

(2014) 01 MAD CK 0036

In the Madras High Court

Case No : C.M.A. (MD) No. 2033 of 2013 and M.P. (MD) No. 1 of 2013

Tamil Nadu State Transport Corporation Limited

APPELLANT

Vs

Jayalakshmi

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Citation : (2014) 1 ACC 610

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

N. Kirubakaran, J.—This Civil Miscellaneous Appeal has been filed by the appellant Transport Corporation, aggrieved by the negligence and quantum of Rs. 4,95,000 awarded in M.C.O.P. No. 614 of 2009, dated 25.7.2012, on the file of the Motor Accident Claims Tribunal/II Additional District Court, Tiruchirappalli for the death of respondent's son in the accident occurred on 26.6.2008, when he was riding his motorcycle, which was hit by the bus belonging to the appellant Transport Corporation driven in a rash and negligent manner. For the death of her son, the respondent filed a claim petition to the tune of Rs. 5 lakh, which was contested by the appellant Transport Corporation.

2. The Tribunal, after inquiry, held that the accident occurred because of the rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation and awarded a sum of Rs. 4,95,000. The said award is being challenged before this Court.

3. Heard Mr. P. Prabhakaran, learned Counsel for the appellant and Mr. N. Sudhakar Nagaraj, learned Counsel for the respondent and perused the materials available on record.

4. Mr. P. Prabhakaran, learned Counsel for the appellant relied upon the evidence of Mr. Kesavan, P.W. 2, wherein he deposed that the accident occurred in the middle of the road and, therefore, no negligence can be fixed against the

Transport Corporation bus.

5. However, the sketch drawn by the Police Authorities viz., Ex. P.5 would clearly show that the bus was proceeding from South to North towards Madras and the motorcycle was coming in the opposite direction from North to South towards Trichy. The road measures roughly at about 224 feet and the middle of the road is about 112 feet, whereas, the sketch shows that the bus went into the right side and dashed against the motorcycle at 80 feet away from the centre of the road into the right side, where the motorcycle was coming extremely to its left side. Therefore, it is clear that the negligence was on the part of the Transport Corporation bus. When Ex. P.5 speaks about the nature of the accident, reliance on the evidence of P.W. 2 is not sustainable. Therefore, the finding of the Tribunal that the accident occurred because of the negligence of the bus driver is confirmed.

6. Moreover, for coming to the conclusion, the Tribunal relied upon Ex. P.1-F.I.R., which has been filed against the driver of the bus. Moreover, the Tribunal found that the criminal Court judgment, in which the driver of the bus was prosecuted, was not filed before the Court. Taking into all these factors only, the Tribunal rightly came to the conclusion that the accident occurred because of the negligence of the driver of the bus belonging to the appellant Transport Corporation.

7. Mr. P. Prabhakaran, learned Counsel for the appellant Transport Corporation rightly contended that the Tribunal wrongly applied the multiplier of "17" based on the age of the deceased viz., "31". Though a recent judgment of the Hon"ble Supreme Court is in favour of the claimant with regard to the adoption of multiplier, the Hon"ble Supreme Court consistently in a number of judgments held that the age of the dependent alone should be the criteria for determination of multiplier and, therefore, the adoption of multiplier "17" by the Tribunal is set aside and for the age of the mother/respondent i.e. 67 years, the appropriate multiplier "7" is adopted.

8. To prove that the deceased was working as a driver in the SST Transport Company, the claimant/respondent examined the owner of the said Company viz., Mr. Selvaraj as P.W. 3, who deposed that he employed the deceased Sureshababu @ Suresh Kumar as a driver from the year 2005 onwards and he was paid a salary of Rs. 9,000 p.m., which was also evidenced by Ex. P.6. When that is the position, the Tribunal should have determined the monthly income at Rs. 9,000. Therefore, the determination of Rs. 3,500 p.m. by the Tribunal is set aside and this Court determines the monthly income at Rs. 9,000 p.m.

9. Admittedly, the deceased was a bachelor and, therefore, 50% of monthly income has to be deducted towards personal expenses, whereas, the Tribunal deducted only 1/3rd. Therefore, out of Rs. 9,000, a sum of Rs. 4,500 (50%) is deducted towards personal expenses. Therefore, the loss of income is determined as follows:

Rs. 9,000 x 12 x 7 = Rs. 3,78,000

10. The respondent/claimant lost her unmarried son. Being an aged lady, she would have expected her son to look after her at the fag-end of her life. For the loss of love and affection, only a sum of Rs. 15,000 was awarded. Therefore, the same is hereby enhanced to a sum of Rs. 50,000. A sum of 2,000 was awarded towards funeral expenses and a sum of Rs. 2,000 was awarded for all other expenses. They are very meagre and, therefore, they are enhanced to a sum of Rs. 10,000 for funeral expenses and Rs. 10,000 for other expenses. The interest granted by the Tribunal at the rate of 7.5% remains unaltered. Accordingly, the award of Rs. 4,95,000 is hereby reduced to a sum of Rs. 4,48,000 and it is rounded off to a sum of Rs. 4,50,000, in the following manner:

11. Accordingly, this Civil Miscellaneous Petition is partly allowed. Consequently, the connected Miscellaneous Petition is closed. No costs. The appellant is directed to deposit the entire award amount within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to pay the entire amount to the respondent/claimant within a period of one week thereafter.