

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 12.03.2020

Judgment Pronounced on : 04.06.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.2685 of 2019

1.Kavitha
2.Sasikala
3.Chandra

... Appellants/Petitioners

Versus

The Managing Director,
Bangalore Metropolitan Transport Corporation (BMTC),
K.H. Road,
Bangalore.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.04.2018 passed in M.A.C.T.O.P.No.152 of 2017 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Dharmapuri.

For Appellants : Mr.A.R.Suresh
for Mr.P.Kandasamy

For Respondent : Mr.T.Thiyagrajan

J U D G M E N T

R.PONGIAPPAN, J.

Aggrieved over the award dated 03.04.2018 passed by the Motor Accidents Claims Tribunal (Principal District Judge) Dharmapuri, in MCOP No.152 of 2017, the appellants herein, who are the claimants in the claim petition, have filed this appeal, in which, they are seeking the relief to enhance the compensation awarded by the Claims Tribunal.

2.For the sake of convenience, the parties are referred to as per the litigative status before the Claims Tribunal.

3. Before the claims tribunal, the appellants herein had filed a claim petition in M.A.C.T.O.P.No.152 of 2017 under Section 166 of the Motor Vehicles Act, in which, they claimed a compensation of Rs.50,00,000/- (Rupees Fifty Lakhs only) for the death of the first claimant's son - Sasikumar,. The claimants 2 and 3 are related to the deceased as his sister and grand mother respectively. The respondent herein is the owner of offending vehicle. After elaborate enquiry the Claims Tribunal determined a sum of Rs.15,92,064/- as a compensation, payable by the respondent to claimants. Accordingly, the petition filed by the claimants are partly allowed. . However, the claims tribunal has held that in the alleged accident, the deceased has also contributed negligence to the extent of 50% and thereby the claimants are entitled to Rs.7,96,032/- alone as a compensation along with interest at the rate of 7.5% per annum, against which, the present appeal has been preferred.

4. Before the Claims Tribunal the case of the claimants 1 to 3 is as follows:-

(i) On 15.09.2016 at about 12.10 hours, when the deceased - Sasikumar was proceeding in a scooter bearing Registration No.KA-03-JB-9750 in old Madras Road, near 100 feet road junction in Bangalore, with utmost care, by following the traffic rules, the Bus owned by the respondent, bearing Registration No.KA-01-FA-2390, driven by its driver - T.Kumar, in a rash and negligent manner and at that time, when he attempted to overtook the on going deceased vehicle, hit the scooter and as a result of which, the deceased fell down and thereafter, the bus dragged him and the said Sasikumar sustained grievous injuries on his left leg, stomach, thigh and multiple injuries all over the body. After the accident, the deceased got treatment initially in C.M.H Hospital in Bangalore and thereafter, he was shifted to Manipal Hospital, Salem on 16.09.2016, however, he was again shifted to the Government M.K. Medical College Hospital, Salem on 25.09.2016. In spite of the best treatments provided to him, he died on the same day at 22.45 hours. For the said occurrence, a case has been registered in Crime No.252 of 2016 under Sections 279 & 304(A) of IPC., by the Indira Nagar Traffic Police Station. Before the death, the deceased was working as Manager in a shop viz., Bombay Silk Saries in Bangalore and earned a sum of Rs.15,000/- per month. Further, he is the only breadwinner to his family. Since the respondent being the owner of the vehicle he is vicariously liable to pay the compensation determined by the Claims Tribunal.

5. Opposing the claim made by the claimants, the respondent, by filing counter, states as follows:-

(i) The vehicle belongs to the respondent is no way involved in this case as stated in the claim petition. On 15.09.2016 when the Bus proceeding at K.R.Puram road, near Binnamangale junction

at about 12.20 pm., the deceased driven the bike in a rash and negligent manner, due to which, the left side handle of the bike dashed against the Bus and afterwards, since the rider of the bike had lost his control, he fell down and sustained injury on left knee with bleeding. The driver of the Bus engaging an Auto, took him to CMC Hospital for treatment. In fact, during the time of occurrence, the left side handle of the two wheeler touched the Bus and as a result of which the deceased fell down from the Scooter and sustained injuries. The case has been falsely registered against the respondent's driver. The respondent's Bus driver is no way connected with the alleged accident. The age, avocation and income of the deceased are all denied. According to the respondent, the accident had happened only due to rash and negligent act of the deceased and thereby, the respondent is no way liable for the payment of compensation.

6. Before the Claims Tribunal, the first claimant in the claim petition examined herself as PW.1 and one Bharat, who is an eye witness to the occurrence has been examined as PW.2. Further, the employer of the deceased was examined as PW.3. In order to prove their claim, the claimants exhibited 27 documents as Exs.A1 to A27. Per contra, on the side of the respondent, one Kumar, the driver of the Bus, was examined as RW.1 and an authorization letter given to the driver for giving, evidence before the Claims Tribunal was exhibited as Ex.R1.

7. Having considering the materials placed, the Presiding Officer, Claim Tribunal came to the conclusion that in the accident, the deceased has also contributed the negligence to the extent of 50% and accordingly, an award has been passed as stated in the preceding paragraph of this Judgment. Aggrieved over the same, the claimants are before this Court with the present Civil Miscellaneous Appeal and seeking the relief to enhance the compensation determined by the Claims Tribunal.

8. The learned counsel appearing on behalf of the appellants would contend that without any iota of evidence, based on the entires made in the discharge summary which was issued by the Manipal Hospital, the Claims Tribunal has come to the conclusion that the deceased has also contributed negligence in the accident. He would further contend that the averments set out in the First information Report, the evidence given by the driver, who drove the bus at the time of accident, did not establish the fact that the deceased has also contributed negligence in the accident. Accordingly, he prays to set aside the findings of the Claims Tribunal, in respect to the portion of the alleged negligence said to have committed by the deceased.

9. During the course of trial before the Claims Tribunal, on the side of the appellants/claimants, the copy of the First Information Report dated 15.09.2016, was marked as Ex.P1. Further Section alteration Report dated 26.09.2016 was marked as Ex.P2. Now on going through the averments made in the said First Information Report, the de-facto complainant has stated that only because of the rash and negligent act of the Bus driver the accident had occurred, on the other hand, to disprove the said averments, the Bus driver, who had driven the bus at the time of accident, was examined on the side of respondent as RW1. He has stated that during the time of occurrence the deceased had driven the Motorcycle in a rash and negligent manner and hit against the Bus, which was stationed in the signal. Per contra in the discharge summary issued by the Manipal Hospital, it was mentioned as the alleged accident had happened, while the deceased riding in the two wheeler hit by another two wheeler followed by him and, then the Bus ran over on the deceased on pelvis area on 15.09.2016 at 11.50 hours.

10. Now on considering the every circumstances stated above, it is apparent that the deceased was admitted in the Manipal Hospital only on 17.09.2016. Before that on the date of accident itself, i.e., 15.09.2016 at 12.10 hours a case has been registered for the accident. In the said circumstances the First Information Report is the earliest document in which, it was stated as only due to rash and negligent act of the driver of the Bus the accident had occurred. In otherwise, since the discharge summary issued by the Manipal Hospital is a subsequent document, it cannot be believed that the entries made in the said document is true one.

11. In otherwise, during the time of giving evidence as RW.1, the driver of the Bus came with a new story that as the Scooter was driven by the deceased alone, in a rash and negligent manner and dashed against the Bus. If really, the story put forth by the driver is true one, it is impossible that the deceased sustained injury at the pelvis area. So, the evidence given by RW.1 cannot be accepted. In otherwise the earliest document to prove the occurrence is, First Information Report, in which, the rash and negligent act of the Bus driver was clearly narrated by the de-facto complainant. The Claims Tribunal, without appreciating the same observed as the deceased has also contributed negligence in the accident which is purely erroneous.

12. Therefore, we are of the opinion that the accident had occurred only due to rash and negligent act of the driver of the Bus. Since the said offending vehicle was owned by the respondent, the respondent herein alone is liable to pay the compensation fixed if any, to the claimants.

13. Coming to the point of quantum, while at the time of giving evidence the mother of the deceased has stated that the deceased was working as manager in the textile shop and earning a sum of Rs.15,000/- per month. His evidence was substantiated through the evidence of PW.3, who is the employer of the deceased. Though the oral evidence given by the employer was in support of the claim made by the claimants as above, in order to prove the same no documents were exhibited. If really, the deceased was employed in the said textile shop and earned Rs.15,000/-, it is very easy for PW.3, to produce the account notebook and prove the income of the deceased. So, without any authenticated documents, it cannot be held that the deceased was earning a sum of Rs.15,000/- per month.

14. Now on going through the award passed by the Claims Tribunal, while calculating the pecuniary loss, the Claims Tribunal took a sum of Rs.6,500/- as monthly income of the deceased, since the accident had occurred in the year 2016. We are also of the opinion that the amount assessed by the Claims Tribunal for calculating pecuniary loss is appropriate one. According to Ex.P5/Postmortem Certificate, the deceased was aged 22 years at the time of accident. Hence, following the judgment of our Honourable Apex Court reported in 2017(2)TNMAC 609 (SC), (National Insurance Company Vs. Pranay Sethi and others), 40% of the monthly income of Rs. 6,500/- i.e. Rs.2,600/- should be added towards future prospects. Accordingly, monthly income of the deceased is determined as Rs.9,100/- [Rs.6,500/- + Rs.2,600/-] and the annual income of the deceased was calculated as Rs.1,09,000/- [Rs.9,100/- x 12].

15. Coming to the point of deduction, the Claims Tribunal, deducted 50%, of the annual income of the deceased towards his personal expenses. In this connection, it is necessary to see the number of dependants that the deceased is having, at the time of his death. In fact, at the time of his death the deceased left his mother, sister and grandmother as his dependants. So size of the family is three in number and no male person is available to safeguard his family, after his death. Since, the second claimant is the Sister and the third claimant is the Grandmother, it is made clear that the deceased alone having the duty to maintain the family. Accordingly, they are dependants of the deceased/Sasikumar. Therefore, according to the oft-quoted judgment of our Honourable Supreme Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, since the size of the family number is 3, 1/3rd of the annual income has to be deducted for calculating the Loss of dependency. Accordingly, after deducting 1/3rd of the annual income towards the personal and living expenses of the deceased, the balance of Rs.72,800/- could be taken as the contribution to the family.

16. Now, coming to the point of multiplier, by following the above referred case, it is necessary to chose '18' as the multiplier, for calculating the loss of dependency, since the age of the deceased at the time of accident was 22 years. Finally, in view of the above, the loss of dependency is hereby calculated as follows:

$$\text{Rs.72,800/-} \times 18 = \text{Rs.13,10,400/-}$$

17. In respect to the "loss of love and affection", we are of the opinion that since all the claimants are depending upon the deceased-Sasikumar, a sum of Rs.20,000/- each has to be awarded under the above head.

18. Under the conventional heads a sum of Rs.15,000/- is hereby allowed for "loss of estate" and Rs.15,000/- is allowed for "funeral expenses".

19. Before the claims tribunal, in order to prove the medical expenses spent by the claimants, the medical receipts issued by Manipal Hospital was exhibited as Ex.P18 and Ex.P27. As per the said exhibits, a sum of Rs.2,36,636/- and Rs.3,42,628/-, respectively, has been spent towards the medical expenses. In respect to the genuineness of the above exhibits, learned counsel appearing for the respondent did not raise any objection. So, it was concluded that the claimant spent Rs.5,79,264/- [Rs.2,36,636/- + Rs.3,42,628/-]

20. Thus, in all, the amount awarded by the Claims Tribunal is enhanced as under:-

Description	Amount awarded by Tribunal Rs.	Amount awarded by this Court Rs.
Loss of dependency	9,82,800/-	13,10,400/-
Medical Expenses	5,79,264/-	5,79,264/-
Loss of estate	15,000/-	15,000/-
Funeral Expenses	15,000/-	15,000/-
Love and affection	-	60,000/-
Total	15,92,064/-	19,79,664/-

21. In view of the modification of the award of the claims tribunal, it is ordered as follows:

(i) the compensation of Rs.15,92,064/- awarded by the Claims Tribunal is modified to the extent of Rs.19,79,664/-.

(ii) The modified compensation of Rs.19,79,664/- has to be apportioned in the ratio of 50:25:25 among the claimants 1 to 3 respectively.

(iii) The rate of interest awarded by the Tribunal at 7.5% per annum from the date of claim till its realisation, remains unaltered.

(iv) The respondent is directed to deposit the entire award amount along with interest and costs, after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment.

(v) On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of Claimants through RTGS/NEFT within a period of one week.

(vi) The appellants/claimants are directed to pay the Court fee for the enhanced compensation, if any.

22. In the result, this Civil Miscellaneous appeal is partly allowed. No Costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

klt/ars
To

The Principal District Judge,
Motor Accidents Claims Tribunal, Dharmapuri.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

C.M.A.No.2685 of 2019

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SP(01/02/2021)