

(2013) 09 MAD CK 0330

In the Madras High Court

Case No : C.M.A. No's. 2762, 3033 of 2010 and M.P. No. 1 of 2010 in C.M.A. No. 3033 of 2010

S. Chandirakala, V.S. Arunkrishnan, K.N. Venkhatram and V. Parvathi (died) **APPELLANT**

Vs

Tamil Nadu State Transport Corporation Limited
The Managing Director, Tamil Nadu State Transport Corporation Limited Vs S. Chandirakala, V.E. Arunakrishnan, K.N. Venkatram and V. Parvathi (died) **RESPONDENT**

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0330

Hon'ble Judges : R. Subbiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : B. Vijayalakshmi in C.M.A. No. 2762 of 2010 and Mr. V. Vijayashankar in C.M.A. No. 3033 of 2010, for the Appellant; V. Vijayashankar in C.M.A. No. 2762 of 2010 and Mr. B. Vijayalakshmi in C.M.A. No. 3033 of 2010, for the Respondent

Final Decision : Partly Allowed

Judgement

R. Banumathi, J.—These two appeals have been filed against the award dated 15.09.2009 made in M.C.O.P. No. 447 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Court Fast Track Court-V), Chennai. Civil Miscellaneous Appeal No. 2762 of 2010 has been filed by the claimants for enhancement of the award amount. Civil Miscellaneous Appeal No. 3033 of 2010 has been filed by the Transport Corporation challenging the award.

2. Since both the appeals arose out of the same award, these appeals are disposed of by way of a common judgment. (For the sake of convenience, the Transport Corporation will be referred to as appellant and the claimants will be referred to as respondents, as per their ranks in C.M.A. No. 3033 of 2010.)

3. The brief facts, which are necessary to decide these appeals, are as follows:-

3(a) The claim was made by the legal heirs of one V. Sridhar, who had died in a motor accident that had occurred on 07.08.2004 involving the bus belonging to the appellant-Corporation bearing Registration No. TN-23-N-1210. According to the respondents/claimants, on 07.08.2004 at 16.15 hours, the deceased V. Sridhar was proceeding in his Hero Honda Motor Bike bearing Registration No. TN-09-Y-9149 from Vellore to Chennai and when he was nearing Madras Bangalore Trunk Road, opposite to Kaveripakkam Bus Stand, the bus bearing Registration No. TN-23-N-1210 belonging to the Appellant Transport Corporation came in a rash and negligent manner and suddenly turned towards its right side and in that process, it dashed against the two-wheeler and thus, caused the accident. In the said accident, the rider of the two-wheeler sustained serious injuries and immediately, he was taken to the hospital, but on the way to the hospital, he succumbed to the injuries. Hence, the legal heirs of the deceased filed claim petition in M.C.O.P. No. 447 of 2005 before the Motor Accidents Claims Tribunal (Additional District and Sessions Court Fast Track Court-V), Chennai, claiming a sum of Rs. 25 lakhs as compensation.

3(b) The case of the claimants was resisted by the Transport Corporation by taking a defence that on the date of accident, the bus belonging to the Appellant-Corporation was proceeding to Gudiyatham from Chennai, at Kaveripakkam Bus Stand, when the bus driver turned the bus towards his right hand side slowly by observing the traffic rules to enter into the bus-stand, the two-wheeler which was coming from Vellore to Chennai at hectic speed dashed against the left front wheel of the bus and thus, the deceased himself got involved in the accident and as such the driver of the corporation bus can not be held responsible for the accident.

3(c) In order to prove the claim, on the said of the claimants, the wife of the deceased examined herself as P.W. 1, besides examining three other witnesses as P.W. 2 to P.W. 4 and marked 12 documents as Ex. P. 1 to Ex. P. 12. On the side of the appellant-corporation, the driver of the bus was examined as R.W. 1 and certified copy of the judgment in C.C. No. 211 of 2004 on the file of the District Munsif-cum-Judicial Magistrate No. 1, Walajah, was marked as Ex. R.1.

3(d) The Tribunal, after analyzing the entire materials available on record, has come to the conclusion that the accident is the result of the rash and negligent driving of the driver of the bus. By coming to such a conclusion, the Tribunal assessed the compensation under various heads and passed an award for a total sum of Rs. 13,60,000/-.

4. It is the submission of the learned counsel for the Appellant-Transport Corporation that the bus was proceeding from East to West and when the bus was nearing Kaveripakkam Bus Stand, the driver of the bus took a turn on his right hand side with an intention to enter into the bus-stand and at that time, the deceased, who was coming in his two-wheeler from West to East at hectic speed, without noticing the bus dashed on the front left wheel of the bus and thus, he himself got involved in the accident. Therefore, the accident occurred only due to

the rash and negligent driving of the deceased and the bus driver cannot be held responsible for the accident. At any event, the Tribunal ought to have fixed contributory negligence on the part of the deceased and ought to have deducted 50% of the compensation amount on the ground of contributory negligence.

5. Further, with regard to the quantum of compensation, the learned counsel for the appellant-Transport Corporation submitted that the Tribunal, while calculating the compensation under the head of loss of income, applied higher multiplier of 16. Considering the age of the victim, the correct multiplier that has to be applied in this case is only 15, as per the dictum laid down by the Hon''ble Supreme Court in the judgment reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

6. Per contra, the learned counsel for the respondents/claimants submitted that the accident had occurred only due to the rash and negligent driving of the driver of the bus, who turned the bus on his right hand side abruptly without noticing the two-wheeler. Therefore, no infirmity could be found in the finding rendered by the tribunal that the accident is the result of the rash and negligent driving of the driver of the bus.

7. With regard to the quantum of compensation, the learned counsel for the respondents/claimants submitted that the deceased was working as a Field Sales Executive and he was earning a monthly income of Rs. 19,189/-. In order to prove the income earned by the deceased, on the side of the respondents/claimants, P.W. 2 & P.W. 3 were examined and three documents viz., Ex. P. 4, Ex. P. 10, Ex. P. 11 were marked. But, without considering these documents, the Tribunal has fixed lesser sum of Rs. 10,000/- as monthly income of the deceased and made the calculation on that basis, which resulted in awarding inadequate compensation. Thus, the learned counsel for the respondents/claimants prays for enhancement of the compensation amount.

8. Heard the learned counsel for the Appellant-Transport Corporation and the learned counsel for the respondents-claimants and perused the materials available on record.

9. It is the case of the respondents/claimants that the accident is the result of the rash and negligent driving of the driver of the bus. Vice versa it is the case of the appellant-Transport Corporation that the deceased is responsible for the accident. Admittedly, the accident had occurred when the bus driver made an attempt to turn the bus to his right hand side with an intention to enter into the bus-stand. According to the respondents/claimants, had the driver of the bus been careful while taking a turn towards his right hand side from the main road to enter into the bus-stand, he could have averted the accident. On the contrary, it is the case of the appellant-Transport Corporation that at the time of accident, the driver of the bus, by observing the traffic rules, turned the bus towards his right hand side at moderate speed with an intention to enter into the bus-stand and at that time, the deceased came in his two-wheeler in a rash and negligent

manner and dashed against the front left wheel of the bus and got himself involved in the accident.

10. Therefore, to have a clarity, We are of the opinion that it would be appropriate to look into the accident sketch marked on the side of the claimants as Ex. P. 1. On a perusal of the accident sketch, We find that when the bus was turning towards its right hand side from the main road with an intention to enter into the bus-stand, the two-wheeler dashed against the left front wheel of the bus. Therefore, it cannot be said that the driver of the bus alone responsible for the accident solely. Hence, We are of the opinion that there is a contributory negligence on the part of the rider of the two-wheeler also. Had the rider of the two-wheeler driven the vehicle at moderate speed, he could have averted the accident. Likewise, had the driver of the bus been more vigilant while taking a turn, he could have also averted the accident. However, considering the factual aspects of the case, We are of the opinion that the negligence on the part of the driver of the bus is greater extent. Therefore, the driver of the bus is responsible for 80% negligence for the accident. Hence, the negligence on the part of the rider of the two-wheeler is fixed at 20%.

11. So far as the quantum of compensation is concerned, it is the submission of the learned counsel for the respondents/claimants that the deceased was earning a sum of Rs. 19,189/- as he was working as a Field Sales Executive. In order to prove the income earned by the deceased, the respondents/claimants have filed Pay-Slip as Ex. P. 4, Statement of Accounts given by UTI Bank as Ex. P. 10 and remittance of salary as Ex. P. 11. On perusal of those documents, We find that the deceased was receiving a sum of Rs. 10,750/- as salary and apart from that, he was also receiving conveyance charges to the tune of Rs. 8,597/-. So far as the conveyance charge is concerned, it is personal benefit given to the deceased and the same cannot be taken into consideration while calculating the loss of income. Therefore, by fixing a sum of Rs. 10,750/- as income of the deceased per month, the calculation could be made to arrive at a just and proper compensation. The deceased was aged about 35 years at the time of accident. But, the Tribunal has failed to consider the future prospects of the deceased. Therefore, 50% of the salary has to be added towards future prospects along with the actual salary amount to arrive at a just and proper compensation, if a sum of Rs. 10,750/- is the income, then 50% of the said amount comes to Rs. 5,375/-. Hence, the actual loss of income of the deceased works out to Rs. 16,125/- per month ($10,750 + 5,375 = 16,125$). Since the claimants are four in number, it would be appropriate to deduct 1/4th towards personal expenses, if 1/4th is deducted, the total sum comes to Rs. 12,100/- ($16,125 \div 4 = 4,031$; $16,125 - 4,031 = 12,094$, rounded off to Rs. 12,100/-). By applying the multiplier of 15, the total loss of income works out to a sum of Rs. 21,78,000/- ($12,100 \times 12 \times 15 = 21,78,000$).

12. The Tribunal has awarded a sum of Rs. 50,000/- only towards loss of consortium to the wife of the deceased. Considering the fact that the 1st respondent/wife of the deceased has lost her husband at the age of 30 years,

she is entitled for a sum of Rs. 1 lakh for loss of consortium. Hence, the compensation of Rs. 50,000/- awarded by the Tribunal under the head of loss of consortium is hereby enhanced to Rs. 1 lakh. Similarly, We find that the compensation of Rs. 19,000/- awarded by the Tribunal to the respondents 2 to 4 under the head of loss of love and affection appears to be very low and hence, the same is hereby enhanced to Rs. 75,000/-. The sum of Rs. 4,600/- awarded by the Tribunal under the head of funeral expenses is hereby enhanced to Rs. 5,000/-.

13. Consequently, the total modified compensation amount works out to Rs. 23,58,000/-. The break up details of the enhanced compensation amount are as follows:-

Loss of income

=

Rs. 21,78,000/-

Loss of consortium

=

Rs. 1,00,000/-

Loss of love and affection

=

Rs. 75,000/-

Funeral expenses

=

Rs. 5,000/-

Total

Rs. 23,58,000/-

Since there is 20% negligence on the part of the deceased, 20% of the compensation amount is liable to be deducted if 20% is deducted from the total compensation amount, the balance amount works out to Rs. 18,86,400/- (23,58,000 $\times$ 4,71,600 = 18,86,400).

14. Therefore, the compensation amount of Rs. 13,60,000/- awarded by the tribunal is hereby enhanced to Rs. 18,86,400/-. In the result, both these appeals are partly allowed. The appellant/Transport Corporation is directed to deposit the entire enhanced compensation amount with 7.5% interest per annum from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/wife is entitled to Rs. 10 lakhs, the 2nd respondent/minor is entitled for a sum of Rs. 8

lakhs with accrued interest. Since it is reported that the 4th respondent/the mother of the deceased died pending appeal, the 3rd respondent/father is entitled for the balance amount of Rs. 86,400/-, with accrued interest. The Tribunal is directed to deposit the share of the minor 2nd respondent in any one of the nationalized banks in a reinvestment scheme, till he attains majority and the 1st respondent here is permitted to withdraw the interest once in three months.

Consequently, connected Miscellaneous Petition is closed.

There is no order as to costs.