

Kavitha Vs. S.Padmanaban

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Court : Chennai

Decided On : Oct-29-2013

Judge : C.S.Karnan

Appellant : Kavitha

Respondent : S.Padmanaban

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

29. 10.2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN
C.M.A.No.3004 of 2009 1.Kavitha 2.Makesh 3.Minor.Logesh ... Appellants (3rd
appellant rep.by his mother natural guardian and next friend 1st appellant Kavitha)
Vs. 1.S.Padmanaban 2.The Managing Director M.G.R.Transport Ltd.,
Kanchipuram ... Respondents (R1-ex part) PRAYER: Civil Miscellaneous Appeal
is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment
and decree dated 02.03.2007, made in M.C.O.P.No.198 of 2002, on the file of the
Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II,
Chennai. For Appellants : Mr.N.M.Elumalai For Respondents : Mr.S.Sairaman for
R2 R1-Ex parte - - -

JUDGMENT

The appellants / claimants have preferred the present appeal against the judgment and decree dated 02.03.2007, made in M.C.O.P.No.198 of 2002, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Chennai.

2. The short facts of the case are as follows:- The claimants, who are the wife and sons of the deceased Thirunavukkarasu, had filed a claim petition in M.C.O.P.No.198 of 2002, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Chennai, claiming a sum of Rs.4,00,000/- as compensation from the respondents for the death of the said Thirunavukkarasu in a motor vehicle accident.

3. It was submitted that on 20.10.2001, at about 10.15 hours, when the deceased Thirunavukkarasu was travelling as a pillion rider on a Bajaj M80 Motorcycle bearing registration No.TN20 C3744, from Tiruttani to Arakkonam and when it was near Narayanamangalam Kandigai, the second respondent's bus bearing registration No.TN21 N0341, coming from Chennai to Tiruttani and driven in a rash and negligent manner, dashed against the motorcycle and caused the accident. As a result, the deceased sustained grievous head injury and died. Hence, the claimants had filed the claim petition against the respondents, who are the driver and owner of the bus bearing registration No.TN21 N0341.

4. The second respondent, in his counter affidavit, had submitted that on 20.10.2001, at about 22.15 hours, when the second respondent's bus was proceeding along Madras to Tiruttani High Road and when it was near Narayanamangalam Kandigai, the driver of the bus had seen a Bajaj M80 Motorcycle bearing registration No.TN20 C3944, coming in the opposite direction and driven in a rash and negligent manner, on the wrong side of the road. On seeing this, the driver of the bus had applied brakes and stopped the bus on the extreme left of the road. But, in spite of it, the motorcyclist had dashed the motorcycle on the front left side of the bus and caused the accident. It was submitted further that the police complaint was given by the local Panchayat Union President, who had not witnessed the accident and based on this, the Police case had been registered against this respondent's bus driver. It was submitted that an

objection letter was sent to the Inspector of Police, Arakkonam Taluk Police Station. The averments made in the claim petition regarding age, income and occupation of the deceased were also not admitted. It was submitted that the claim was excessive.

5. On considering the averments of both sides, the Tribunal had framed three issues for consideration namely: i. Whether the accident caused by the rash and negligent driving by the first respondent?. ii. Whether the accident was caused by the rash and negligent riding of the motorcycle by the deceased Velayutham?. and iii. What is the quantum of compensation, which the claimants are entitled to get?.

6. In the same accident another claim had been filed by the claimants in M.C.O.P.No.188 of 2002, who are the legal heirs of the deceased motorcyclist namely Velayutham, against the same respondents, claiming compensation for the death of the said Velayutham. Based on a joint memo filed by the counsels of both claimants, a joint trial was conducted and common evidence was recorded. The first claimant in M.C.O.P.No.188 of 2002 namely Sumathi was examined as P.W.1, the first claimant in M.C.O.P.No.198 of 2002 namely Kavitha was examined as P.W.2 and one Karimulla was examined as P.W.3 and seven documents were marked as Exs.P1 to P7 namely copy of FIR, postmortem report, M.V.I's report, charge sheet filed against the first respondent, salary certificate, legal heir certificate and postmortem certificate. On the respondents' side one Padmanabhan was examined as R.W.1 and no document was marked.

7. P.W.3 had adduced evidence that on 20.10.2001, at about 09.30 p.m., he was travelling as a passenger in TNSTC bus bearing registration No.TN21 N0341, from Tiruvallur to Tiruttani and when the bus was near the junction of Arunkulam Road and Tiruttani Road, the driver of the bus drove it in a rash and negligent manner and dashed it against the Bajaj M80 motorcycle coming in the opposite direction.

8. P.W.1 and P.W.2 had also adduced evidence that the accident was caused by the rash and negligent driving by the driver of the respondent's bus.

9. R.W.1 had adduced evidence that he is working as a driver in the TNSTC bus at Tiruttani Depot and that on 20.10.2001, when he was driving the bus towards

Tiruttani near Narayanamangalam Kandigai, he had seen the motorcyclist along with a pillion rider, coming in the opposite direction and that on seeing the motorcyclist riding the motorcycle in a rash and negligent manner, he had stopped the bus and that in spite of it, the motorcyclist had dashed his vehicle against the bus and caused the accident. Further, he deposed that in the criminal case filed against him, he had been acquitted.

10. The Tribunal, on scrutiny of Exs.P1 and P4, observed that the FIR and charge sheet had been filed against the first respondent. Hence, the Tribunal, on scrutiny of evidence of P.W.3 and the exhibits marked held that the accident had been caused by the rash and negligent driving of the bus by the first respondent and hence held the second respondent being the owner of the bus liable to pay compensation to the claimants.

11. P.W.2 had adduced evidence that at the time of accident, her husband was running a shop and earning Rs.5,000/- to Rs.10,000/- per month. As no documentary evidence was produced to prove the income of the deceased, the Tribunal held that the notional income of the deceased was Rs.15,000/- per annum. On scrutiny of Ex.P7, it is seen that the deceased was aged 35 years at the time of accident. The Tribunal, on adopting a multiplier of 17, awarded a sum of Rs.1,70,000/- as compensation under the head of loss of income ($1,50,000 \times 23 \times 17$), Rs.2,000/- was awarded for funeral expenses, Rs.5,000/- was awarded under the head of loss of love and affection and Rs.5,000/- was awarded for transport expenses. In total, the Tribunal awarded a sum of Rs.1,82,000/- as compensation to the claimants at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation with costs, within a period of two months from the date of its order.

12. Not being satisfied with the quantum of compensation, the claimants have preferred the present civil miscellaneous appeal for additional compensation of a sum of Rs.2,82,000/-.

13. The learned counsel appearing for the appellants has contended in the appeal that the Tribunal erred in fixing the annual income of the deceased at Rs.15,000/- and failed to appreciate the evidence of P.W.2, who had deposed that the

deceased was running a shop and earning Rs.5,000/- to Rs.10,000/- per month. It is contended that the Tribunal erred in not awarding any award under the head of future prospects of the deceased as the deceased was aged only 35 years at the time of accident. It is also contended that the Tribunal failed to grant award to the first appellant wife under the head of loss of consortium. It is also pointed out that the award granted for loss of love and affection, funeral expenses and transport expenses were on the lower side and hence it is prayed for grant of additional compensation of Rs.2,18,000/-.

14. The highly competent counsel for the Transport Corporation has vehemently argued that the claimants have not produced income proof to show that the deceased was earning Rs.5,000/- per month. However, the Tribunal had granted adequate compensation to the claimants under the relevant heads.

15. On verifying the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence and liability. However, the quantum of compensation is on the lower side. This Court is of the view that the accident took place in the year 2001 and the claimants are three in numbers, consisting of young widow, one minor son and another son aged about 19 years. Further, the deceased was aged only 35 years. The claimants had claimed a sum of Rs.4,00,000/- before the Tribunal. The claim amount is reasonable, but the Tribunal had granted a sum of Rs.1,82,000/- only. Therefore, the claimants had filed the above appeal and have sought an additional compensation of a sum of RS.2,18,000/-, which is reasonable. Therefore, this Court is inclined to allow the above appeal.

16. Hence, this Court directs the second respondent State Transport Corporation to deposit the appeal value amount i.e., a sum of Rs.2,18,000/- with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, to the credit of M.C.O.P.No.198 of 2002, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Chennai, within a period of eight weeks, from the date of receipt of a copy of this Judgment.

17. After such a deposit having been made, it is open to the claimants to withdraw their apportioned share amount, as per the ratio fixed by the Tribunal, with proportionate interest thereon, lying in the credit of M.C.O.P.No.198 of 2002, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Chennai, after filing a memo, along with a copy of this Judgment.

18. In the result, this civil miscellaneous appeal is allowed and the Judgment and decree dated 02.03.2007, made in M.C.O.P.No.198 of 2002, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Chennai, is modified. No costs. 29.10.2013 Index : Yes/No Internet : Yes/No krk To:

1. The Additional District Judge Motor Accident Claims Tribunal Additional District Court Fast Track Court No.II, Chennai 2.The Section Officer V.R.Section, High Court Madras C.S.KARNAN, J.

krk C.M.A.No.3004 of 2009 29.10.2013

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