

(2010) 03 MAD CK 0153

In the Madras High Court

Case No : C.M.A. No. 752 of 2005 and C.M.P. No. 4189 of 2005

The Managing Director Metropolitan Transport Corporation
Ltd.

APPELLANT

Vs

Dhatchayani and Others

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 279, 304(A)

Citation : (2010) 03 MAD CK 0153

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : P. Jagadeeswaran, for the Appellant; G. Karthikeyan, for RR1 and 5,
for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/respondent against the Award and Decree, dated 01.07.2004, made in M.C.O.P. No. 249 of 2003, on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruvallur, awarding a compensation of Rs. 2,75,500/- together with interest at the rate of 9% per annum from the date of filing the petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/respondent has filed the above appeal praying to set aside the award and decree passed by the Tribunal.

3. The short facts of the case are as follows:

The (deceased) Chandrasekar was aged about 45 years and was employed as a Watchman at Arkmind Holding Private Ltd., Ambattur, Chennai-58 and earning a sum of Rs. 3,000/- per month at the time of accident. On 07.01.2003, at about 7.40 a.m. when the deceased Chandrasekar tried to board in the respondent's

bus bearing registration No.TN02 N0182, when it was stopped at Wavin Junction at Ambattur Estate. The bus had stopped at the bus stop and some passengers alighted and the deceased Chandrasekar tried to board the bus. The driver of the bus, without noticing the deceased Chandrasekar, trying to board the bus, started the bus and moved it forward. Resultantly, the deceased fell down from the foot board, sustained injuries and died. The accident was caused only by the rash and negligent driving by the driver of the respondent's bus. Hence, the first petitioner, the wife of the deceased; the second petitioner, the son of the deceased and the fourth and fifth petitioners, the father and mother of the deceased have filed the claim seeking a compensation of Rs. 3,00,000/- from the respondent, the owner of the bus, together with interest and costs u/s 166 of the Motor Vehicles Act.

4. Regarding the said accident, a criminal case has been filed in Crime No.6/2003, at the Ambattur Industrial Police Station, as against the driver of the said bus, under Sections 279 and 304A of I.P.C.

5. The respondent, in his counter, has resisted the claim denying the averments in the claim regarding the manner of accident. It has been stated that on 07.01.2003, the MTC bus bearing registration No.TN02 N0182 was on its trip from Koyambedu to Kilcondiar. At about 7.40 hours, when the bus was taking a right turn from south avenue road to the second main road, at the junction of Wavin, the deceased suddenly emerged there and tried to board, taking advantage of the slowing down of speed of the bus at the turning point, lost his grip, fell down and sustained injuries. He was brought to the private hospital at Ambattur for treatment and later on succumbed to the injuries. As such, the respondent has stated that the accident happened only due to the negligent and reckless act of the deceased alone, who tried to board into a moving bus. The respondent has also denied the averments in the claim that there was a bus stop at the place of accident. Hence, it has been stated that the driver of the respondent Corporation was not at all responsible for the accident and hence not liable to pay any compensation.

6. The respondent has also denied the averments in the claim regarding the age, income and occupation of the deceased and has stated that all these should be proved through documentary evidence. It has also been submitted that the petitioners should prove that they are the legal heirs of the deceased through documentary evidence. It has also been submitted that the claim is excessive and has to be dismissed with costs.

7.The Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) Was the accident caused due to the rash and negligent driving by the driver of the first respondent's bus?

(ii) Are the petitioners entitled to get compensation? If so, what is the quantum of compensation, which they are entitled to get?

8. On the petitioners' side two witnesses were examined as PW1 and PW2 and two documents were marked as Exs.P1 and P2. On the respondent's side one witness was examined as RW1 and no documents were marked.

9. The first petitioner, Dhatchayani was examined as PW1. The PW1, in her evidence adduced that she had gone to the Government General Hospital, Chennai on hearing that her husband had been admitted there after the accident and that when she had gone there, her husband had already succumbed to the injuries sustained in the accident. One Nandagopal, who had witnessed the accident, was examined as PW2. The PW2, in his evidence had deposed that the accident had occurred at the Wavin bus stop because the driver of the bus had moved the bus forward rashly and negligently without seeing the deceased Chandrasekar trying to board the bus. He had deposed that the accident had occurred only due to the fault of the driver. He had stated that subsequent to the occurrence of the accident, the driver, the conductor of the bus and himself had admitted the injured person at KMC Medical Hospital and subsequently admitted him at Government General Hospital, Chennai and that the injured person had succumbed to his injuries at the hospital.

10. The driver of the bus was examined as RW1. The RW1 in his evidence has stated that he had moved the bus forward at Wavin bus stop only after all the persons had boarded the bus and that while taking a turn at the right side, the passengers in the bus had shouted at the driver to stop the bus as a person had fallen down from the bus and that he had fallen down as he had not had a firm foot hold on the rear steps of the bus and had lost his hand grip on the rail of the bus. He had further deposed that the accident place was not the bus stop as alleged in the claim. On scrutiny of the Ex.P1, the FIR, it is seen that the complaint had been given by the driver of the said bus, wherein it had been stated that the accident had occurred at a place, which was not a bus stop and that the accident had happened because the person, who tried to board the bus had lost his hand grip on the rail of the bus. But, on scrutiny of the evidence of PW2, it is seen that the bus was moved forward at the Wavin bus stop without ensuring that the (deceased) Chandrasekar had safely boarded the bus. The Tribunal on considering that the PW2 was not a relative of the deceased and therefore was not an interested witness were of the opinion that there had been no need for him to give evidence supportive to the case of the petitioners. As such the Tribunal, on considering the evidence of the PW2 held that the accident occurred only due to the negligence of the driver of the bus and accordingly held the respondent, being the owner of the bus, liable to pay compensation to the petitioner.

11. The PW1, in her evidence had stated that her husband was aged about 45 years at the time of accident and that he was working at the Industrial Estate as a Watchman and earning a sum of Rs. 3,000/- per month; that after the said accident, she has been put into lot of hardship due to the loss of income of her deceased husband. On scrutiny of the Ex.P2, the Post-mortem Report, it is seen

that the deceased Chandrasekar was aged about 45 years at the time of accident. Further, after an examination of the evidence of the PW1, it is seen that the first petitioner is the wife of the deceased, the second and third petitioners are the minor daughters and son of the deceased and that the fourth and fifth petitioners are the parents of the deceased. The Tribunal was of the opinion that all the petitioners were dependants on the income of the deceased Chandrasekar. Though, it has been stated that the deceased Chandrasekar was earning a sum of Rs. 3,000/- per month, no documentary proof had been let in by the petitioners' side to establish this claim. Hence, the Tribunal took the notional income of the deceased as Rs. 1,800/- per month. Deducting 1/3rd share of this for his personal expenses, the Tribunal assessed the loss of income of the petitioners as Rs. 1,200/- per month and computed their annual loss as Rs. 14,400/-. The Tribunal, on considering that the deceased was aged about 45 years at the time of accident, adopted a multiplier of 15 to assess the loss of income to the petitioners. Accordingly, they computed the loss of income sustained by the petitioners as Rs. 2,16,000/- and awarded this amount as compensation to the petitioners under the head of loss of income. The Tribunal further awarded a sum of Rs. 4,000/- as compensation under the head of funeral expenses; Rs. 15,000/- to the first petitioner under the head of loss of consortium; Rs. 15,000/- to the petitioners under the head of loss of love and affection and Rs. 10,000/- to the petitioners under the head of pain and suffering and mental agony and Rs. 15,000/- under the head of loss of happiness. In total, the Tribunal awarded a sum of Rs. 2,75,000/- as compensation to the petitioners and directed the respondent to deposit the above said award together with interest at the rate of 9% per annum from the date of filing the petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 249 of 2003, on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruvallur, together with costs, within a period of one month from the date of its Order. The Tribunal further apportioned Rs. 1,65,000/- from and out of the award amount to the first petitioner and apportioned a sum of Rs. 27,500/- each to the second, third, fourth and fifth petitioners. Further, after such deposit was made by the respondent into the Court, the apportioned share of the first, fourth and fifth respondents was to be deposited in a nationalised bank, as fixed deposit, for a period of three years and the apportioned share of the second and third minor petitioners was to be deposited in a nationalised bank as fixed deposit until such time they attain the age of a major. The excess Court fee paid by the petitioner was to be refunded to her. The Advocate fees was fixed at Rs. 8,500/-. The respondent was directed to pay the cost of Rs. 10,631.50 to the petitioners.

12. Learned Counsel appearing for the appellant has contended in his appeal that the Tribunal had erred in holding that the driver of the appellant's bus was rash and negligent and was responsible for the accident. It has also been contended that the Tribunal erred in holding that the driver of the appellant's bus was rash and negligent and was responsible for the accident. It has also been contended that the Tribunal erred in presuming the age of the deceased as 45 years and his

income as Rs. 1,800/- per month without any proof. It has also been contended that the award of Rs. 2,16,000/- granted by the Tribunal towards loss of income to the claimants; Rs. 15,000/- granted towards consortium to the first respondent; Rs. 15,000/- granted towards love and affection to the claimants and Rs. 10,000/- granted towards shock and mental agony caused to the claimants; Rs. 15,000/- granted towards loss of happiness to the claimants and Rs. 4,000/- granted towards funeral expenses to the claimants, are excessive. It has been contended that the Tribunal ought to have held that the deceased had contributed to the accident by his negligence and reduced the compensation proportionately to that extent. As such, it has been contended that the award of Rs. 2,75,500/- granted by the Tribunal as compensation to the claimants is highly excessive and arbitrary.

13. Learned Counsel appearing for the respondents argued that considering the age of the deceased and income of the deceased and dependency of the claimants, the award and decree passed by the Tribunal is fair and equitable and that there is no error in the said award. The Tribunal only after well considering the oral evidence of the claimants and documentary evidence available had granted the said award. As such, the appeal is not maintainable.

14. Considering the facts and circumstances of the case and after scrutiny of the findings of the Tribunal order and after hearing the arguments advanced by the learned Counsel appearing on either side, this Court is of the view that the quantum of compensation granted by the Tribunal is not excessive. But, there is some minor discrepancy in the heads, under which the award has been granted. Hence, the Court rectifies the error as follows:

1. The Tribunal had awarded a sum of Rs. 10,000/- towards shock and mental agony and Rs. 15,000/- towards loss of happiness. The grants of the above said award under these heads are not pertinent.

2. The Tribunal awarded a sum of Rs. 15,000/- under the head of love and affection to the claimants 2 to 5. This is on the lower side. So, this Court enhances the compensation granted under this head from 15,000/- to Rs. 40,000/-.

As such, this Court confirms the award and decree passed by the Motor Accident Claims Tribunal, Sub Court, Thiruvallur, in M.C.O.P. No. 249 of 2003, dated 01.07.2004.

15. On 22.03.2005, this Court imposed a condition on the appellant to deposit the entire compensation amount. After such deposit, the claimants 1, 4 and 5 were permitted to withdraw 40% of their apportioned share of the award, with accrued interest.

16. As such, it is open to the claimants to withdraw their apportioned share amount, as per the Tribunal order, with accrued interest, lying in the credit of the M.C.O.P. No. 249 of 2003, on the file of the Motor Accident Claims Tribunal, Sub

Court, Thiruvallur, after filing necessary payment out application in accordance with law, subject to deduction of withdrawals, if any, made as per this Court order and further subject to the third claimant becoming a major.

17. In the result, the above Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 01.07.2004, in M.C.O.P. No. 249 of 2003, passed by the Motor Accident Claims Tribunal, Sub Court, Thiruvallur, is confirmed. Consequently, connected civil miscellaneous petition is closed. There shall be no order as to costs.