

(2013) 09 MAD CK 0360

In the Madras High Court

Case No : C.M.A. No. 978 of 2012 and M.P. No. 1 of 2012

The Managing Director

APPELLANT

Vs

S. Nagalakshmi, S. Sasikala and S. Manikandon

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0360

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

Bench : Division Bench

Advocate : B. Vijayalakshmi, for the Appellant; Ma. P. Thangavel, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—Questioning the quantum of compensation awarded by the Motor Accident Claims Tribunal (Additional District Judge and Fast Track Court No. 1), Erode, by order dated 31.12.2009 made in M.C.O.P. No. 32 of 2007, the present appeal has been filed by the Transport Corporation. Respondents 1 to 3 herein are the claimants before the Tribunal. The first respondent is the wife of the deceased N. Srinivasan, second respondent is the daughter and the third respondent is the minor son respectively.

2. It is the case of the claimants before the Tribunal that on 10.1.2006 at about 11.50 a.m., while the deceased N. Srinivasan was riding TVS Suzuki bearing registration No. TN-38-U-9498 at Coimbatore to Trichy Main Road, the Bus bearing Registration No. TN-33-N-1617 belonging to the appellant Transport Corporation came from the opposite direction in a rash and negligent manner and dashed against the two wheeler, due to which, the deceased sustained multiple grievous injuries and died on the spot itself. Hence, the claimants made a claim before the Tribunal as against the Transport Corporation, claiming a sum of Rs. 20,00,000/- as compensation.

3. Resisting the claim petition, the Transport Corporation has filed a counter

affidavit stating that at the time of accident, the bus was driven by the driver at a moderate speed and it was the deceased, who came in a two wheeler from the opposite direction in a rash and negligent manner and dashed on the right side of the bus and fell down on the road and sustained grievous injuries and died. Therefore, the bus driver cannot be held responsible for the accident. The Transport Corporation had also denied their liability to pay the compensation.

4. In order to prove the claim, on the side of the claimants, the first claimant, viz., the wife of the deceased examined herself as P.W. 1, one K. Ramalingam, who was working as Assistant Executive Officer in Tamil Nadu Electricity Board, Coimbatore was examined as P.W. 2 and one Nanjappan was examined as P.W. 3 and marked 8 documents as Exs. P. 1 to P. 8. On the side of the respondents, the driver of the bus viz., R. Palanichamy was examined as R.W. 1 and 3 documents were marked as Exs. R. 1 to R. 3.

5. The Tribunal after analysing the entire evidence, both oral and documentary, has come to the conclusion that the accident is the result of rash and negligent driving of the driver of the bus. By coming to such a conclusion, the Tribunal has awarded a sum of Rs. 16,51,000/- with interest at the rate of 7.5% per annum as compensation as against the claim of Rs. 20,00,000/-. Aggrieved over the said quantum of compensation, the Transport Corporation has preferred the present appeal.

6. Since the appeal has been filed only questioning the quantum of compensation, we are not dealing with the other aspects of the award.

7. It is the main contention of the learned counsel appearing for the Transport Corporation that the Tribunal while calculating the loss of income of the deceased N. Srinivasan, applied the multiplier of 14, which resulted in awarding an exorbitant sum of Rs. 15,96,000/- under the head of loss of income. Therefore, by adopting a lesser multiplier, the amount awarded by the Tribunal has to be modified.

8. Per contra, learned counsel appearing for the claimants/respondents made his submissions supporting the award passed by the Tribunal.

9. Keeping the submissions made by the learned counsel on either side, we have carefully gone through the entire materials available on record.

10. We find that at the time of accident, the deceased N. Srinivasan was working as Foreman Grade-I in Tamil Nadu Electricity Board, Coimbatore. In order to prove the income earned by the deceased, on the side of the claimants/respondents, the Assistant Executive Officer, Tamil Nadu Electricity Board, Coimbatore was examined as P.W. 2. He had stated in his evidence that at the time of accident, the deceased N. Srinivasan was earning a sum of Rs. 12,231/- as monthly income. Further, he had stated in his evidence that had the deceased been alive, he would have been promoted as Junior Engineer Grade II and the salary for Junior Engineer Grade II was Rs. 25,000/- per month. The salary

certificate of the deceased N. Srinivasan was also marked through P.W. 2. The Tribunal, by considering the evidence of P.W. 2, has fixed the monthly income of the deceased as Rs. 9,531/- after making the statutory deductions. At the time of accident, the deceased was aged about 44 years. The multiplier that has to be applied for the age of 44 is 15 as per II Schedule of Motor Vehicles Act. But, the Tribunal, had applied only the multiplier of 14 stating that had the deceased been alive, he would have attained the age of superannuation on 30.4.2010. Thus, the Tribunal had calculated loss of income only for the period of 14 years and arrived at a sum of Rs. 15,96,000/- as loss of income, after deducting 1/3rd amount towards his personal expenses. Absolutely, there is no infirmity in the calculation made by the Tribunal to arrive at a sum of Rs. 15,96,000/- under the head of loss of income. That apart, the Tribunal had awarded a sum of Rs. 30,000/- towards loss of consortium and Rs. 20,000/- towards loss of love and affection and a sum of Rs. 5,000/- towards funeral expenses. Thus, the Tribunal has awarded a total sum of Rs. 16,51,000/- as compensation. Considering the facts and circumstances of the case, the amount awarded by the Tribunal cannot be said to be excessive and there is no need to interfere with the award passed by the Tribunal.

11. In the result, the compensation awarded by the Motor Accident Claims Tribunal (Additional District Judge and Fast Track Court No. 1), Erode, 31.12.2009 made in M.C.O.P. No. 32 of 2007 is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. It is submitted by the learned counsel appearing for the appellant/Transport Corporation that pursuant to the order passed by this Court, the Transport Corporation has deposited the entire compensation amount with proportionate interest and respondents 1 and 2 have also been permitted to withdraw 50% of the compensation amount. In view of the said submission, respondents 1 and 2 are permitted to withdraw their balance amount with proportionate interest after deducting the amount, that has already been withdrawn by them. So far as the share of minor third respondent is concerned, as per the earlier order of this Court dated 29.3.2012 made in M.P. No. 1 of 2012, the first respondent shall continue to withdraw the interest once in three months, till he attains majority.