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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.3080 of 2012

1. A.Patrick Lazar

2. Ruby Lazar

...Appellants / Petitioners

Versus

Managing Director,
State Express Transport Corporation Ltd.,
Pallavan Salai,
Chennai - 600 002.

...Respondents / Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 29.10.2011 made in M.C.O.P.No.2093 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District Judge (IV Fast Track Court) Chennai.

For Appellants : Mr.K.Varadhakamaraj

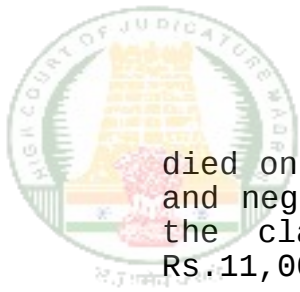
For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This appeal is laid as against the judgment and decree dated 29.10.2011 made in M.C.O.P.No.2093 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District Judge (IV Fast Track Court) Chennai, thereby awarded the compensation to the tune of Rs.2,42,000/-

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimants is that they are the parents of the deceased. The deceased was a student and part time Assistant Technical Instructor in Spectrum PBO Private Limited, Little Mount, Chennai and was earning Rs.7,000/- per month. While being so, on 21.09.2006, when the deceased was travelled as a pillion rider in the motor cycle along with another person, who was the rider of the motor cycle, the bus owned by the respondent was going in front of the motor cycle and the driver suddenly applied the break. As a result the motor cycle driven by the rider collided with the bus due to which, the deceased



died on the spot. The accident was occurred only due to the rash and negligent driving of the respondent's bus driver. Therefore, the claimants filed claim petition seeking compensation at RS.11,00,000/-.

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4. Resisting the same, the respondent filed counter stating that the respondent bus driver never drove the vehicle in rash and negligence manner. The deceased and the another drove the two wheeler in a rash and negligence manner without maintaining distance between the bus and two wheeler and they themselves dashed against the bus and died on the spot. Therefore, the respondent is not liable to pay any compensation to the claimants. The respondent further stated that the deceased is student and simultaneously the claimants also claimed that he was working as Assistant Technical Instructor and it could not be possible for the deceased to have part time job.

5. On the side of the claimants, they examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.9. On the side of the respondent neither oral nor documentary evidence was let in. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal found that the negligence on the part of the respondent and also on the part of the rider of the motor cycle and fixed liability at 75% as against the respondent and awarded compensation of Rs.2,42,000/- and also deducted the 25% of the compensation. Being not satisfied with the quantum of the compensation awarded by the Tribunal, the claimants came forward with the present appeal.

6. The learned counsel appearing for the claimants submits that the deceased was working as part time Assistant technical Instructor in Spectrum BPO Private Limited, Chennai and his salary certificate has been marked as Ex.P.5. Even then, the Tribunal did not consider the same and fixed notional income at Rs.3,000/-, when there is absolutely no contra evidence produced by the respondent; The Tribunal also failed to consider the future prospect of the deceased, when the deceased died at the age of 22 years. The Tribunal found that the accident took place only on the rash and negligence driving of the respondent's bus driver and even then fixed 25% liability on the rider of the motor cycle. The Tribunal also ought to have deducted 1/3rd income for the personal expenses of the deceased, instead of that the Tribunal deducted ½ of the income towards personal expenses of the deceased.

7. Per contra, the learned counsel appearing for the respondent contended that the deceased are tort-feasors and they themselves drove the motor cycle in rash and negligence manner. They could not even control their vehicle and hit the back side of the bus with high speed. Therefore, they themselves invited



their death and both the rider and pillion rider of the motor cycle died on the spot. Hence, the respondent is not at all liable to pay any compensation to the claimants.

8. Heard Mr.K.Varadhakamaraj, learned counsel appearing for the claimants and Mr.K.J.Sivakumar, learned counsel appearing for the respondent.

9. The claimants are the parents of the deceased. The deceased and another were riding the motor cycle on 21.09.2006. The respondent's bus was driven by the driver on the same road and he applied sudden break and stopped the bus. When the deceased and another were riding the motor cycle on the same direction of the bus and due to the sudden stop of the bus, they hit the bus and sustained grievous injury and also died on the spot. At the same time, the deceased and another should have maintained the distance between the bus and two wheeler, as per the traffic rules. Without even noticing the sudden break of the bus, they hit the bus on the back side and sustained grievous injury and died on the spot. Therefore, the Tribunal rightly fixed the negligence on the part of the bus driver at 75% and 25% negligence on the part of the rider of the motor cycle.

10. Insofar as the quantum of compensation is concerned, the claimants marked Ex.P.5, the salary certificate. It revealed that the deceased was working in Spectrum BPO Private Limited, Chennai, for the monthly salary of Rs.7,000/-. Simultaneously, they also claimed that the deceased was a student. However, the Tribunal has taken the monthly salary only at Rs.3,000/-. Further the Tribunal also failed to consider the future prospects of the deceased, when he died at the age of 22 years. Therefore, the claimants are entitled for compensation under the head of future prospects.

11. Insofar as the deduction is concerned, the deceased is a bachelor at the time of his death and as such, the Tribunal rightly deducted 50% towards his personal expenses. The Tribunal has taken multiplier of 13. When the deceased died at the age of 22 years, the multiplier has to be taken at 18. At the same time, the multiplier also has to be taken into account at 40% of the income towards the future prospects, since the deceased was a student and he was working as part time Assistant Technical Instructor. The salary has to be taken into account at Rs.4,500/- per month. Accordingly the pecuniary loss by the claimants is calculated as follows :-

$$\begin{aligned} &= [(Rs.4,500/- + 40\%) \times 12 \times 18] - 50\% \\ &= [(Rs.4,500/- + 1,800) \times 12 \times 18] - 50\% \\ &= [6,300 \times 12 \times 18] - 50\% \\ &= 13,60,800 - 50\% = 6,80,400 \end{aligned}$$

Accordingly, a sum of Rs.6,80,400/- has to be awarded under the head of loss of pecuniary benefits to the claimants.



12. Insofar as the other heads, the Tribunal awarded a sum of Rs.3,000/- towards funeral expenses and Rs.5,000/- towards love and affection. This Court is inclined to grant a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.25,000/- towards love and affection. The Tribunal failed to award any compensation towards loss of estate. Therefore, this Court is inclined to award a sum of Rs.15,000/- towards loss of estate. The claimants are entitled 75% of the award amount after deducting 25% from the total compensation.

13. Accordingly the compensation awarded by the Tribunal stands modified as under :-

Sl.No	Heads	Awarded by the Tribunal	Awarded by this Court
1	Loss of Pecuniary	2,34,000	6,80,400
2	Funeral expenses	3000	15,000
3	Loss of estate	Nil	15,000
4	Love and affection	5,000	25,000
	Total	2,42,000/-	7,35,400
	Deduction 25%		1,83,850
			5,51,550

14. In the result the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.2,42,000/- to Rs.5,51,550/-.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The claimants are entitled to get the modified award amount as follows:-

First claimant - Rs. 3,00,000/-

Second claimant - Rs. 2,51,550/-

(iv) The respondent is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(v) On such deposit, the claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.



(vi) The claimants shall pay requisite Court fee before the receipt of the copy of the judgment for the enhanced compensation.

(vii) There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

Rts

To

The Additional District Judge
Motor Accident Claims Tribunal,
(IV Fast Track Court)
Chennai.

+1cc to Mr.K.Varadhakamaraj, Advocate SR.No.22582

+1cc to Mr.J.Sivakumar, Advocate SR.No.22149

C.M.A.No.3080 of 2012

RLD(CO)
RVM(23/09/2021)