

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2020

CORAM

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1877 of 2017

1. Mrs.A.Mary
2. Mr.A.Charles
3. Mr.A.George

.. Appellants/Petitioners

Vs.

Metropolitan Transport Corporation (Chennai Division I)
Limited, rep by its Managing Director,
Pallavan House, Anna Salai,
Chennai - 600 002.

.. Respondent/Respondent

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act - 1988 against the Judgment and Decree dated
08.12.2016 made in MCOP.No.5225 of 2014 on the file of Motor
Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondent : Mr.S.S.Swaminathan

J U D G M E N T

Dissatisfied with the quantum of compensation awarded by the
Claims Tribunal at Rs.36,655/- to the appellants / claimants,
they are before this Court with this Civil Miscellaneous Appeal.

2. The case of the claimants / appellants is that on
12.01.2009 at 13.20 hrs, when Aruldoss, husband of the first
appellant and father of the second and third appellants, was
walking on the South Usman Road, near T.Nagar Bus Stand,
Chennai, he was knocked down by the respondent's bus bearing
Reg.No.TN-01-N-3464, due to which, Aruldoss sustained grievous
injuries and succumbed to the injuries on 20.07.2012. It is the
further case of the appellants that the deceased was aged 61 at
the time of accident, he was employed as coolie cum security and
earning Rs.150/- per day. The manner of accident, avocation and
his relationship with the appellants herein were denied by the
respondent herein. The Tribunal, based on the evidence and

documents available on record, has fastened the liability on the respondent herein and quantified the compensation at Rs.36,655/- with interest at the rate of 7.5% per annum from the date of petition, as against the claim of Rs.20,00,000/-. Aggrieved by the same, the appellants are before this Court.

3. Heard the learned counsel for both sides.

4.The learned counsel for the appellants / claimants submitted that the Trial court went wrong in coming to the conclusion that the death of the deceased was not due to the accident, though the evidence of P.Ws.1, 3 and 4 apart from Exs.P-2, P-3 to P-8 and P-12 prove that the deceased died only due to the injuries sustained in the accident; the Tribunal went wrong in not awarding any amount under the heads loss to estate and loss of income; the Tribunal ought to have followed the precedents of this Court and Supreme Court, in similar circumstances and ought to have allowed the claim as prayed for.

5.On the other hand, the learned counsel for the respondent / Transport Corporation submitted that the Tribunal has taken into account the evidence of the Doctor, P.W.4, wherein he did not speak about the cause of death since there is no medical evidence to prove that the deceased died due to the injuries sustained by him in the motor accident, the findings of the Tribunal do not require any interference; the evidence of P.Ws.2 and 3 were elaborately discussed in paragraph 12 of the award of the Tribunal and hence the submission of the learned counsel for the appellants has no legs to stand; Exs.P-2 and P-7 were also taken note of by the Tribunal in paragraph 11 of its award and hence the submission of the learned counsel for the appellants that the Tribunal has not taken note of documents, will not hold good. He also submitted that the Tribunal has taken all the aspects into consideration and has awarded the just compensation, which does not require any interference by this Court.

6.This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

7.Admittedly, the accident had taken place on 12.01.2009, which is supported by the evidence of P.W.1 and Ex.P-1-First Information Report. Immediately after the accident, Aruldoss took treatment at Rajiv Gandhi Government General Hospital, Chennai, which is evidenced by Ex.P-2-Discharge Summary. Subsequently also, he took treatment in the same hospital, which is evidenced by Ex.P-7 discharge summary and Ex.P-12-case Sheet. To prove the cause of death, two Doctors have been examined, P.Ws.3 and 4. P.W.3 in his evidence has stated about the

treatment given to the deceased Aruldoss. He further stated that the injuries sustained by Aruldoss are grievous in nature and he died three-and-half-years after the accident. Further, he stated in his evidence that he is not in a position to state that Aruldoss died due to the injuries sustained by him in the accident.

8.P.W.4, Dr.Muniappan deposed about the treatment given to the deceased Aruldoss at Cresent Hospital. He did not speak about the cause of death of Aruldoss.

9.Though Exs.P-2 and P-7-Discharge summaries, Exs.P-3 and P-5-Prescriptions, Exs.P-4 and P-6-Lab Reports, Ex.P-8-copy of Death Certificate and Ex.P-12-Cresent Hospital case sheet, have been filed before the Tribunal and evidence has also been let in by P.Ws.1 to 4 on those documents, the same only prove that the deceased had taken treatment at various intervals, but the same have not proved that the deceased died only due to the injuries sustained in the accident.

10.However, a perusal of the said documents would prove that the deceased sustained Grade I Compound fracture on left both bones; left leg with fracture superior and inferior pubic rami; fracture of right ankle (fracture) medial malleolus lateral malleolus; lacerations and abrasions all over the body. This Court is of the view that certainly, these injuries would have contributed to his ill-health, but not to his death. Further, the said documents would also reveal that the deceased had taken treatment as in-patient in the Government Hospital from 12.01.2009 to 16.01.2009 and then shifted to Cresent Hospital, Royapettah, Chennai, and treated there as in-patient for three months and again treated as in-patient in Government Hospital from 13.07.2012 to 20.07.2012 and finally died on 20.07.2012 in the Government Hospital. In such circumstances, the claimants who are the legal representatives of the deceased would be entitled to whatever compensation he would have received for the injuries sustained in the accident.

11.Hence the amounts awarded by the Tribunal at Rs.25,000/- and Rs.1,655/- towards Transportation expenses and Medical expenses are confirmed as such.

12.Though the deceased was taking treatment at various hospitals at different intervals, the Tribunal has awarded only a sum of Rs.10,000/- towards attendant charges and has not awarded any amount towards Extra Nourishment. Considering the nature of injuries, period of treatment and taking note of the surgeries undergone by the deceased, the sum of Rs.10,000/- awarded towards attendant charges is modified to Rs.18,000/- and a sum of Rs.15,000/- is awarded towards extra nourishment.

13. At this juncture, it is worthwhile to note that in similar circumstance, this Court in CMA No.1543 of 2016, dated 28.09.2018 (United India Insurance Co. Ltd. v. L.B.Kumaran (since deceased) and L.K.Anandhi and four others) has awarded loss of income to the deceased therein, though there is a finding by the Division Bench to the effect that the death was not happened due to the injuries caused in the accident. Following the said judgment, in this case, this Court is of the opinion that some amount under loss of income has to be awarded. Though no document was produced by the appellants to show that the deceased was working as Coolie sum security, at least for his needs he would have been earning some amount and the injuries caused in the accident would have definitely affected the earning capacity of the deceased. This Court is of the opinion that awarding a sum of Rs.150/- per day would be the just compensation payable under the head loss of income. Hence for a period of six months, there will be a loss of income to the deceased to the tune of Rs.27,000/- (Rs.150/- x 30 days x 6 months) and accordingly the same is awarded. Towards loss to estate, the Tribunal has not awarded any sum. Hence a sum of Rs.10,000/- is awarded towards that count, since at the time of accident, the deceased was contributing some amount to his family. Further, a sum of Rs.2,000/- is awarded towards damages to clothes. In fine, the re-structured breakup details of the total amount of compensation reads thus:-

Transportation expenses	-	Rs.25,000/-
Extra nourishment	-	Rs.15,000/-
Loss of income during treatment period	-	Rs.27,000/-
Medical expenses	-	Rs. 1,655/-
Attendant charges	-	Rs.18,000/-
Damage to cloths	-	Rs. 2,000/-
Loss to estate	-	Rs.10,000/-

		Rs.98,655/-

(rounded off)	-	Rs.98,700/-

14. In the result, the Civil Miscellaneous Appeal preferred by the appellants / claimants is partly-allowed by enhancing the total amount of compensation from Rs.36,655/- to Rs.98,700/- with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit amount. The respondent shall deposit the total compensation amount as arrived by this Court now along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, 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 Tribunal is directed to transfer the deposited

amount to the Savings Bank Accounts of the claimants/appellants, within one week thereafter, through RTGS, in the ratio of apportionment as done by the Claims Tribunal. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

srk
To

1.The Chief Small Causes Court,
Chennai.

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.27658

C.M.A.No.1877 of 2017

AD(CO)
CB(26/04/2021)



WEB COPY