supreme Court in Nagappa Vs. Gurudayul Singh, (2003) 2 SCC 274.

19. In this case, the Tribunal has considered the notional income of Rs.4,000/- per month considering the fact that the deceased was not earning but a college student at the time of

the accident/death. In V.Mekala Vs. Malathi and another, (2014) 11 SCC 178, the Hon'ble Supreme Court has considered a notional income of a XI Standard student as Rs.10,000/- p.m. for awarding compensation. In Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735, the Hon'ble Supreme Court has considered a notional income of Rs.6,500/- p.m in the case of a vegetable vendor for awarding compensation.

20. Since the deceased was aged 21 years and was a final year B.Tech. Student, the Tribunal could have considered a notional income of the deceased as Rs.15,000/- p.m.

21. Therefore, I propose to consider the notional income of the deceased as Rs.15,000/- to award a just compensation so that the views expressed in The Managing Director, Marudhu Pandiyar Transport Corporation, Karaikudi Vs. Sundaram, 2000 SCC OnLine Mad 333 : (2001) 2 LW 69 is not disturbed for the present. As and when an occasion arises, a Division Bench of this Court may re-look at the issue in the light of the observation contained herein.

22. Therefore, it would be fair to attribute 25% negligence on the part of the deceased and 75% on the driver and the conductor of the bus of the respondent State Transport Corporation considering the fact that the deceased was a young student aged about 21 years and took a chance to travel in a crowded bus on the footboard and risked his life.

23. The correct multiplier is to be applied as per the decisions of the Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12. Similarly, the compensation is to be proportionately enhanced on account of future prospect and appropriate deduction to be made towards personal expenses of the deceased as per the decisions of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680 and in Sarla Verma (Smt)'s case (supra) respectively.

24. The appellants being the parents of the deceased are entitled to compensation towards filial consortium as per the latest decision of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130.

25. In the light of the above, I am inclined to enhance the compensation payable to the appellants as follows:-

Heads and Calculation	Amount
Loss of dependency:-	
Monthly Income - Rs.15,000/-	
Annual Income (15000 x 12) : Rs.1,80,000/-	
Add : Future Prospectus at 40% (1,80,000 x 40/100) : Rs. 72,000/-	

	: Rs.2,52,000/-
Less : Personal Expenses 1/2 nd (2,52,000 x 1/2) : Rs.1,26,000/-	

	: Rs.1,26,000/-

Multiplier 18 (1,26,000 x 18): Rs.22,68,000/-	
Less: Contributory Negligence at 25% (22,68,000 x 25/100) : Rs. 5,67,000/-	

	: Rs.17,01,000/-
	Rs.17,01,000/-
Filial Consortium (2 x 40,000)	Rs. 80,000/-
Funeral Expenses	Rs. 15,000/-
Transportation	Rs. 10,000/-
Total	Rs.18,06,000/-

Thus the amount of compensation of Rs.2,82,000/- awarded by the Tribunal is enhanced to Rs.18,06,000/-.

26. The appellants are therefore directed to pay the necessary court fee on the enhanced amount of compensation within a period of four weeks from the date of receipt of a copy of this Judgment and file the proof of payment of court fee before the Tribunal to withdraw the amount of compensation.

27. The respondent State Transport Corporation is directed to deposit the re-quantified amount of compensation of Rs.18,06,000/- together with interest at the rate of 7.5% p.a. from the date of claim petition (i.e. 07.12.2009) till the date of such deposit and costs, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

28. On such deposit, the appellants are permitted to withdraw the same together with interest and costs equally, less any amount already withdrawn, by filing suitable application before the Tribunal.

29. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:-

1.The Motor Accident Claims Tribunal,
(Principal District Judge's Court),
Vellore, Vellore District.

2.The Section Officer
VR Section, High Court, Madras.

+1 cc to M/s.C.Prabakaran, Advocate Sr.No. 28603

C.M.A.No.1069 of 2013

SR(CO)
RMP (26/03/2021)

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