

(2010) 11 MAD CK 0023

In the Madras High Court

Case No : Civil Miscellaneous Appeal (MD) No. 1165 of 2007 and C.M.P. (MD) No. 1 of 2007

Tamilnadu State Transport Corporation

APPELLANT

Vs

M. Sekar and Others

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Citation : (2010) 11 MAD CK 0023

Hon'ble Judges : S. Nagamuthu, J;R. Banumathi, J

Bench : Division Bench

Advocate : M. Prakash, in C.M.A. MD Nos. 1165 and 1166 of 2007, for the Appellant; S. Palanivel in C.M.A. (MD) Nos. 1165 and 1166 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Being aggrieved by fastening of liability and quantum of compensation awarded for the death of the deceased

Palaniammal and injuries sustained by the first claimant Sekar, the Transport Corporation has filed these two Appeals.

2. The brief facts of the case are as follows:

(i) On 26.1.2003 at about 10.15 a.m., the first claimant was driving his Kinetic Honda Two Wheeler bearing Regn. No. TNJ 5087 along with his

wife Palaniammal as the pillion rider on the Madurai to Ramnad, East - West main road near S.P.M. Bricks Chamber, Puliyangulam, Madurai

South Taluk. While he was proceeding so from the East to West, a Transport Bus bearing Regn. No. TN-59-J-5087 was driven in a rash and

negligent manner from East to West and hit against the moving Kinetic Honda and caused instantaneous death of the pillion rider and the first

claimant had also sustained injuries. On his complaint, a criminal case was registered against the bus driver in Crime No. 20/2003 in Silaiman

Police Station. The deceased Palaniammal was aged 43 years and she was a Post-Graduate Teacher having M. Sc. (Chemistry), M. Phil and M.

Ed and she was earning Rs. 18,000/- per month. Alleging that the accident was due to rash and negligent driving of the bus driver, the claimants

who are husband, daughters and parents of the deceased Palaniammal have filed a claim petition in M.C.O.P. No. 995 of 2004 claiming

compensation of Rs. 42,80,500/- but restricted the claim to a sum of Rs. 36,00,000/-. In the same accident, the first claimant has sustained injuries

i.e. fracture on the right shoulder, right frontal and cut injury over right thigh. For the injuries sustained by the first claimant, he filed claim petition

M.C.O.P. No. 996 of 2004 claiming compensation for Rs. 6,87,500/- but restricted his claim to Rs. 5,00,000/-.

(ii) Before the Tribunal, the first claimant examined himself as PW.1 and Doctor Muthusamy, who treated him was examined as PW.3 and one

Selvamani, who was the eye-witness, was examined as PW. 4. Exs. P1 to P.22 were marked. The driver of the transport bus was examined as

RW. 1. Upon consideration of the oral and documentary evidence, the Tribunal held that the first claimant was riding his Two Wheeler keeping left

and only the bus was driven in a rash and negligent manner without sounding horn. Pointing out that the road is 28 feet breadth and that the scene

of accident was on the left extremity, the Tribunal held that RW. 1 was responsible for the accident and held that the Appellant Corporation is

liable to pay compensation to the claimants.

(iii) Based on Ex.P. 6 Salary Certificate, the Tribunal has taken the monthly income of the deceased at Rs. 17,123/- and adopted multiplier 15 and

after deducting 1/3rd for personal expenses, the Tribunal has calculated loss of dependency at Rs. 20,44,760/-. Adding conventional damages, the

Tribunal has awarded total compensation of Rs. 21,04,760/-. Insofar as the injuries sustained by the claimant in M.C.O.P. No. 996 of 2004, the

Tribunal has awarded compensation of Rs. 77,500/-.

3. The learned Counsel for the Appellant Corporation contended that the Tribunal erred in holding that the accident occurred due to rash and

negligent driving of the Appellant Corporation was driven. Drawing our attention

to the evidence of PW.1 and RW. 1, the learned Counsel would further contend that the Tribunal failed to take note of the evidence of the Respondents/pw. 1 who has stated that the accident took place because of the loss of balance by the Respondent and while so, the Tribunal erred in holding that the accident was due to rash and negligent driving of the bus by the driver. It was further contended that the tribunal failed to analyze the evidence of pw. 1 in proper perspective. Insofar as the quantum of compensation is concerned, the learned Counsel would submit that the quantum of compensation already awarded by the Tribunal is very much on the higher side.

4. Drawing our attention to the evidence of pw. 1 and pw. 4, the learned Counsel for the claimants/Respondents submitted that the consistent evidence of pw. 1 and pw. 4 would clearly show that the bus driver was responsible for the accident and the finding of the Tribunal is well considered based upon the evidence and the same cannot be interfered. Drawing our attention to Ex.P. 6 Salary Certificate and other documents, the learned Counsel would contend that the deceased Palaniammal was a Post-Graduate Assistant and that she was getting salary around Rs. 18,000/- and future prospects by way of revision of salary was not, in fact, taken into account by the Tribunal and that the quantum of compensation awarded is very much reasonable.

5. The main defense plea of the Appellant Corporation is denial of the manner of the accident and its liability of paying the compensation. Drawing our attention to the evidence of pw. 1 (as recorded in paragraph 10 of the judgment), it was contended that while he was proceeding in the main road on the southern side by the Two Wheeler bearing Regn. No. TNJ 5087, pw. 1 lost his balance and in that process, the Two Wheeler hit against the bus and Palaniammal had fallen down and sustain fatal injuries. Laying emphasis upon the answers elicited from pw. 1, the learned Counsel would submit that pw. 1 himself has admitted that the accident had taken place in the main road and therefore, the bus driver cannot be held responsible.

6. The learned Counsel has placed reliance on the evidence of RW. 1. In his defense, RW. 1, bus driver has stated that while he was proceeding from Mudugalathur to Madurai, while he was nearing Silaiman, he was carefully

driving the bus and the Two Wheeler rider swerved to the left side of the main road, and as such, the rider of two wheeler lost his balance and due to which pillion rider had fallen down and sustained injuries and he was not responsible for the accident.

7. The learned Counsel for the Appellant Corporation placed much reliance upon Ex.P. 3 rough plan and submitted that in Ex.P.3, the scene of accident is shown only as the main road which makes it clear that at the time of the accident, the Two Wheeler was only proceeding in the main road and lost the balance resulting in the accident. Though the scene of accident is shown in the main road, in our considered view, Ex.P. 3 could not have reflected the position of the vehicles at the time of the accident. Ex.P. 3 was prepared mentioning the position of the vehicles after the impact. The position of the vehicles in Ex.P. 3 cannot be taken as the conclusive evidence to hold that the bus driver was not responsible for the accident.

8. As pointed out earlier, in his evidence, pw. 1 has clearly stated that on 26.1.2003 after the Republic Day function in the School, he was taking his wife in the Two Wheeler and when he was proceeding from the East to the West keeping left i.e. on the southern side, the Corporation bus came in a rash and negligent manner from behind and dashed the Two Wheeler due to which his wife -pillion rider had fallen down and the front left tire of the bus run over her head and his wife sustained crush injuries on the head and died on the spot.

9. The evidence of pw. 1 was amply strengthened by the evidence of pw. 4. In his evidence, pw. 4 has stated that on the date of the accident i.e. on 26.1.2003, after the Republic Day function, while he was proceeding in Ramnad -Madurai road, pw. 1 Sekar was proceeding in front side and that he was following them in his two wheeler had a distance of about 100 feet and at that time, the bus bearing Regn. No. TN-63-N-0738 was driven in a rash and negligent manner and dashed against the Two Wheeler of pw. 1 Sekar and stopped after dragging for about 100 feet. pw. 4 has also stated that because of hit by the bus, the pillion rider, Palaniammal had fallen down and sustained crush injury and the front tire of the bus ran over and Palaniammal sustained crush injury. Based upon the consistent evidence of pw. 1 and pw. 4, the Tribunal rightly held that the accident

was due to rash and negligent driving of the bus by the driver. No weight could be attached to the interested version of RW. 1. The contention of the Appellant Corporation that the accident took place because of the loss of balance by the first claimant does not merit acceptance. We do not find any reason to interfere with the finding of the Tribunal holding the bus driver responsible for the accident and that the Appellant Corporation is liable to pay compensation.

10. Insofar as the quantum of compensation awarded in M.C.O.P. No. 995 of 2004 (C.M.A. No. 1165 of 2007) the deceased Palaniammal was

working as the Selection Grade P.G. Assistant. As seen from Exs.P8, P9 and P10, Palaniammal had studied M. Sc., M. Phil and M. Ed. Ex.P.11

is the order giving her Selection Grade. In the Selection Grade, Palaniammal was getting the salary of Rs. 17,123/-. From Ex.P.7, School

Certificate, it is seen that the date of birth of the deceased Palaniammal is 2.8.1959 and on the date of the accident she was running 44 years. The

Tribunal has taken the age as 44 and as per the Schedule II. Taking the income of the deceased at Rs. 17,123/- per month, the Tribunal has

calculated the annual income at Rs. 2,05,476/- and adopted the multiplier 15 and thus, the Tribunal has calculated total income at Rs. 30,72,140/-.

After deducting 1/3rd for personal expenses, the total loss of dependency was calculated at Rs. 20,44,760/-. Adding the conventional damages,

the Tribunal has awarded total compensation of Rs. 21,04,760/-, which in our considered view is very reasonable warranting no interference.

11. The learned Counsel appearing for the Appellant Corporation has submitted that the income tax payable by Palaniammal was not deducted by

the Tribunal and therefore, prayed for an appropriate deduction.

12. As per the decision of the Hon"ble Supreme Court in Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. 2009(2) TN MAC

1, in respect of a Government servant, for future prospects necessary increase has to be made. In fact, the Tribunal has not taken into account the

future prospects. Had the future prospects been taken into account, the compensation awarded would be still higher. In such view of the matter,

the contention of the learned Counsel appearing for the Appellant Corporation prayed for deduction towards income tax payable is unacceptable.

13. Insofar as M.C.O.P. No. 996 of 2004(C.M.A. No. 1166 of 2007), insofar as the

injury sustained by the first claimant in the accident, he sustained multiple fracture on the right shoulder and cut injury. After the accident, pw. 1 was admitted in the Government Hospital and thereafter, he was taking treatment in Madurai Meenakshi Hospital. pw. 3 Doctor Muthusamy has examined pw. 1 clinically and also with reference to the documents, assessed the disability at 45%. Having regard to the injuries sustained by the claimant, the Tribunal has awarded Rs. 20,000/- for medical expenses, Rs. 7,500/- for extra nourishment and for the pain and suffering Rs. 10,000/-. The compensation for permanent disability was awarded Rs. 20,000/-. The Tribunal has awarded that Rs. 20,000/- towards disability on the ground that the claimant has lost amenities.

However, such approach of the Tribunal in awarding compensation for the death of wife and resultant loss of amenities cannot be sustained.

Having regard to the nature of the injuries, the amount of Rs. 20,000/- is modified as Rs. 10,000/- for transportation and the further sum of Rs.

10,000/- for pain and suffering. The total compensation of Rs. 77,500/- awarded to the first claimant for the injuries sustained by him is quite

reasonable warranting no interference. The Tribunal has awarded interest at the rate of 7.5% and the same is maintained. The quantum of

compensation awarded in M.C.O.P. No. 996 of 2004 (C.M.A. No. 1166 of 2007) is confirmed and the interest is also confirmed.

14. The quantum of Compensation and the rate of interest awarded by the Tribunal in M.C.O.P. No. 995 of 2004 and 996 of 2004 are confirmed

and both the Civil Miscellaneous Appeal (MD)Nos.1165 and 1166 of 2007 are dismissed. No order as to costs. Connected Miscellaneous

Petitions are closed.