



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 17.12.2020

DATE ON WHICH PRONOUNCED : 11.01.2021

CORAM:

THE HON'BLE MR. JUSTICE G.ILANGOVAN

C.M.A. (MD) .No.674 of 2010

in

MP (MD) No. 2 of 2010

Tamil Nadu State Transport Corporation,
Kumbakonam through it's
Managinst Director.

:Appellant / Respondent

Vs.

1.Kalaiselvi

2.Kovindasamy

(2nd Respondent name deleted by Memo
dated 21.06.2007 in the Trubunal.
Hence, notice dispensed with)

3.Kunjammal

: Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.395 of 2005, dated 11th day of June 2009, on the file of the Motor Accident Claims Tribunal/Principal Sub-Court, Kumbakonam.

For Appellant : Mr.M.Prakash

For R1 to R3 : No Appearance

For R2 : Dispensed with (Vide in EB)



JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 11.06.2009, passed in M.C.O.P.No.395 of 2005 on the file of the Motor Accident Claims Tribunal/Principal Sub-Court, Kumbakonam.

2.The case of the claimant before the Tribunal is that on 09.10.2003, at about 08.30 a.m, the deceased Saravanan was riding in a two wheeler as a pillion rider bearing Registration No.TN-49-V-3430, belongs to his owner, which was driven by one Lenin. When they were nearing the place of occurrence, the bus, bearing Registration No.TN-49-N-0263 was driven by its driver in a rash and negligent manner and dashed against the two wheeler, in which, the deceased was travelling as a pillion rider. Soon after the accident, he was taken to the Medical College Hospital, Thanjavur and he died on the same day.

3.In respect of the offence, a case in Crime No.436 of 2003 for the offence under Sections 279, 337 & 304 of IPC was registered against the driver of the respondent.

4.He was earning a sum of Rs.3,000/- per month by working in a Soap Factory. The sister and the grand-mother of the deceased, approached the Tribunal, claiming compensation amount of Rs.10 lakhs. The deceased was unmarried and his parents also died.

5.The case of the appellant before the Tribunal is that, the accident took place only due to the rash and negligent driving on the part of the two wheeler, who came in an uncontrollable speed and fell on the road. The other facts were denied.

6.During enquiry before the Tribunal, on the side of the petitioners / claimants, three witnesses were examined and ten documents marked. On the side of the respondent, one witness was examined and no document marked.

7.At the completion of enquiry, the Tribunal came to the conclusion that the accident took place, due to the rash and negligent driving on the part of the driver of the appellant.

8.Regarding the compensation, it came to the conclusion that the claimants were the dependants of the deceased and awarded compensation **Rs.95,000/-** (Rupees Ninety Five Thousand Only) by categorising the same, under the heads of Funeral Expenses, Loss of Love and Affection and Loss of death of deceased.

9.Challenging the same, the Transport Corporation has filed this appeal on the ground of liability and quantum, the claimants

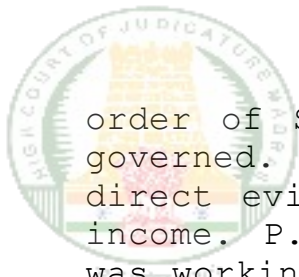


were the family members of the deceased, they were not depending on him.

10.Regarding the occurrence, the First Information Report was registered on the basis of the complaint given by the rider of the two wheeler namely Lenin, he has stated that he was riding the two wheeler as noted above with the deceased as a pillion rider on 09.10.2003, at about, 08.00 a.m, they were nearing the place of occurrence, the driver of the appellant came in the opposite direction in a rash and negligent manner and dashed against them. The eye witness was examined as P.W.3. He would say that he witnessed the occurrence and only because of the rash and negligent driving on the part of the appellant's driver, the accident took place. From his evidence, it is seen that the two wheeler as well as the appellant's vehicles were proceeding in a oppositer direction. The suggestion was made to him that the rider of the two wheeler suddenly came to the main road from the branch road and hit against the bus. But, this was denied by him. R.W.1 was the driver of the appellant, at the relevant time in the offending vehicle. He would say that the rider of the two wheeler, suddenly came from the branch road, to the main road in a high speed and on seeing them, he turned the bus left and in spite of that, the two wheeler fell on the road, due to the uncontrollable speed. If it is really so, he would have been the first informant about the occurrence. He would also admitt that the charge sheet was also filed against him and the result was not known to him. So, from the manner of the accident, it is seen that only R.W.1 was rash and negligent in his driving. So, the findings of the Tribunal does not require any interference.

11.The problem arises with regard to the assessment made by the Tribunal, even though there is no cross objection by the respondent. This is the duty of this Court to analyse the manner of disposal. The Tribunal came to the conclusion that the first petitioner being the sister and the second petitioner being the grand-mother were not residing along with deceased and they were not depending upon his income and so they were not entitled for Loss of Dependency and it fixed the compensation of Rs.50,000/- for no fault liability. But, the case has been filed on the fault liability for assessing the compensation, how the Tribunal found that it is no fault is not understandable. Whatever it may be, it is the duty of this Court to make a proper assessment.

12.It is a settled and basic law that the claimants need not be the dependents of the deceased as per Motor Vehicles Act. What is required is assessment of Loss of Estate. Loss of income, the Medical Expenses will add to the Loss of Estate of the deceased. Dependency is different from Loss of Estate. After assessment of Loss of Estate, the legal heirs are entitled to the same in the



order of Succession, depending upon the law, by which, they are governed. So, the Loss of Estate has to be assessed. There was no direct evidence to show the job of the deceased and his monthly income. P.W.1, who is the sister of the deceased stated that he was working in soap manufacturing Company and he was earning a sum of Rs.3,000/- per month. But she stated that she did not know the name of the Company. P.W.2, who was the councillor, in the relevant time, would say that the deceased was residing along with P.W.1 in her house. But, whatever it may be, even if they were residing separately. It need not be given any importance. The rider of the two wheeler, while giving the statement to the police, has stated thT he was working in a Chocolate Company in Kumbakonam and the deceased Saravanan is his sister's son and he was working in a Soap Company at Kumbakonam. So, from the First Information Report, it is seen that the deceased was working in a Soap Company at Kumbakonam. Since this is the earlier information furnished by the rider of the two wheeler, it can be taken as a true one.

13.As mentioned earlier, there is no documentary evidence to prove the monthly salary. At the time of the accident, he was aged about 22 years, which is evident from the Postmortem Certificate / Ex.P.4. In the absence of any contra or corroborated evidence, the same may be taken as the approximate age of the deceased. Since the accident took place during 2003, the minimum may be taken as monthly income of the deceased. During the relevant time, daily wager can get Rs.100 per day. So, we take the monthly income at Rs.3,000/- per month. He died as a bachelor. So, Rs.1,500/- has to be deducted towards personal income. Since the age of the deceased is 22 at the time of accident, the multiplier 18 is taken. After applying multiplier '18', the total Loss of Estate would comes at **Rs.3,24,000/-** ($12 \times 1500 \times 18$). To this, customary amount of Funeral Expenses **Rs.15,000/-**, Loss of Love and Affection **Rs.15,000/-** is to be added. So, the total compensation works out to **Rs.3,54,000/-**.

14.In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is enhanced from **Rs.95,000/-** (Rupees Ninety Five Thousand Only) to **Rs.3,54,000/-** (Rupees Three Lakhs and Fifty Four Thousand Only). There is no order as to costs. Consequently, connected miscellaneous petition is closed.

15. The petitioners 1 and 3 are entitled to equal share. The appellant /Transport Company is directed to deposit the aforesaid amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit (excluding the period of default of the petition, if any) and also proportionate cost, within a period of two months from the date of receipt of a copy of this judgment, less the amount already deposited, if any, and



on such deposit being made, the petitioners 1 and 3 are permitted to withdraw the same BY filing proper application since there is a lapse of 17 years from the date of accident.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The Principal Sub Judge,
Motor Accident Claims Tribunal,
Kumbakonam.
- 2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.PRAKASH, Advocate (SR-1000[F] dated 18/01/2021)

Judgment made in
C.M.A. (MD) .No.674 of 2010
in
MP (MD) No. 2 of 2010
11.01.2021

KM (11.03.2021) 5P 5C