



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CMA.No.913 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Vellore.

...Appellant/Respondent

..vs..

1.Dhanasekar

2.T.Selvi

..Respondents/Claimants

Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.08.2012 in M.C.O.P.No. 119 of 2009 on the file of the Motor Vehicles Accident Claims Tribunal, Sub Court, Arani.

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

For Respondents R2 : No Appearance

R1 : Died

JUDGMENT

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation against the judgment and decree dated 29.08.2012 in M.C.O.P.No. 119 of 2009 on the file of the Motor Vehicles Accident Claims Tribunal, Additional Sub Court, Arani.

2.The appellant is the respondent before the tribunal . The claimants/respondents has filed the claim petition, claiming a sum of Rs. 5,00,000/- as compensation for the death of their son, who died in the road accident that took place on 01.05.2009.

3. It is the case of the respondents/claimants, on 01.05.2009 at about 5.00PM, the deceased was selling fruits in the appellant transport corporation bus bearing Reg.No.TN23-N-1830 at New Bus Stand, Arni. While their son getting down from the bus, the driver of the bus suddenly moved the bus with high speed, due to which the deceased fell down from the bus and left



back wheel of the bus ran over on the deceased and he died. The said accident had happened only due to the rash and negligent driving on the part of the driver of the appellant transport corporation bus. Hence, the parents of the deceased have filed a claim petition, claiming a sum of Rs.5,00,000/- as compensation. The tribunal based on the oral and documentary evidence available on record, has concluded that the accident had occurred only due to the rash and negligence on the part of the driver of the appellant transport corporation bus directed the appellant/transport corporation to pay a sum of Rs.3,50,000/- as compensation to the claimants. Challenging the liability and the quantum of compensation, the transport corporation has preferred the present appeal to set aside the award passed by the tribunal.

4. The learned counsel for the appellant/Transport Corporation submitted that the tribunal ought to have held that the scene of occurrence that the deceased himself invited the accident and failed to consider the negligence on the part of the deceased. The learned counsel for the appellant/transport corporation submitted that the monthly income fixed by the tribunal at Rs.3000/- is without any basis and the total compensation awarded at Rs.3,62,000/- is highly excessive and liable to be set aside.

5. Heard the learned counsel for the appellant/Transport Corporation and perused the document available on record.

6. Before the Tribunal, on the side of the claimants two witnesses were examined as P.W.1 & PW2 and two documents were Ex.P1 & P2. On side of the respondents, one official witness RW1 was examined and no documents were marked.

7. It is seen from the records the FIR/Ex.P1 was registered against the driver of the bus and no contra evidence was placed before the tribunal to disprove the negligence on the part of the driver of the bus. The tribunal, on considering the above aspect, has fixed the negligence on the part of the driver of the appellant/transport corporation bus and directed the transport corporation to pay the compensation.

8. With regard to quantum of compensation, though the claimants have not placed any document to show the income of the deceased, the tribunal considering the young age of the deceased, who was 12 years at the time of the accident, has fixed notional monthly income at Rs.3000/- and awarded a sum of Rs.3,50,000/- toward loss of income. The tribunal has also awarded a sum of Rs.5,000/- towards Loss of Consortitium, a sum of Rs.5000/- towards Funeral Expenses and a sum of Rs.2000/- towards Transport Expenses. The Tribunal has awarded a total



compensation for a sum of Rs.3,62,000/- , which according to the learned counsel for the appellant/transport corporation is exorbitant.

9. The main contention of the appellant is that at the time of the accident, the deceased was aged about 12 years, studying 7th standard, therefore the notional income fixed by the tribunal at Rs.3000/- per month is excessive.

10. At this juncture, it is useful to rely upon the decisions of the Hon'ble Supreme Court in the case of Kishan Gopal & another Vs. Lata & others. The relevant portion is extracted below:

" In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. 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 the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma v. Delhi Transport Corporation, the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas[4], which is referred to in Lata Wadhwa's 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 said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants. "

11. As per the calculation made in the judgment cited supra, if a sum of Rs.30,000/- is fixed as annual income, applying 15 years multiplier as per the age of the mother of the deceased who was aged 36 years as per the Sarala Verma's case, the total loss of income comes to Rs.4,50,000/-. But taking note of the



fact that the respondents/claimants have not produced legal heirship certificate, the said benefit of enhancement cannot be granted.

12. Therefore, considering the fact that the accident was not disputed and negligence was also proved before the tribunal by way of evidence and document, this Court is of the opinion that it would be proper to confirm the compensation awarded by the tribunal at Rs.3,62,000/-.

13. The appellant /Transport Corporation is directed to deposit the entire compensation amount along with interest as awarded by the tribunal, less the amount already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents / claimants are permitted to withdraw the compensation along interest and costs as per the apportionment fixed by the tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

14. In the result, the present Civil Miscellaneous Appeal is dismissed and the award passed by the tribunal in M.C.O.P.No. 119 of 2009, dated 29.08.2012 is confirmed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ak

To

The Subordinate Judge,
The Motor Vehicles Accident Claims Tribunal,
Sub Court, Arani.

Copy To

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

+1cc to Mr.C.S.K.Sathish, Advocate, S.R.No.16343/2021

C.M.A.No.913 of 2013

SV(CO)
RGA(08/09/2021)