

(2013) 11 MAD CK 0211

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3334 of 2013 and M.P. No. 1 of 2013

The Managing Director, Tamilnadu State Transport
Corporation Ltd.

APPELLANT

Vs

Chandramathi and Others

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0211

Hon'ble Judges : R. Sudhakar, J; Pushpa Sathyanarayana, J

Bench : Division Bench

Advocate : M. Kiruba, for the Appellant; A.K. Kumarasamy for RR 1 to 5, for the Respondent

Judgement

Pushpa Sathyanarayana, J.—Aggrieved by the Award dated 20.08.2009 in M.C.O.P. No. 262 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District Judge cum Fast Tract Court No. 1), Erode, awarding compensation of Rs. 37,23,000/- for the death of deceased Rajoo in a road traffic accident occurred on 26.01.2006, this appeal has been filed by the Transport Corporation. Brief facts are that on 26.01.2006, when the deceased Rajoo and his relative Palanisamy were travelling in Transport Corporation Bus bearing Registration No. TN 49 N 1415 from Trichy to Thanjavur, at about 03.00 a.m., the Seventh Respondent herein, who drove the bus in a rash and negligent manner, near Thirumalaichathiram Shanmugha Engineering College, dashed the bus against a Tamarind Tree. Due to the impact, Rajoo succumbed to injuries on the spot itself while the co-passengers sustained grievous injuries. One of the co-passengers and relative of the deceased Palanisamy also sustained injuries and was taken to Government Hospital, Thanjavur, where he succumbed to injuries at 4.35 p.m. A Criminal Case was registered against the Driver in Vallam P.S. Crime No. 31 of 2006 under Sections 279, 337 and 304(A) IPC. Alleging that the accident occurred due to the rash and negligent driving of the driver of the Transport Corporation bus, Claimants who are the wife, children and mother of the deceased, filed Claim Petition claiming compensation of Rs. 45,00,000/-.

2. Resisting the Claim Petition, the Managing Director of the appellant State Transport Corporation, has filed counter denying the manner of accident as alleged by the Claimants. It is stated that on the day of accident, when the Bus was proceeding near Shanmugha Engineering College at Thirumalaichathiram, at 3.00 A.M., a lorry was coming in the opposite direction with an uncontrollable speed on the wrong side of the road and due to mist, the lorry driver could not notice the bus and since the distance between the said lorry and the bus was very short, with a view to avoid great mishap, the driver of the bus swerved the bus to the left, which resulted in the accident. The Transport Corporation also denied the occupation, income, monthly contribution to the family and age of the deceased and stated that the compensation claimed is excessive.

3. Before the Tribunal, Mrs. Chandramathi, wife of the deceased examined herself as P.W. 1 besides examining one Mr. G. Saravanakumar, eye-witness as P.W. 2 and one Mr. Ramasamy, colleague of the deceased, as P.W. 3. Exs. P. 1 to P. 17 were marked and the details of which are as follows:-

Ex. P-1/26.01.2006 Copy of FIR

Ex. P-2/26.01.2006 Copy of rough sketch

Ex. P-3/26.01.2006 Copy of Observation Mahazar

Ex. P-4/26.01.2006 Copy of M.V. Inspector report

Ex. P-5/26.01.2006 Copy of Post-mortem Certificate

Ex. P-6/--- Salary Certificate

Ex. P-7/14.01.2008 Legal Heirship Certificate

Ex. P-8/--- Permission letter given to PW 3

Ex. P-9 - --- Pay slip of the deceased Rajoo for the month of October 2005

Ex. P-10 --- Pay slip of the deceased Rajoo for the month of November 2005

Ex. P-11 --- Pay slip of the deceased Rajoo for the month of December 2005

Ex. P-12 --- Attendance Register of the deceased Rajoo

Ex. P-13 --- Copy of Passport of P.W. 3

Ex. P-14 --- Photostat Copy of Malaysia Citizenship Card of P.W. 3

Ex. P-15 --- Air Ticket of P.W. 3

Ex. P-16 --- Air Ticket of P.W. 3 to travel to Malaysia

Ex. P-17 --- Permission Order issued by High Court of Malaysia to run Suriya Laundry

4. On the side of appellant Transport Corporation, driver of the bus which was involved in the accident, viz., Mr. V. Ramesh, was examined as R.W. 1 but no

document was marked.

5. Considering the evidence of P.W. 2 - Eye witness and Ex. P. 1-FIR, Ex. P. 2 - rough sketch and Ex. P3 Observation Mahazar, Tribunal held that the accident was due to rash and negligent driving of the bus driver and that the Transport Corporation is liable to pay compensation to the Claimants.

6. Insofar as quantum of compensation is concerned, on the basis of the evidence of P.W. 3 Ramasamy, co-worker of the deceased in Malaysia, and Exs. P. 9 to P. 14, viz., Pay Slips of the deceased for various months and his Attendance Registrar produced before the Tribunal, it has fixed the gross monthly income of the deceased at Rs. 42,000/- and after deducting 1/3 towards his personal and living expenses, a sum of Rs. 28,000/- was arrived as his contribution to the family.

7. Since the deceased was 50 years at the time of accident, which lead to death, the Tribunal applying multiplier 11, calculated the loss of pecuniary benefits to the family at Rs. 36,96,000/- (Rs. 28,000/- x 12 x 11). In addition, the Tribunal has also granted compensation under conventional heads with interest at 7.5% as follows:-

Sl. No.

Heads

Amount granted by the Tribunal

1

Loss of income to the claimants

Rs. 36,96,000/-

2

Loss of love and affection

Rs. 20,000/-

3

Transportation

Rs. 5,000/-

4

Funeral expenses

Rs. 2,000/-

Total

Rs. 37,23,000/-

8. Feeling aggrieved, the appellant Transport Corporation has preferred this appeal.

9. In this appeal, the question of negligence and quantum of compensation are challenged before this Court.

10. The points that arise for consideration before this Court are:-

(i) Whether the accident occurred due to the rash and negligent driving of the driver of the bus?

(ii) Whether the quantum of compensation arrived at by the Tribunal is correct?

(iii) To what relief the claimants are entitled to?

11. Heard the rival contentions made by the learned counsel appearing for the appellant Transport Corporation as well as the Claimants and perused the documents.

12. Point No. (i):-

The case of the Claimants is that the deceased Rajoo was travelling in TNSTC bus bearing Registration No. TN-49 N-1415 from Trichy to Thanjavur. Around 3.00 A.M., near Thirumalai Chatram, the bus driven by R.W. 1 at a reckless manner, swerved and hit a Tamarind tree. The deceased died on the spot. P.W. 2 is the eye-witness to the accident. He has categorically deposed that the driver of the TNSTC bus was driving the vehicle in a rash and negligent manner at a high speed and hit the tree on the side of the road resulting in the accident.

13. The driver of the vehicle has deposed as R.W. 1 that he was carefully driving the vehicle and that to avoid a lorry coming from the opposite direction, he had to swerve the vehicle. As it was a foggy morning, the visibility was also poor, he dashed against the Tamarind tree.

14. The FIR is marked as Ex. P. 1 and Ex. P. 2 is the rough sketch. Ex. P. 4 is the report of the Motor Vehicle Inspector. The evidence of P.W. 2, eye-witness, has not mentioned about the lorry coming on the opposite direction as stated by the Driver, R.W. 1. There is no reason to discredit the evidence of P.W. 2. A perusal of Exs. P. 1 to P. 4 also makes it clear that the accident occurred only due to the rash and negligent driving of the driver of the Appellant Corporation. Point No. (i) is answered accordingly.

15. Point No. (ii):-

As regards the compensation to be awarded to the Claimants, it is stated that the deceased was 42 years on the date of accident and that he was employed as an Electrical Engineer in Sri Surya Laundry Company in Malaysia. His monthly income was Rs. 42,000/-. To substantiate the same, P.W. 3, who is a co-employee/colleague was examined. Ex. P. 8 is the authorisation letter given to P.W. 3 by his employer to depose on behalf of the employer before the Court. The pay slips of the deceased are also marked as Exs. P. 9 to P. 11. The deceased had

obtained citizenship of Malaysia which is evidenced by Ex. P. 14. The Air Travel tickets are also filed as Exs. P. 15 and P. 16 to show that he was to return to Malaysia. The licence to run the establishment in Malaysia is filed as Ex. P. 17. The Tribunal had fixed the income at Rs. 42,000/- p.m. and determined the age of the deceased as 50 based on the Post Mortem Report. Therefore, adopting 11 multiplier, the Tribunal had fixed the loss of dependency at Rs. 28,000 x 12 x 11 = Rs. 36,96,000/-. On the non-pecuniary damages, the Tribunal has granted Rs. 2,000/- as funeral expenses, Rs. 5,000/- towards transportation and Rs. 20,000/- towards loss of love and affection. In all, the total compensation awarded is Rs. 36,96,000/- + Rs. 2000/- + Rs. 5,000/- + Rs. 20,000/- = Rs. 37,23,000/-.

16. Now, the correctness of the Award is challenged by the Appellant/ Corporation. In assessing the compensation to be awarded in the case of death, basically, three factors need to be established by the Claimants. They are (i) age of the deceased; (ii) Income of the deceased and (iii) the number of dependents. From the income, addition/deduction to be made and deduction towards Income Tax and personal expenses of the deceased and the multiplier to be applied with reference to the age of the deceased.

17. In the case on hand, the age of the deceased is fixed at 50 based on the P.M. Report and the income is fixed based on the salary slips at Rs. 42,000/- p.m. Applying the principles laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , only 1/4th of the income is to be deducted where the number of dependents is 4 to 6 and the multiplier to be adopted is 13 if the deceased is aged 50. However, the Tribunal had not followed the above principles enunciated in Sarla Verma case (cited supra). The effort of the Hon''ble Apex Court is only to bring in uniformity and consistency in awarding compensation. The Tribunal had not adverted to the said decision and had not awarded the compensation adhering to the formula. It is seen from the Award that the proper method of computation is not adopted by the Tribunal. Further, the compensation granted under the conventional heads is on the lower side in view of the decision reported in Rajesh and Others Vs. Rajbir Singh and Others, . While so, attacking the same by the Appellant/Corporation on the ground of quantum of compensation is not at all warranted.

18. There is no dispute in respect of the interest granted by the Tribunal at 7.5% p.a. Point No.(ii) is also answered against the Appellant Corporation. Point No. (iii):-

In view of the foregoing discussion, the Civil Miscellaneous Appeal is dismissed and the Award of the Tribunal is confirmed.

(i) Eight weeks time is granted to deposit the entire award amount as ordered by the Tribunal and confirmed this Court, less the amount already deposited.

(ii) On such deposit, the claimants 1, 2 and 6 are permitted to withdraw their share as apportioned by the Tribunal.

(iii) The share of the minor claimants 3 to 5 are directed to be deposited in any nationalised bank till they attain majority.

(iv) There will be no order as to cost in this appeal.

(v) Consequently, connected Miscellaneous Petition is closed.