(2013) 10 MAD CK 0222

In the Madras High Court

Case No : C.M.A. No. 2033 of 2013 and Cross Objection No. 90 of 2013

Managing Director APPELLANT

Vs

Karpagambal RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2014) 1 TNMAC 34

Hon'ble Judges : Mr. P.R. Shivakumar, J.

Bench : Single Bench

Advocate : Mr. A. Babu, Advocate, for the Appellant; Mr. Terry Chellaraja, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. P.R. Shivakumar, J.—The state owned Transport Corporation that figured as respondent in M.C.O.P.No.4172 of 2009 on the file of the Motor Accidents Claims Tribunal, (VI Judge, Small Causes Court), Chennai has brought forth this appeal under Section 173 of the Motor Vehicles Act challenging the award of the said Tribunal dated 9.1.2013 made in the above said M.C.O.P., both on the question of liability and on the question of quantum of compensation awarded by the Tribunal.

2. One Dhanasekar, S/o. Late Mahadevan, aged about 21 years died in an accident that took place involving a motorcycle bearing Registration No.TN-22BZ-9222, in which he was travelling and the bus belonging to the appellant Transport Corporation bearing Registration No.TN-21-N-0857 at about 3.30 p.m on 1.11.2009 on the Tambaram-Chengalpattu Road at Irumbuliyur bridge. The accident was reported to the police and a case was registered on the file of the Traffic Investigation Wing, St. Thomas Mount Police Station as Crime No.1248 of 2009 against the driver of the said bus for the alleged offences under Sections 279 and 304-A IPC. The investigation of the police resulted in the submission of final report against the driver of the said bus alleging commission of the above said offences. The first respondent herein is the mother of the said

Dhanasekar, who died in the accident. Respondents 2 and 3 are the daughters of the first respondent. Contending that the accident was the result of rash and negligent driving of the above said bus belonging to the appellant Transport Corporation by its driver, the respondents herein had made a claim for compensation in the above said M.C.O.P.

3. It was contended therein that while the deceased was proceeding in his motorcycle from Irumbuliyur to Perungalathur, the driver of the bus bearing Registration No.TN-21-N-0857 owned by the appellant Transport Corporation on its trip from Tambaram to Chengalpattu, drove the same at a high speed with rashness and negligence, as a result of which, the said bus hit the motorcycle, in which, the deceased was proceeding from behind, resulting in fatal injuries leading to the death of the deceased on the spot, that though the deceased though was a bachelor, he was the only person supporting the family with his monthly income of Rs.7,000/- and the entire support from him to the family was lost due to his sudden demise in the accident and that therefore, the respondents were entitled to claim compensation from the appellant Transport Corporation. Hence, they filed a claim petition claiming compensation of Rs.10,00,000/- against the appellant Transport Corporation along with interest and costs.

4. The claim made by the respondents herein was resisted by the appellant Transport Corporation by filing a counter contending that there was no negligence on the part of the driver of the bus belonging to the appellant and on the other hand it was the deceased, who acted with rashness and negligence in riding his motorcycle with high speed and in doing so, he made his right side handle bar of his motorcycle come into contact with the left side body of the bus, as a result of which, he fell down and sustained injuries and that though the said injuries proved to be fatal, the appellant Transport Corporation would not be held liable to pay any compensation, as the accident had occurred due to the fault on the part of the deceased. Besides contending that there was no fault on the part of the driver of the bus belonging to the appellant Transport Corporation and on the other hand, the deceased was at fault, the appellant Transport Corporation also disputed the averments made by the respondents herein regarding his age, avocation and income and challenged the amount claimed as compensation, as the same, according to the appellant was highly exorbitant and unreasonable.

5. In the enquiry conducted by the Tribunal three witnesses were examined as P.Ws. 1 to 3 and 9 documents were marked as Ex.P.1 to P.9. on the side of the respondents herein/claimants and one witness was examined as R.W.1 and no document was marked on the side of the appellant Transport Corporation, which figured as respondent before the Tribunal.

6. The Tribunal considered the pleadings and evidence in the light of the points urged by the counsel appearing on both sides in their arguments and upon such consideration, came to the conclusion that the respondents herein/claimants had proved that the accident took place due to the rash and negligent driving of the bus bearing Registration No.TN-21-N-0857 belonging to the appellant herein by

its driver and hence, the appellant Transport Corporation was liable to pay compensation to the respondents herein, who are the mother and sisters of the deceased Dhanasekar. The Tribunal took the age of the deceased to be 21 years, assessed his monthly income at Rs.6,500/- based on the evidence of P.W.3 that the deceased was employed as driver by P.W.3 at a monthly salary of Rs.6,500/-, deducted ? towards personal living expenses of the deceased, took the balance as the monthly contribution, selected 18 to be the appropriate multiplier and arrived at a figure of Rs.9,35,928/- as pecuniary loss caused to the respondents due to the death of Dhanasekar in the accident. The Tribunal also awarded Rs.10,000/- towards funeral expenses and Rs.20,000/- towards loss of love and affection. Thus, the Tribunal fixed the total amount of compensation at Rs.9,65,928/- (rounded to Rs.9,66,000/-) and passed the award directing the appellant Transport Corporation to pay the said amount along with an interest at the rate of 7.5% per annum from the date of numbering of the M.C.O.P. till deposit and also costs. The Tribunal also effected apportionment of the above said compensation among the respondents. The appellant Transport Corporation, which is not concerned with the apportionment of compensation, has chosen to challenge the award of compensation both on the question of fixing of liability and also regarding reasonableness of quantum.

7. The claimants have preferred cross-objection No.90 of 2013 as against the disallowed portion of the claim and seeking enhancement.

8. The points that arise for consideration in this appeal are:

(1) Whether the Tribunal has committed an error in holding that the driver of the bus bearing Registration No.TN-21-N-0857 belonging to the appellant Transport Corporation was at fault having driven the said vehicle in a rash and negligent manner causing the accident?

(2) Whether the amount awarded by the Tribunal as compensation is excessive and exorbitant warranting reduction?

(3) Whether the amount awarded by the Tribunal has to be enhanced?

9. The arguments advanced by Mr. A. Babu, learned counsel appearing for the appellant and by Mr. F. Terry Chellaraja learned counsel for the respondents are heard. The materials available on records are also perused.

10. It is not in dispute that the deceased Dhanasekar died on the spot in the accident that took place at about 3.30 p.m. on 1.11.2009 at Irimbuliyur bridge. It is also not in dispute that the deceased Dhanasekar was riding his motorcycle bearing Registration No.TN-22BZ-9222 from Irumbuliyur to Perungalthur and the bus belonging to the appellant Transport Corporation bearing Registration No.TN-21-N-0857 was also proceeding in the very same direction from Tambaram to Chengalpattu. It is also not in dispute that the accident took place at Irumbuliyur bridge when both the vehicles were proceeding in the very same direction.

11. According to the respondents'' case, while the deceased was proceeding in his motorcycle, the bus which came in the same direction, hit the motorcycle from behind, as a result of which the deceased sustained fatal injuries and died on the spot. The appellant Transport Corporation had taken a stand that there was no rashness and negligence on the part of the driver of the bus bearing Registration No.TN-21-N-0857 belonging to the appellant. It was the further contention made by the appellant in the counter statement that when the bus was proceeding from Tambaram to Chengalpattu, the deceased drove his motorcycle in such a way that the handle bar of his motorcycle came into contact with the left side body of the bus, which resulted in his falling down and sustaining fatal injuries. In any event, the contention of the parties will clearly show that both the vehicles were proceeding in the very same direction. Though the respondents/claimants have taken a clear plea that while the deceased was proceeding in his motorcycle, the bus that came in the very same direction hit the motorcycle from behind implying that the motorcycle was going in front of the bus and the bus was following the motorcycle, the appellant Transport Corporation cleverly avoided to refer the fact which vehicle was going in front and which vehicle was following and whether the impact was made while the bus was trying to overtake the motorcycle on its right side or the accident occurred when the motorcyclist was trying to overtake the bus on the left side of the bus. With such a nebulous plea, the appellant Transport Corporation seems to have thrown burden upon the respondents to prove the fault on the part of the driver of the bus, since the claim was made under Section 166 of the Motor Vehicles Act and not under Section 163 A of the Motor Vehicles Act. In the light of the above said pleadings, the respondents herein/claimants have chosen to lead evidence through P.W.1, who was not an eye witness and through P.W.2 an alleged eye witness, who witnessed the occurrence. P.W.2 has given a vivid description of the accident by stating that the bus came behind the motorcycle and dashed against the motorcycle, in which the deceased was proceeding.

12. The learned counsel for the appellant made an attempt to discredit the evidence of P.W.2 by pointing out the fact that he was not the author of the complaint, based on which the First Information Report was registered by the police. Of course, it is obvious from Ex.P.1, copy of the First Information Report, that a case was registered by the police against the driver of the bus belonging to the appellant Transport Corporation on the information furnished by one Sundara Rajan, a close relative of the deceased. Such contention was raised by the learned counsel for the appellant on the assumption that the informant should have been projected as eye witness in the complaint. But the fact remains that the informant, based on whose information the First Information Report was registered, made it clear that he was not the eye witness and that he went to the place of occurrence and saw the dead body of the deceased only on receiving information regarding the death of Dhanasekar. Therefore, the non-examination of said Sundara Rajan, the brother of the deceased, who was not an eye witness to the accident, will not affect the case of the respondents/claimants. Simply

because the information to the police was given by a person who was not an eye witness, it cannot be assumed that there was no eye witness to the occurrence. P.W.2, who has clearly asserted that he was the eye witness to the occurrence, has given a clear account of the incident. The meticulous cross-examination made by the counsel for the appellant did not in any way impair the trustworthiness or the reliability of the evidence of P.W.2.

13. On the other hand, the evidence of R.W.1, the sole witness examined on the side of the appellant herein, will not support the case of the appellant that it was the deceased Dhanasekar, who invited the accident by trying to overtake the bus on its left side. R.W.1, is the person, who was on duty in the bus as its conductor on the trip during which the accident took place. He has simply stated that on the scene of occurrence he heard the bang on the left side rear wheel of the bus. Pursuant to which, the bus was stopped and when they got down from the bus, they came to know that a person was run over by the left side back wheel of the bus and he had died. Though he would have made an attempt to state that the accident took place due to the negligence on the part of the rider of the motorcycle, during his cross-examination he candidly admitted that he did not see the accident. It is also pertinent to note that neither the driver nor the conductor lodged a complaint with the police. On the other hand, a criminal case was registered based on the complaint lodged by one Sundara Rajan, a relative of the deceased. The police, after completion of investigation, chose to file a final report against the driver of the bus for prosecuting him for the offences under Sections 279 and 304-A of IPC and the same is obvious from Ex.P.2, the final report. A copy of the rough sketch prepared by the Investigating Officer has been marked as Ex.P.8. It will show that the deceased was proceeding in his motorcycle on the left side of the road and that the bus, which came from behind in the very same direction, hit the motorcycle.

14. The Tribunal, on appreciation of evidence, came to a correct conclusion that the accident took place due to the rash and negligent driving of the bus bearing Registration No.TN-21-N-0857 belonging to the appellant Transport Corporation. This Court also, on re-appreciation of evidence, comes to the very same conclusion and hence, the finding of the Tribunal that the accident took place due to the rash and negligent driving of the bus bearing Registration No.TN-21-N-0857 belonging to the appellant Transport Corporation by its driver does not warrant any interference and on the other hand it deserves confirmation. The appellant Transport Corporation being the owner of the offending vehicle is liable for the negligence on the part of its driver. Hence, this Court does not find any defect or any infirmity in mulcting liability on the appellant Transport Corporation to pay compensation to the claimants. Question No.1 is answered accordingly against the appellant and in favour of the respondents.

15. Though the appellant might have failed to successfully challenge the award on the question of negligence and liability, there is some substance in the contention raised on behalf of the appellant on the question of reasonableness of

the amount awarded by the Tribunal as compensation. The learned counsel for the appellant contends that though the claim petition contains an averment that the deceased was employed as driver and was having a monthly income of Rs.7,000/-, there was no material to show that he was employed under anybody either as a driver or in any other capacity. The respondents have chosen to introduce P.W.3 and through him, they have produced Ex.P.9. It was done only as a result of an after thought to get more amount as compensation. The averment made in the claim petition that the deceased was self employed will show that the respondents have not proved that the deceased Dhanasekar had been employed as driver by P.W.3 as spoken to by him. Though P.W.3 would have chosen to depose that he was doing construction business having a trade name "YESMES Group Consulting Engineers & Contractors, Chennai," he has not chosen to produce any document showing the persons employed under him and the amount paid to each one of them as wages. He has also admitted that there is no record to show that the deceased Dhanasekar was employed under him as a driver.

16. Under such circumstances, especially when the claim petition itself contains an averment to the effect that the deceased was self employed, this Court has to arrive at a conclusion that the evidence of P.W.3 is bound to be disbelieved. The certificate allegedly issued by P.W.3 has been marked as Ex.P.9. It is stated in Ex.P.9 that the deceased was paid a sum of Rs.6,500/- p.m. as salary and besides the said salary, he was paid batta at the rate of Rs.50/- per day. Though Ex.P.9 was marked through P.W.3, in his evidence he has not adverted to the payment of such batta. His evidence is to the effect that he was paying the deceased only a sum of Rs.6,500/- as monthly salary. In view of the fact that P.W.3 has not even supported the certificate issued by him regarding payment of batta, this Court has to come to the conclusion that the above said certificate as well as the testimony of P.W.3 are bound to be rejected as not reliable. The Tribunal definitely was wrong in accepting or acting on the testimony of P.W.3. Only on the basis that P.W.3 did not support alleged payment of batta, the Tribunal chose to fix the monthly salary of the deceased as Rs.6,500/-. In view of the foregoing discussions, this Court comes to the conclusion that fixing of monthly earnings of the deceased by the Tribunal is not correct. Ex.P.7 is the driving licence of the deceased. From Ex.P.7, it is obvious that he got the driving licence on 7.9.2007 authorising him to drive motorcycle with gears and light motor vehicle (Non transport vehicles). Simply because a person was holding a driving licence, we cannot assume that he was employed or he could be employed as a driver with a liberal amount as salary.

17. The date of birth of the deceased entered in the driving licence of the deceased is 7.6.1988. The very same date of birth is also found in Ex.P.6, the school transfer certificate. Based on the same, this Court comes to the conclusion that fixing of the age of the deceased as on the date of accident at 21 years, has got to be confirmed. The deceased was a drop out from the school in 9th Standard. He had a valid driving licence to drive not only a motorcycle but also a

light motor vehicle (Non transport vehicle). He was hale and healthy. He could have earned a minimum amount of Rs.3,000/- per month by doing any manual work. Considering the fact that with the available qualification he might be able to get a job in future, the said income can be loaded with 50% of the same. If 50% of Rs.36,000/- is added, the average annual income can be arrived at Rs.54,000/-. As per the dictum made by the Hon''ble Supreme Court in Sarla Verma (Smt) And Others v. Delhi Transport Corporation And Another (2009 (6) SCC 121) which was also again reiterated in Reshma Kumari And Others v. Madan Mohan And Another (2013 ACJ 1253), the appropriate multiplier to be selected in a case of fatal accident shall be based on the age of the deceased and not based on the age of the claimants. According to the very same judgment, the appropriate multiplier for the deceased person, whose age is 21 years shall be 18.

18. The entire average annual income of the deceased shall not be taken as the multiplicand. From the same, a part has to be deducted towards his personal and living expenses. When the claimants are the parents alone, the deduction of 50% towards personal and living expenses is very reasonable. Normally, the married siblings and the father shall not be considered to be the dependants of the deceased. In this case, the father of the deceased had died long back and hence he is not one of the claimants. Mother and two sisters of the deceased are the claimants. Out of the two sisters, one sister, namely the second respondent herein was already married and hence she was not a dependant depending on the income of the deceased. Since the father was no more, the mother and unmarried sister, namely the first and third respondents, shall be considered to be the persons depending on the income of the deceased. So far as the first respondent is concerned, her dependence would have last for a considerable number of years. So far as the third respondent is concerned, as she was aged about 19 years, her dependance would last only for a few years and hence, the nature of her dependency can be equated with or held to be even less than the extent of dependency of his non-earning father. As there are only two dependants, it is quite reasonable to allow a deduction of 50% towards personal and living expenses of the deceased. If 50% is deducted from the annual income of the deceased, Rs.27,000/- alone shall be taken as annual contribution made by the deceased to the family. Taking the same as the multiplicand, we have to find the product of the multiplicand and the selected multiplier to represent the figure representing the compensation for loss of dependency. The product of Rs.27,000/- and 18 comes Rs.4,86,000/-.

19. Besides, awarding compensation for loss of dependency, conventional damages also should be awarded. The Tribunal has awarded a sum of Rs.10,000/- towards Funeral Expenses. Relying on Rajesh And Others v. Rajbir Singh And Others (2013 (3) CTC 883) decided by the Hon''ble Supreme Court, taking into consideration the cost of living, Rs.25,000/- shall be the reasonable amount to be awarded as compensation for Funeral Expenses. Accordingly, the said amount of Rs.10,000/- awarded by the tribunal is increased to Rs.25,000/- towards Funeral Expenses. The Tribunal has awarded a sum of Rs.20,000/-

towards Loss of Love and Affection. In this case, there is no minor dependant. The dependants are only the mother and the unmarried sister. So far as the mother is concerned, she will be entitled to a larger amount towards Loss of love and affection, especially, when she is a widow, having lost her husband and was found to be solely dependant on the deceased son. A sum of Rs.65,000/- is awarded towards Loss of Love and Affection for the first respondent. So far as the unmarried sister, namely, the third respondent is concerned, this Court deems it appropriate to award a sum of Rs.35,000/- as reasonable compensation for Loss of love and affection. In all, on the head of Loss of love and affection, a total sum of Rs.1,00,000/- shall be awarded.

20. The Tribunal has not awarded any amount towards transportation. It is presumed that some amount would have been incurred towards Transport Expenses for bringing the body to the hospital and the dead body from the hospital to the residence of the deceased. Hence, on the head of Transport Expenses, a sum of Rs.10,000/- can be awarded. Hence, this Court finally comes to the conclusion that the total amount of compensation that can be awarded for the death of the deceased Dhanasekar shall be Rs.6,21,000. The breakup particulars of the amount awarded are furnished below:

Sl.No.	Heading	Amount
1.	Loss of dependency	Rs.4,86,000/-
2.	Funeral Expenses	Rs. 25,000/-
3.	Loss of Love and Affection	Rs.1,00,000/-
4.	Transportation	Rs. 10,000/-
	Total compensation	Rs.6,21,000/-

21. The Tribunal had chosen to apportion the total award amount by awarding major part to the first respondent and dividing the remaining in equal proportion between the second and third respondents. The same also requires to be interfered with. Taking into account the facts of the case, the first respondent shall be entitled to Rs.4,00,000/-, the second respondent shall be entitled to Rs.93,000/- and the third respondent shall be entitled to Rs.1,28,000/- with proportionate interest and costs. In all other aspects, the award of the Tribunal shall be confirmed. The above finding will lead to the further conclusion that the cross-objection filed by the respondents seeking enhancement is bound to fail.

22. In the result;

(i) the appeal is allowed in part by modifying the award of the Tribunal reducing the total amount of compensation to Rs.6,21,000/- from Rs.9,66,000/-.

(ii) The apportionment of Rs.6,21,000/- among the respondents shall be as follows:

First respondent

Rs. 4,00,000/-

Second respondent

Rs. 93,000/-

Third respondent

Rs. 1,28,000/-

(iii) It is represented that the appellant Transport corporation, has deposited 50% of the amount awarded by the Tribunal with proportionate interest. The balance award amount as modified by this Court shall be deposited by the appellant Transport Corporation within a period of four weeks from today.

(iv) The Cross Objection is dismissed.

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

