(2012) 06 MAD CK 0119

In the Madras High Court

Case No : C.M.A (MD) No. 462 of 2009 and M.P. (MD) No. 1 of 2009

The Managing Director, Tamil Nadu State Transport Corporation, Trichy — APPELLANT

Vs

Manimehalai, Enia, Nivedha Veerasamy (Died) and Nagarathinam — RESPONDENT

Date of Decision : 21-06-2012

Acts Referred:

Citation : (2012) 06 MAD CK 0119

Hon'ble Judges : R. Banumathi, J;B. Rajendran, J

Bench : Division Bench

Advocate : M. Prakash, for the Appellant; G. Karnan and Mr. Veera Kathiravan, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—The State Transport Corporation has preferred the appeal as against the award of compensation of Rs. 22,49,000/- for the death of a person. According to the appellant, the deceased was proceeding in his motorcycle bearing Registration No. 49-A-0363 with a pillion rider. The accident took place near the Chatram bus stand on Trichy-Karur main road in Trichy. According to the appellant, the bus bearing Registration TN-45-N-1894 which was coming from the opposite direction i.e. from west towards east was also driven carefully and there was a collision. The Tribunal has taken into consideration the First Information Report lodged against the driver of the bus and come to the conclusion that the entire responsibility is on the bus driver and a criminal case was registered against the bus driver and has awarded the compensation without taking into consideration the negligence on the part of the deceased also. As far as the quantum is concerned, though the deceased was a Development Officer working in the Oriental Insurance Company, the Tribunal has taken the entire amount of income i.e., Rs. 20,000/- as shown in the income certificate and also arrived at a huge amount as compensation which is not legally sustainable and therefore, he would also contend that the quantum is also on the higher side. Hence, they have come forward with the present Civil Miscellaneous Appeal.

2. The learned Counsel for the respondents/claimants would mainly contend that the driver of the bus was driving the vehicle on the wrong side. He was driving the vehicle on the right hand side of the road and dashed against the vehicle resulting which the tyre of the bus ran over on the thighs of the deceased person. He would also contend that the rough sketch filed by the Investigation Officer before the Tribunal clearly indicates that the accident spot is on the right extreme corner as the bus which was plying from west to east clearly indicates that it is on the wrong side. Therefore, there may not be any mistake on the part of the deceased driving the vehicle and rightly the FIR and the criminal case were lodged against the driver of the bus and there is no question of negligence on the part of the deceased and an individual witness has also been examined. P.W.2 who was the clear eye witness has categorically proved regarding the bus being taken in the wrong side. Insofar as the quantum is concerned, the learned Counsel would only contend that the deceased was a senior officer in the insurance company, his gross income was Rs. 19,519.62, he was at young age and he has got future prospects, the Tribunal has rightly granted the award considering the age and also the dependents of the deceased.

3. Heard both parties.

4. Objection has been raised regarding the liability. As far as the liability is concerned, definitely the driver of the bus alone can be held responsible as rightly held by the Tribunal. When we analyse the First Information Report, Ex. P1 and Ex. P12 rough sketch along with the evidence of P.W.2-Eye witness, it is very clear that the bus which was running from west to east instead of going in the left hand side of the road viz., northern side it has taken to the extreme right and thereby the accident took place on the right hand corner. In fact, in the FIR itself it is clearly stated that the motorcycle bearing Registration No. TN-49-A-0363 was driven by the deceased and the complainant who was a person coming five feet behind the said vehicle, has categorically stated that the bus was coming from west to east and the bus was driven in a rash and negligent manner which was coming on the right hand side of the road and dashed against the deceased was driving the motorcycle coming from the opposite side.

5. This fact, insofar as the bus being driven in the wrong side, is made very clear in the rough sketch Ex. P12 which is a certified copy produced before the Tribunal. In the sketch, it is very clearly stated that the occurrence spot is on the right hand side corner of the road when the bus is coming from west to east which was keeping the left side northern side whereas the accident took place in the southern side. Further, this fact has been fully established by the eye witness who is not a relation stating that the vehicle is coming in the wrong direction. Even in the cross examination, the only suggestion is made that the vehicle was coming extreme right side corner when it was driven to overtake another vehicle. Therefore, it is admitted that the vehicle was coming on the wrong side at that

time of accident. Whereas the further evidence is that there was some traffic at that point of time when the vehicle was overtaking. In this connection, the appellant State Transport Corporation has examined RW.1 the driver of the bus. In his chief examination itself he would clearly say that " 6. Insofar as the quantum is concerned, Ex. P5 is the salary certificate of the deceased who was employed in the Oriental Insurance Company as a Developmental Officer and as per Ex. P5 salary certificate he was drawing the salary of Rs. 19,519.62 per month. P.W.3. the Branch Manager of the insurance company has been examined. He has categorically stated that as per the records, the date of birth of the deceased was 17.05.1958; that he joined as Development Officer Grade II on 19.02.1986; that he was promoted as Development Officer Grade I on 01.03.1987; that his next promotion as a Scale-I officer was due; that the age of retirement is 60 years and that his superannuation would be only on 01.04.2018. Apart from basic pay, he is eligible for Dearness Allowance revisable once in three months and he is also entitled for incentive if he operating surplus every year, the maximum of 24 months basic as incentive. Apart from his getting medical treatment including his family members and LTC facilities till retirement. Once he becomes Class I officer, his promotion pattern would be different and considering his age, definitely, he would have gone to the higher level.

7. Therefore, there is no dispute insofar as to the position of deceased as an officer. He was earning roughly an amount of Rs. 20,000/- per month and if we take into consideration that his eligibility for incentive, it may go upto 30% per month and he is also eligible for promotion and his age at the time of accident only was 46 years. Therefore, the Tribunal has taken into consideration the incentive and fixed the monthly income at Rs. 21,000/- and deducted 1/3 for his personal expenditure. In fact, the dependents are the wife, two children and mother at the time of claim petition. Since his father is dead, now the mother is there and at the time of the death of the deceased there were five members. In fact, in Sarala Verma and others v. Delhi Transport Corporation and another, reported in 2009 (2) TN MAC 1 (SC), the deduction should be 1/4th towards personal expenses. The Tribunal has taken into consideration 1/3rd deduction and arrived at the monthly income of Rs. 14,000/- and the annual income at Rs. 1,68,000/- . Taking into consideration the age of the deceased viz., 46 years 4 months, as per the schedule, the Tribunal fixed the the multiplier as 13 which is also correct and arrived at the compensation at Rs. 21,84,000/- towards loss of earning. In fact, if we apply Sarala Verma''s case, we will have to include 50% for future prospectus considering his promotional aspect also we have to deduct for the income tax. In this case, neither income tax have been deducted nor future prospects have been considered. Therefore, that will work out the income. There is nothing wrong in the multiplier also. When we analyse the entire compensation, it is very clear that the Tribunal has clearly followed the principals of the Hon''ble Supreme Court and various citations and arrived at Rs. 21,84,000/- viz., (Rs. 14,000/- x 12 x 13) which is correct. Further, a sum of Rs. 20,000/- has been awarded towards consortium for the first respondent wife of

the deceased, a sum of Rs. 20,000/- for love and affection to the children, a sum of Rs. 6,000/- has been awarded for funeral expenses and a sum of Rs. 10,000/- has been awarded towards love and affection to the of the deceased which are very reasonable. Therefore, we do not find any reason to interfere with the quantum also. The interest rate of 7.5% per annum awarded by the Tribunal is fair, reasonable and correct since the accident took place in the year 2004. Under those circumstances, the appeal filed by the State Transport Corporation is dismissed. If the appellant has not deposited the amount, they shall deposit the same within a period of six weeks from the date of receipt of this judgment and on depositing the same, the respondents are permitted to withdraw the same as apportioned by the Tribunal. Since the third respondent is still minor, the share of the minor shall be deposited in a nationalised bank till he attains majority. Consequently, connected miscellaneous petition is closed. No costs.