

(2016) 09 MAD CK 0037

In the Madras High Court

Case No : C.M.A. No. 2141 of 2016 and CMP No. 15406 of 2016 (Appeal under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (Principal District Judge), Vellore, in MCOP No. 399 of 2009 dated 25

Tamil Nadu State Express Transport Corporation Ltd.

APPELLANT

Vs

R. Latha

RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2017) AAC 229

Hon'ble Judges : Mr. S. Manikumar and Mr. N. Authinathan, JJ.

Bench : Division Bench

Advocate : Mr. K.J. Sivakumar, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

Mr. S. Manikumar, J.—Facts leading to the appeal are that on 30.05.2009 about 3.30 am, when the husband of the 1st respondent was riding a motorcycle on Vellore to Arni Road, near Madras Matriculation School, Otterri, Vellore Taluk and District, a transport corporation bus bearing Regn.No.TN-01 N 8030, which came in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the motorcycle and the motorcyclist, sustained fatal injuries and died, on the way to the hospital. In this regard, a case in Cr.No.229 of 2009, for offence, under Sections 279 and 304(A) IPC has been registered against the driver of the state transport corporation bus, on the file of Sub Inspector of Police, Bagayam Police Station.

2. Respondents, wife and minor daughter filed MCOP No. 399 of 2009, on the file of the learned MACT [District Judge], Vellore, claiming compensation of Rs. 1,21,25,000/- under various heads, by impleading the Tamilnadu State Express Transport Corporation Limited, and the parents of the deceased as respondents.

3. Before the claims tribunal, the respondents/claimants submitted that the

accident, occurred only due to the rash and negligent driving of the driver of the state transport corporation bus. They further submitted that, at the time of accident, the deceased was aged 46 years, and as Technical Assistant in BHEL, Ranipet, earned Rs. 37,584/-.

4. Transport Corporation has opposed the claim denying negligence. According to them the accident occurred due to the rash and negligent riding of the motorcyclist, who suddenly crossed the road, without noticing the oncoming vehicle, and dashed against the bus in the front right side. Without prejudice to the above, they have disputed the quantum of compensation claimed, under various heads.

5. Before the claims tribunal, wife examined herself, as PW1 and narrated the manner of accident. However, she has not witnessed the same. PW3, is stated to be the eye witness, who has deposed that the accident occurred due to the rash and negligent driving of the bus by its driver. Supporting the oral testimony, Ex.P1, copy of FIR has been marked and upon perusal of the same, the tribunal has recorded that one Mr. V.G. Mani, has lodged a complaint on 30.05.2009 before the Sub Inspector of Police, Bagayam Police Station, against the driver of the bus, bearing Regn.No.TN01N8030.

6. On the side of the transport corporation, witness examined as RW1, has deposed that the bus was driven, by abiding the traffic rules, but the deceased, who was riding the two wheeler, in a zig zag manner, under the influence of alcohol dashed, in front of the bus and thus invited the accident.

7. Evaluating the oral and documentary evidence adduced by both parties, the claims tribunal has come to the conclusion that the cogent evidence of PW1 and the eye witness PW3, regarding the manner of the accident, was duly corroborated by Ex.P1, FIR and in the contra, evidence of RW1, lacked support.

8. On the quantum of compensation, it could be seen from the award that to substantiate the contention that the deceased was employed as a Technical Assistant in BHEL, Ranipet and earned Rs. 37,584/- respondents/claimants have marked Ex.P6, salary certificate issued by BHEL Ex.P7, ID card issued by BHEL, Ex.P9, Salary certificate and Ex.P10, service particulars. Upon perusal of Ex.P9, salary certificate, the tribunal has observed that at the time of accident, the deceased as Technical Assistant in BHEL, Ranipet, and as per the pay slip dated 02.03.2009, his gross salary was Rs. 32,097/- Tribunal has found that a sum of Rs. 10,603/- has been paid as cafeteria allowance and therefore, did not take into consideration the said amount for determining the monthly income of the deceased. The tribunal has taken Rs. 23,945/- as the income for computing loss of contribution to the family.

9. Age of the deceased has been determined on the basis of entry in Ex.P7, ID card issued by BHEL and Ex.P8, driving licence of the deceased. We do not find any error in determining the age of the deceased. Having regard to the age of the deceased-46 years, the tribunal has added 30% of the income under the

head future prospects and after applying "13" multiplier, as per the decision in Smt. Sarla Verma & Ors. v. Delhi Transport Corporation and another, reported in 2009 (2) TN MAC 1 (SC), computed the loss of contribution to the family, as Rs. 32,37,364/- In addition to the above, the tribunal has awarded Rs. 1,00,000/-, towards loss of consortium to the wife, Rs. 50,000/- under the head loss of love and affection to the 2nd respondent/claimant, and a sum of Rs. 12,636/- has been awarded towards funeral expenses. Altogether, the tribunal has awarded Rs. 34,00,000/-, with interest at the rate of 7.5% per annum from the date of claim till deposit.

10. Though, Mr. K.J. Sivakumar, learned counsel for the transport corporation assailed the correctness of the finding fixing negligence on the driver of the state transport corporation and further contended that the evidence of the eye witness ought not to have been taken into consideration, this Court is not inclined to accept the same.

11. It is well settled in motor accident claims cases that finding of negligence is arrived at by the Claims Tribunal, on the principles of preponderance of probabilities. Strict proof of evidence is not required like that of a criminal case. It is also well settled that the adjudication of claims before the Motor Accident Claims Tribunal, is summary in nature. Testing the finding of negligence recorded by the Claims Tribunal, on the above said principles, this Court is of the view that there is no perversity in the finding of negligence, warranting interference and the same is confirmed.

12. Quantum of compensation has been properly arrived at by the tribunal taking into consideration the oral and documentary evidence adduced. There is no error in computation. We do not find that the appellant State Express Transport Corporation has made out a prima facie case to entertain the appeal. Consequently, the Civil Miscellaneous Appeal is dismissed. No costs.

13. Consequent to the dismissal of the appeal, the appellant-State Express Transport Corporation, is directed to deposit the entire award amount with proportionate accrued interests and costs, less the amount already deposited, to the credit of MCOP No. 399 of 2009, on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Vellore, within a period of eight weeks from the date of receipt of a copy of this order. At the time of filing of the claim petition i.e., in the year 2009, the 2nd respondent/daughter of the deceased was a minor aged 16 years and by this time, she would have attained majority. Therefore, on such deposit being made, the respondents/claimants are permitted to withdraw the same, by making necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is also closed.