

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2828 of 2013

Chinnaponnu

W/o. Late Ganesan

..Appellant/Claimant

Versus

The Managing Director,
Tamilnadu State Transport Corporation Limited
No.12, Ramakrishna Road, Salem Division I
Salem.

..Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 29.06.2011 made in M.C.O.P.No.1363 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District Judge and Special Judge for EC Act Cases, Salem.

For Appellant : Mr. K. Kuppuswamy

For Respondent : Mr. D. Venkatachalam

J U D G M E N T

The claimant before the Tribunal has preferred this appeal against the Judgment and order in M.C.O.P.No.1363 of 2004 dated 29.06.2011 on the file of the Motor Accident Claims Tribunal, Additional District Judge and Special Judge for EC Act Cases, Salem, seeking for enhancement of compensation.

2. The facts of the case briefly are as follows:

On 05.07.2004, the daughter of the claimant/appellant herein died after sustained fatal injuries when she boarding in the State Transport Bus due to rash and negligent driving of the driver. In view of the fatal accident, the mother of the deceased claiming a sum of Rs.5,00,000/- as compensation preferred M.C.O.P. No.1363 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District Judge and Special Judge for EC Act Cases, Salem. The Tribunal has awarded a sum of Rs.1,55,000/-(Rupees One Lakh Fifty Five Thousand Only) combining all over heads.

3. Being aggrieved by the award passed by the Tribunal, the claimant/appellant herein has filed the present appeal contesting the meagre award amount and seeking for enhancement

of the compensation awarded by the tribunal.

4. The learned counsel appearing on behalf of the appellant submits that the Tribunal has awarded a meagre sum of Rs.155,000/- despite the claim amount of Rs.5,00,000/- without taking into consideration of the death of appellant's only daughter to be supporting her as the appellant was a widow. The appellant has lost her affectionate studying daughter. As the daughter of the appellant was died at the age of 10 years in the aforesaid road accident and the appellant was also younger age of 35 years at the time of accident, after confirming that the accident took place in view of the rash and negligent driving of the driver of State owned bus, the appellant is entitled to receive compensation of Rs.5,00,000/-. To support of his contention, he placed on reliance of the Supreme Court's Division Bench Judgment in the case "Kishan Gopal and another Vs. Lala and others" reported in (2014) 1 Supreme Court Cases 244.

5. On the other hand, the learned Counsel for the respondent/Transport Corporation would submit that the claimant/appellant herein was awarded after considering the entire oral and documentary evidence during the trial. Hence, there is no need to interfere with the award passed by the Tribunal.

6. Heard both sides and perused the available materials on records.

7. P.W.1 was examined and Ex.P.1 to Ex.P3 were marked on the side of the claimant/appellant herein. R.W.1 was examined and none was marked on the side of the respondents before the Tribunal.

8. The factum and the manner of the accident being rash and negligence on the part of the driver of the state-owned-bus under Section 163A is not in dispute. The quantum of the compensation awarded by the Tribunal is alone disputed.

9. After going through the oral and documentary evidences placed before this Court, it is confirmed that the deceased daughter of the appellant died due to rash and negligent driving of the driver of the respondent's state owned bus as the driver has not cared for the signal of the conductor to take off the bus as stated in the Award. On considering the quantum of the compensation, the decision of the Supreme Court in the aforesaid case as cited by the learned counsel for the appellant, the appellant was awarded a sum of Rs.5,00,000/- as compensation stating in paragraph no.39 as under:

"39. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking

young age of the parents, namely, who was about 36 years old, at the time of accident, by applying the legal principles laid down in Sarla Verma Vs.DTC, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 X 15= 4,50,000/- and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC Vs. Susamma Thomas, which is referred to in Lata Wadhwa case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the amount would be fair, just and reasonable compensation to be awarded in favour of the appellants."

10. In view of the aforesaid decision of the Supreme Court Bench and considering facts and circumstances of the present case are having cogent reasons with the Supreme Court Judgment, this Court is inclined to increase the award amount to Rs.5,00,000/- from Rs.1,55,000/- in favour of the appellant with interest @7.5% pa from the date of petition till the date of realization.

11. Accordingly, the Transport Corporation is directed to deposit the award amount to the credit of M.C.O.P.NO.1363 of 2004 within a period of four weeks from the date of receipt of copy of this Judgment.

12. On such deposit, the claimant/appellant is entitled to withdraw the modified award amount after filing the formal petition before the Tribunal.

13. In the result, the appeal is allowed and impugned Judgment and order of the Tribunal is set aside. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

lbm

Copy to:

1.Motor Accident Claims Tribunal,
Additional District Judge and
Special Judge for EC Act Cases, Salem.

2.The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.K.Kuppusamy, Advocate, S.R.No. 12368
+1cc to Mr.D.Venkatachalam, Advocate, S.R.No. 12478

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GN(08/01/2021)



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