

(2004) 09 MAD CK 0058

In the Madras High Court

Case No : C.M.A. NPD (B) No. 1140 of 1998

Metropolitan Transport Corporation (Chennai Dn. I) Ltd.

APPELLANT

Vs

Padmini Sivaramakrishnan, N.S. Sriram, Sivakami (since deceased), L.S. Kesavan and N.K. Padmavathy

RESPONDENT

Date of Decision : 16-09-2004

Acts Referred:

Citation : (2005) ACJ 614 : (2004) 4 CTC 663 : (2004) 4 MLJ 486

Hon'ble Judges : N. Kannadasan, J;K. Govindarajan, J

Bench : Division Bench

Advocate : M. Krishnamurthy, for the Appellant; G. Rangaratnam, for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajan, J.—The Transport Corporation filed the above appeal questioning the correctness of the award passed by the Tribunal.

2. In the accident that took place on 25.4.1992 when the deceased tried to cross Dr. Radhakrishnan Road, the bus owned by the appellant-

corporation bearing Regn. No. TML 1920 dashed against the deceased and he died. According to the claimants, only due to the rash and

negligent driving of the bus, the said accident took place. But, according to the appellant-corporation, the deceased carelessly crossed the road

and he dashed on the front side of the bus and so the accident was not due to the negligence on the part of its driver. The Tribunal found that the

accident took place due to the negligent driving of the bus.

3. Learned counsel for the appellant submitted that the Tribunal is not correct in fixing the negligence on the driver of the bus. The Tribunal,

appreciating Ex.P10, the First Information Report and Ex.P11, the Plan, found

that the bus has dashed against the deceased. P.W.5 also deposed about the said accident. P.W.5, the Police Officer, on enquiry from the eye-witness, came to the prima facie conclusion that the accident took place only due to the rash and negligent driving of the bus driver. P.W.2, the eye-witness deposed about the accident. All these oral and documentary evidence had been appreciated by the Tribunal and it came to the correct conclusion that the accident was due to the negligence on the part of the bus driver. So we are not inclined to interfere with the same. 4. With respect to the quantum, the Tribunal has awarded a sum of Rs. 2,64,000/- towards loss of income to the claimants. This amount was fixed on the basis that the deceased was earning Rs. 2,500/- per month, and Rs. 2,000/- was the contribution per month by the deceased to the family. The age of the deceased was fixed at 54 years and on that basis, 11 years multiplier was adopted. The Tribunal awarded Rs. 15,000/- towards pain and suffering to the family members and Rs. 50,000/- was awarded towards loss of parental care to the 2nd respondent. Another sum of Rs. 50,000/- was awarded to the 1st claimant towards loss of consortium and another sum of Rs. 50,000/- was awarded towards traveling expenses to the claimants. Rs. 5,000/- was awarded towards the medical expenses of the deceased and for the mother of the deceased, the 3rd claimant. Rs. 30,000/- was awarded towards mental shock and agony to the claimants.

4. The Tribunal found that the deceased was aged 54 years at the time of death. The Tribunal also fixed multiplier of 11 taking into consideration the longevity of life of the father and mother of the deceased. No challenge is made with respect to the above said aspects. Before the Tribunal, P.W.1, the 1st claimant has deposed that the deceased was earning a sum of Rs. 2,500/- per month and he was contributing a sum of Rs. 2,000/- per month to the family. The Tribunal accepted the evidence of P.W.1 and fixed a sum of Rs. 2,64,000/- as the loss of income to the family, adopting the multiplier of 11. Since the said amount was fixed on the basis of evidence and also in the absence of any contra evidence, we are not inclined to interfere with the same.

5. The Tribunal awarded a sum of Rs.50,000/- towards travelling expenses for the 2nd claimant for coming to Chennai from America. To claim the

said amount, P.W.1, the 1st claimant marked Ex.P6 series, the counterfoils of the flight tickets. P.W.1 has deposed that only because the

deceased sustained injuries, the 2nd claimant had to come to Madras to see his father. There is no contra evidence available to show that the 2nd

claimant had come to India from America on routine visit and not to see his father, who was injured due to the accident. Even if it is so, merely

because the father sustained injuries in the accident, the claim for damages towards cost of the tickets cannot be granted, which is not reasonably

connected with the injuries, and the claim is too remote. But, in this case, after sustaining such injuries, the deceased died. So, as the only son of

the deceased father, the 2nd claimant's presence was necessary to discharge his obligation to the deceased father by doing ceremonies on his

death. Though the intention of the 2nd claimant was to see his father who was injured in the accident, but due to the death of his father, his journey

to India has to be taken for the purpose of discharging his obligation, as the only son of the deceased father. Hence we do not find any reason to

interfere with the quantum of Rs.50,000/- fixed by the Tribunal towards flight charges spent by the 2nd claimant.

6. The Tribunal has awarded a sum of Rs.50,000/- towards loss of parental support to the 2nd claimant. The 2nd claimant was aged about 27

years on the date of the accident and was studying M.S., in the United States of America. Even at the time of preferring this Appeal, the 2nd

claimant was in U.S. , and that is why this appeal had been preferred through the 1st claimant on the basis of the General Power of Attorney

executed by the 2nd defendant. The said claim was made only on the basis as spoken to by P.W.1 that had the deceased been alive, the 2nd

claimant could have continued his studies very comfortably. No evidence is available to show that the 2nd claimant had discontinued his studies in

the United States, due to the death of his father. Moreover, even according to P.W.1, the deceased was earning only a sum of Rs. 2,500/- and

contributing to the family a sum of Rs. 2,000/- only. So, even if the deceased was alive, the 2nd claimant could not have got the support of the

deceased father. Hence the said sum of Rs.50,000/- fixed by the Tribunal towards parental care cannot be sustained and so the award of the

Tribunal on that score is set aside.

7. The Tribunal awarded a sum of Rs. 15,000/- towards pain and suffering of the deceased. Evidence is available to show that the deceased

sustained injuries due to the accident and took treatment from 25.4.1992, the date of the accident, till the deceased died on 18.5.1992. The Apex

Court in the decision in N. Sivammal v. Pandian Roadways Corporation, 1985 ACJ 75, held that claimants are entitled for compensation towards

pain and suffering suffered by the deceased before his death and during treatment taken for the injuries. Hence we are inclined to sustain the claim

for a sum of Rs. 15,000/- awarded by the Tribunal towards pain and suffering suffered by the deceased.

8. The Tribunal fixed a sum of Rs.50,000/- to the claimants towards loss of consortium, to the 1st claimant. Even according to the evidence of

P.W.1, the deceased was aged about 54 years at the time of the accident. Taking into consideration the said age, the amount fixed by the Tribunal

under the said heading is on the higher side. Hence we are inclined to fix a sum of Rs. 15,000/- under the said heading, loss of consortium, instead

of Rs.50,000/-.

9. The Tribunal has fixed a sum of Rs. 30,000/- towards the shock and mental agony caused to the claimants due to the death of the deceased.

The Division Bench of this Court, in the decision in Srinivasa Roadways, Madurai Vs. Saroja and Others, and in Marudhu Pandiyar Transport

Corporation Ltd., through its Managing Director, ""Marudhupathi"", Karaikudi, PMT District vs. Mohanammal & others, 1996 T.L.N.J. 537, held

that the Tribunal is wrong in awarding any compensation for the mental agony of the survivors. Even the Apex Court in the decision in N. Sivammal

v., Pandian Roadways Corporation, 1985 ACJ 75, held as follows:-

4. Thereafter, the High Court proceeded meticulously to examine every item of compensation included in the award. The High Court held that

award of Rs. 5,000/- under the head mental agony suffered by the claimants as a result of the death of the deceased cannot legally be sustained.

This is only the different way of looking at the same thing which is legally permissible. Muthukrishnan lived for 19 days since the accident and he

was throughout under a shadow of death. He had suffered severe injuries. He must have suffered continuous pain and compensation was

admissible for pain and suffering, suffered by the deceased . Therefore, the

amount of Rs. 5,000/- which the High Court held inadmissible, is

legitimately admissible under another head and therefore by changing the head we restore the amount of Rs. 5,000/- awarded by the Tribunal.

10. In spite of the above said decisions, the Tribunal awarded the said amount of Rs. 30,000/-. Hence, the said portion of the award, awarding

Rs. 30,000/- towards shock and mental agony is set aside.

11. The claimants claimed compensation for the treatment of the 3rd claimant, the mother of the deceased on the ground that she suffered heart

attack on hearing the accident and the death of the deceased. They claimed Rs. 5,000/- towards medical expenses. In view of the principles laid

down in the above said decisions in *Srinivasa Roadways, Madurai Vs. Saroja and Others*, and 1985 ACJ 75 (supra), such amount awarded

cannot also be sustained, and hence the said sum of Rs. 5,000/- awarded by the Tribunal is set aside.

12. But the Tribunal has not awarded any amount to the claimants towards loss of love and affection of the deceased, either to the 2nd or 3rd

claimant. So, the same can reasonably be fixed at Rs. 10,000/- to each.

13. In view of the above discussion, the claimants are entitled to a total sum of Rs. 3,64,000/- together with interest as awarded by the Tribunal,

instead of Rs. 4,64,000/- as awarded by the Tribunal. With the above modification, this Appeal is allowed. No costs.