

(2015) 04 MAD CK 0005

In the Madras High Court

Case No : Civil Miscellaneous Appeal(MD)No.479 of 2015 and M.P(MD)No.1 of 2015

Tamil Nadu State Express Transport Corporation Limited

APPELLANT

Vs

D. Bhagyalakshmi

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Citation : (2016) 1 TNMAC 421

Hon'ble Judges : Mr. S. Manikumar and Mr. G. Chockalingam, JJ.

Bench : Division Bench

Advocate : Mr. P. Prabhakaran, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Being aggrieved by the judgment and decree, made in MCOP No.800 of 2010, on the file of Motor Accidents Claims Tribunal (District and Sessions Court/Communal Clash Cases Court), Madurai. finding the driver of the appellant bus, bearing registration No.TN-01 N 8168, was negligent, in causing the accident, which resulted in the death of one Duraipandi, and the quantum of compensation of Rs. 12,60,760/-, with interest @ 7.5% per annum, awarded to the wife, minor son and the mother of the deceased, the present Civil Miscellaneous Appeal has been filed.

2. That on 16.10.2009, about 07.15 p.m., when the breadwinner of the family, Duraipandi, was proceeding to his native place Lalapuram from Madurai, in his Motor Cycle bearing Registration No.TN-59 AH 3553, at a normal speed, from north to south, by observing the traffic rules, on the left side of Tirumangalam - Madurai Road, on the Kappalar over-bridge, a bus, bearing Registration No.TN-01 N 8168, belonging to the Tamil Nadu State Express Transport Corporation Limited, driven by its driver in a rash and negligent manner, dashed against the motor cycle and in the result, the motor cyclist, Duraipandi, fell down, sustained grievous injuries and died on the spot.

3. According to the respondents/claimants, the accident occurred solely due to the rash and negligent driving of the driver of the appellant Transport Corporation Bus. At the time of accident, the deceased was aged 38 years. He was working as a Cashier in M/s.Venkatesh Gas Agency, K.K.Nagar, Madurai, and was earning a sum of Rs.10,972/- per month and out of that income, he was maintaining the family. Since they have lost their sole breadwinner, dependents of the deceased, namely the wife, son and the mother of the deceased, claimed a compensation of Rs.20,00,000/-.

4. The appellant defended the claim. In the counter affidavit, they denied the manner of accident, as alleged. According to them, the bus was driven, at a moderate speed, on Tirumangalam-Madurai Road. It was the motor cyclist, who rode the vehicle, in a rash and negligent manner, dashed on the right side bumper of the bus. According to them, it was the deceased, who was negligent in causing the accident and therefore the appellant Corporation is not liable to pay any compensation. They also disputed the age and the occupation of the deceased and further contended that the amount claimed as compensation, under various heads, was on the higher side and for the aforesaid reasons prayed for dismissal of the claim petition.

5. Before the Claims Tribunal, the 1st respondent/wife examined herself as PW1. She is an eye-witness to the occurrence. She has reiterated the manner of accident. According to her, her husband was riding his motor cycle, in front and she followed him in another motor bike, bearing Registration No.TN-59 J 918, as a pillion rider, and the vehicle was driven by her father, and at the time when they were proceeding on Kappalur Over-bridge, a bus belonging to the appellant Corporation, which came in the opposite direction and driven by its driver in a rash and negligent manner, dashed against her husband's motor cycle, in which her husband sustained grievous injuries and died on the spot. She has further stated that immediately her father proceeded to Thirumangalam Police Station and lodged a complaint against the driver of the bus, based on which, a case in Crime No.673/2009, under Section 304(A) of the Indian Penal Code was registered against the driver of the bus. She has marked Ex.P1-FIR, Ex.P2-Postmortem Certificate, Ex.P3-Salary Certificate of the deceased, Ex.P4-Driving Licence of the deceased Duraipandi, Ex.P5-Motor Cycle Inspection Report issued by the Motor Vehicle Inspector, Ex.P6-Inspection Report issued by the Motor Vehicle Inspector in respect of the bus, Ex.P7 Charge Sheet filed in the criminal case, Ex.P8 - Legal Heir Certificate, Ex.P9- Recommendation Letter and Ex.P10-Extracts of Salary Register for the months of September and October, 2009. PW2 is the Manager of M/s. Venkatesh Gas Agency, in which the deceased was working as a Cashier. He has deposed about the employment of the deceased in their Agency and the salary drawn by him and other admissible benefits. On the side of the appellant, the driver of the bus has been examined as R.W.1.

6. On an analysis of oral and documentary evidence, adduced by both the parties, the Claims Tribunal, held that the accident occurred, due to the rash and

negligent driving of the driver of the bus, bearing registration No. TN-01 N 8168.

7. As regards the age of the victim, upon considering Ex.P2-Postmortem Certificate of the deceased, the Claims Tribunal, determined the age of the deceased, at the time of accident, as 38 years. For determining the quantum of compensation, after considering the oral testimony of PW1/Wife, that at the time of accident, the deceased was working as a Cashier in M/s. Venkatesh Gas Agency, Madurai and earned Rs.10,972/- per month and the evidence of P.W.2, Manager of the said Agency, corroborated by Exs.P3, P9 and P-10, the Claims Tribunal fixed the monthly income of the deceased, at Rs.9,489/- and after deducting 3rd amount towards his personal expenses, computed the annual income at Rs. 77,868/-. As the deceased had a permanent job and that he was less than 50 years, the Claims Tribunal added a further sum of Rs.17080/-, towards 30%, future compensation for five years. Having regard to the decision of the Supreme Court in 2009 (2) TNMAC 1 (SC), and the age of the deceased "38" at the time of accident, the Tribunal applied "15" multiplier, for the purpose of computing the loss of contribution to the family. Accordingly, the Tribunal worked out the same to Rs. 11,55,760/- ($\text{Rs.}77868 \times 12 \times 15 = \text{Rs.}11,38,680/- + \text{Rs.}17080/- = \text{Rs.} 11,55,760/-$).

8. In addition to the above, the Claims Tribunal awarded Rs.30,000/- towards loss of consortium, Rs.45,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs. 5,000/- towards transport charges. Altogether, the Tribunal awarded a compensation of Rs.12,60,760/- with interest @ 7.5% per annum and accordingly, apportioned the same to the legal representatives.

9. Though Mr. P.Prabhakaran, learned counsel appearing for the appellant, assailed the finding of the Claims Tribunal, fixing negligence on the driver of the bus, this Court is not inclined to accept the said submission, for the reason that the oral testimony of PW1, is duly corroborated by Ex.P1-FIR. Moreover, in the criminal case filed against the driver of the bus (R.W.1), after investigation, police has filed charge sheet before the Judicial Magistrate, Thirumangalam and that the same has been taken on file in C.C.No.57 of 2010 and this fact has also been admitted by R.W.1 in his evidence. Evidence of the respondents/claimants is duly corroborated by Ex.P1-FIR and on the contra, there is no supporting evidence on the side of the appellant.

10. It is well settled that in motor accident claim cases, the test to find out negligence is only preponderance of probability and strict proof of evidence, as required in criminal proceedings, is not necessary. Testing the finding of the Tribunal, on the principles of preponderance of probability, this Court does not find any infirmity or perversity, warranting reversal of the above said finding. Hence, the finding of the Tribunal, regarding negligence, is confirmed.

11. PW1/wife of the deceased, has deposed that at the time of accident, the deceased was working as a Cashier in M/s. Venkatesh Gas Agency, K.K.Nagar, Madurai, and earned Rs. 10,972/- per month. However, based on the evidence of

P.W.2, who is the manager of the said Agency, corroborated by Exs.P3, P9 and P-10, the Claims Tribunal fixed the monthly income of the deceased at Rs.9,489/- and after deducting 3rd amount towards his personal expenses, computed the annual income at Rs.77,868/-.

12. Determination of age of the deceased as 38 years, at the time of accident, on the basis of Ex.P2-Postmortem Certificate cannot be said to be faulty, in view of the judgments in *Fakeerappa v. Karnataka Cement Pipe Factory*, reported in 2004 (4) LW 20 and *The Managing Director, Tamilnadu State Transport Corporation, Madurai v. Mary* [2005 (5) CTC 515].

13. As the deceased had a permanent job and that he was less than 50 years, the Claims Tribunal added a further sum of Rs. 17080/-, towards 30% future compensation for five years. Having regard to the decision of the Supreme Court in *Smt. Sarla Verma & Ors. v. Delhi Transport Corporation* and another reported in 2009 (2) TNMAC 1 (SC), and the age of the deceased, "38" at the time of accident, the Tribunal applied "15" as multiplier, for the purpose of computing the loss of contribution to the family, the Tribunal worked out the loss of dependency to Rs.11,55,760/- (Rs. 77,868 x 12 x 15 = Rs.11,38,680/- + Rs.17080/- = Rs.11,55,760/-). We do not find any error in computation of loss of dependency. Hence, the award of Rs.11,55,760/- under the head, "loss of contribution" is confirmed.

14. In addition to the above, the Tribunal has awarded Rs. 30,000/- towards loss of consortium. Wife of the deceased was aged 26 years at the time of accident. "Consortium", as per *Best v. Samuel Fox*, reported in (1952) AC 716, means, "Duty owed by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc.,". Therefore, the award made under the head, "loss of consortium", cannot be said to be on the higher side and the same is confirmed. Further, the Tribunal has awarded Rs.45,000/- towards loss of love and affection for the wife, minor son and mother. At the time of accident, minor son of the deceased was aged 9 and he has lost the love and affection of his father, at the tender age. Mother also has lost the love and affection of her son. Compensation awarded under the said head is also not on the higher side. Hence, it is confirmed. Considering the present day cost, the Tribunal has awarded a sum of Rs.25,000/-, under the head of funeral expenses and Rs.5,000/- towards transport charges, which, in the considered opinion of this Court, are just and reasonable and do not warrant any reduction and accordingly they are sustained. Rate of interest at 7.5%, awarded by the Tribunal is confirmed, in view of the judgment in *Tamilnadu State Transport Corporation Ltd. v. Rajapriya* reported in 2005 (3) CTC 373 = 2005 (10) SCC 720.

15. The total compensation of Rs.12,60,760/- awarded to the family, consisting of three dependents, for the death of their sole breadwinner, in our opinion, cannot be said to be excessive or bonanza, warranting interference by this Court.

16. The appellants are directed to deposit the entire award amount, with accrued interest and costs, less the amount already deposited, if any, to the credit of MCOP.No.800 of 2010 on the file of the Motor Accidents Claims Tribunalum District and Sessions Court/Communal Clash Cases Court, Madurai, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, respondents 1 and 3/claimants 1 and 3 are permitted to withdraw their respective shares, with proportionate accrued interest and costs, by making necessary application, before the Tribunal. The Tribunal is directed to deposit the share of respondent No.2/minor claimant, in any one of the Nationalised Banks, proximate to the residence of the 1st respondent/1st claimant, in a Fixed Deposit, till he attains majority. The interest accruing on such deposit, is permitted to be withdrawn, by the 1st respondent/mother and guardian of minor, once in three months, directly from the bank.

17. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Connected, M.P(MD)No.1 of 2015 is also dismissed.