

The General Manager Technical Vs. Dr.Ambedkar Tahdco Contractors

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Court : Chennai

Decided On : Jan-05-2015

Judge : Satish K.Agnihotri

Appellant : The General Manager Technical

Respondent : Dr.Ambedkar Tahdco Contractors

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

07. 10.2009 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN C.M.A.NO.1066 of 2005 Metropolitan Transport Corporation Limited, Rep by its Managing Director Formally known as Dr.Ambedkar Transport Corporation Limited, No.4, Anderson Street, Ayyanavaram, Chennai-23. . . Appellant Vs. 1.Tamilselvi 2.Minor Gopi 3.Minor Bhuvanewari 4.Sarojaamal 5.K.Natarajan 6.National Insurance Company Limited, Sowcarpet Branch, No.378, Mint Street, First Floor, Chennai. . . Respondents Minors are represented by their mother the first respondent. Prayer:The civil miscellaneous appeal is filed against the award and decree dated 22.09.2004 in M.C.O.P.No.1128 of 1997 on the file of the Motor Accident Claims Tribunal (VI Small Causes Court), Chennai. For Appellant :Mr.P.Jagadeeswaram For Respondents:No appearance for R1 to R5 Mr.S.Vadivel for R6

JUDGMENT

This civil miscellaneous appeal has been filed by the appellant/first respondent against the award and decree passed on 22.09.2004 in MCOP No.1128 of 1997 on the file of the Motor Accident Claims Tribunal (VI Small Causes Court), Chennai awarding a compensation of Rs.2,48,500/- with interest of 9% from the date of petition till date of payment of compensation.

2. Aggrieved by the said award, the first respondent/Metropolitan Transport Corporation Limited has filed the above appeal to set aside the order.

3. The short facts of the case are as follows;- On 30.05.1996, the deceased Gnanavel, load man, one K.Nagarajan, cleaner Ravi and driver and the others sat behind the cabin with the milk cans. At about 04.00 a.m., while approaching the Nagathamman koil, Poozhal, rettaiyeri, GNT Road, a bus bearing registration No.TCB-5107 belonging to the Metropolitan Transport Corporation, driven rashly and negligently by its driver from the opposite direction from Madras to Redhills. The driver of the bus drove the bus on the wrong side of the road and dashed against the mini lorry in which the deceased was travelling and caused death of the deceased and driver Murali. The monthly income of the deceased was Rs.1,500/- at the time of accident. Hence the first petitioner, wife of deceased, the second and third petitioners, the children of the deceased and the fourth petitioner, the mother of the deceased have jointly filed the petition and claimed a compensation of Rs.3,50,500/- under Section 166, Rule 3 of the Motor Vehicles Act from the respondent.

4. The first respondent/Metropolitan Transport Corporation in his counter has resisted the claim stating that on 30.05.1996, their bus Route 57 J bearing registration No.TCB5107 was on its trip from High Court. The bus was proceeding towards Karanodai along GST Road very slowly and cautiously with a limited speed of 20 km/hr. The respondent further states that when the bus was nearing Rettaiarri Nagathamman Koil, a lorry bearing registration No.TN-21-Y-3477 which came from the opposite direction and driven rashly and negligently, dashed against this bus as a result of which the driver and the deceased in the lorry died. The said accident happened solely due to the rash and negligent driving of the lorry driver. Further, it was submitted that the claim petition was bad for non

joinder of parties like the owner of the lorry and its insurer. Further, the age, income, nature of injury, period of treatment were not admitted. Further, the amount claimed is excessive. As such, they have sought for dismissal of the claim petition. Subsequently, the second and third respondent namely the owner of the lorry its insurer were also added as necessary parties by the petitioners in their claim. But, as the second respondent remained absent, he was set exparte.

5. The third respondent/the National Insurance Company Limited in its counter has resisted the claim stating that the accident happened only due to the rash driving of the driver of the first respondent. Further, a criminal case has been filed only against the driver of the first respondent. Further, it was submitted that the age, income and occupation of the deceased has to be proved by the petitioners. Further, the petitioners should only prove that the driver of the lorry had valid licence, and the lorry had necessary permit and insurance. Hence, they had sought for dismissal of the petition against them.

6. The learned Motor Accident Claims Tribunal framed four issues namely 1) Who was responsible for the accident?. 2)Whether the respondents are liable to pay compensation?. 3) Are the petitioners entitled to get compensation?. and 4) To what other relief?.

7. On the side of the petitioners, three witnesses were examined and five documents were marked as Ex.P1 to Ex.P5. On the side of the first respondent, two witnesses were examined and one document was marked as Ex.R1.

8. PW1, the first petitioner herein in her evidence has submitted that on 30.05.1996, when her husband was travelling in the said mini lorry, nearing the Puzhal rettaiari, near Nagatthamman Temple, a Metropolitan Transport Bus, had dashed against the said mini lorry and in that accident, her husband had died. In support of her evidence, a copy of the first information report was marked as Ex.P1. Further, the Sub Inspector of Puzhal Police Station, MR.Subramania Pillai, who was examined as PW3, has given in his evidence that on the complaint given by one Nagarajan, about the said accident, a criminal case was registered against the driver of the Metropolitan Transport bus under Sections, 279 337, and 304(A) IPC and that the said Gnanavel had died in the accident.

9. On the first respondent side, the driver of the bus Royal was examined as RW1 and he has adduced evidence stating that on 30.05.1996, he had taken the bus at 03.30 a.m. and travelled from High Court to Karanodai, and that as he was nearing rettaiari Nagaththamman temple at 4.20 - 4.25, he saw a lorry which was coming from the opposite side with high speed and that he had immediately stopped the bus. But, the lorry had come and dashed against the bus and in the result, he had sustained injuries on his foot, and that his knee was fractured. It was further submitted that in the place of the said accident, the road has been dug up to facilitate laying of pipes for Veerannam project, and so it had become necessary for the bus to go only at a slow speed and so, the lorry driver was the cause for the accident. RW2, the Transport investigator was examined and he has adduced in his evidence that he had carried out investigation, and has stated that the mud on both sides of the road had been dug up to facilitate bringing of Krishna waters by means of pipes and that it was possible for only one vehicle to go on the road. While the bus was going on this road, then mini lorry bearing registration No.21 Y3477 had come and dashed against the bus and that the accident had occurred only due to the rash and negligent driving of the lorry by its driver. In support of this evidence regarding investigation, a document was marked as Ex.R1.

10. On the third respondent side, RW3, an Assistant employed in the third respondent was entrusted with the job of investigating this accident and that from his report, it came to light that the accident happened due to the negligent driving of the driver of the bus and in support of this marked a document as Ex.R2.

11. The petitioners and the third respondent have stated that the accident was caused only by the negligence of the driver of the first respondent. But on the first respondent's side, it was submitted that the accident was due to the fault of the second respondent's lorry driver. On consideration of the evidence it has been found from Ex.P1, the first information report that a case has been registered against the driver of the bus only. Herein, it has been stated that the driver of the bus bearing registration No.TCP5107 had driven the bus negligently on the right side of the road and had dashed against the lorry. Though the evidence adduced by the first respondent's witnesses, namely RW1 and RW2, stating that near the accident spot, the road had been dug up on either side to facilitate laying out of

pipes and that it was possible for only one vehicle to move on this road at a time, and that the bus had been driven very slowly here and it was only the lorry which had come fast in the other direction and caused the accident, they above said details have not been stated in their counter. So as these details have not been mentioned in their counter, the Tribunal cannot take them as facts in their evidence. Further, the Tribunal was of the view that these details have been furnished in their evidence of RW1 and RW2, to escape from their liability of paying compensation. Considering that a criminal case has been lodged only against the driver of the bus as per Ex.P1, the Tribunal held that the driver of the bus bearing registration No.TCP5107 was responsible for the accident.

12. Though the case was lodged only against the first respondent initially and subsequently the second and third respondents were added as necessary parties, the Tribunal considering that the driver of the first respondent was the cause for the accident, absolved the second and third respondents of their liability to pay compensation to the petitioners and held that only the first respondent is liable to pay compensation.

13. PW1 in her evidence has submitted that her husband was working in a Dairy as a Salesman and that he was earning Rs.1,500/- per month and that he used to get a daily batta of Rs.30 to Rs.40. Hence, she had claimed Rs.3,50,000/- in her claim petition. Further, in support of this, she has submitted Ex.P2-death certificate and Ex.P4-Legal heir certificate. Further, PW2, one Muralidaran, the Director of the said Dairy i.e. PNP Dairy (P) Limited, in his evidence has adduced that the deceased was employed in the said dairy as a Salesman and that his monthly salary was Rs.1,500/- and that he also gets a batta of Rs.30 per day, and marked document salary certificate as Ex.P5 in support of this. Further, From Ex.P2, it was established that the age of the deceased was 24. Considering Ex.P5, the Tribunal came to a conclusion that the monthly salary of the deceased could be taken as Rs.1,750/-. Taking a multiplier of 17, the Tribunal arrived at the loss of income for petitioners = $1750 \times 12 \times 17 - \frac{1}{3} (1750 \times 12 \times 17) = \text{Rs.}2,38,000/-$ 14. Further, the damages to clothes, Rs.500/- and for consortium Rs.10,000/- were granted as compensation to the first petitioner. As such, the Tribunal apportioned Rs.1,23,500/- to the first petitioner, Rs.50,000 to each of the minor second and

third petitioners and Rs.25,000/- to the fourth petitioner. Further, the Tribunal directed the first respondent to deposit the award amount with interest at the rate of 9% from the date of filing the petition till date of payment of compensation. Further, it permitted the first petitioner to withdraw 50% of her award amount with accrued interest and also allowed the fourth petitioner to withdraw her amount of award with interest, immediately after deposit was made by the first respondent. Further, the balance amount of the first petitioner award amount was to be deposited in a nationalised bank as fixed deposit for three years and the award of the second and third petitioners were to be deposited in a nationalised bank as fixed deposit till they attain the age of major and that the first petitioner can receive the interest on said deposits made on the second and third petitioners name once in six months. The petitioners were permitted to receive balance of Court fee paid. Advocate cost was fixed as Rs.8,000/-. The claim petition against the second and third respondents were set aside.

15. The learned counsel for the appellant has argued in his appeal that the Tribunal has wrongly held the driver of the bus as being rash and negligent and was responsible to the accident. The Tribunal ought to have held that the driver of the lorry was negligent and responsible for the accident. Further, the quantum of compensation given under the heads were challenged and claimed as excessive and arbitrary.

16. For the foregoing reasons, and on consideration of the facts and circumstances of the case, considering the exhibits and grounds of appeal, the Court is of the opinion that the award of Rs.2,48,500/- passed by the Motor Accident Claims Tribunal/VI Small Causes Court Judge, Chennai together with interest at the rate of 9% from the date of filing of the petition till date of payment of compensation, is equitable and fair. On the basis of First information report, and evidence of the first claimant and also the Tribunals findings, that the respondents counter did not contain the details which they furnished in their evidence, this Court is of the view that the Tribunal had come to a correct conclusion as regards negligence. Regarding quantum of compensation, the employer of the deceased adduced evidence that the deceased was an employee under him and that the deceased was paid Rs.1,500 as a monthly salary and a daily batta of Rs.30.

Supporting this, salary certificate has also been marked as Ex.P5. From the evidence of PW2, the deceased age was fixed as 24 years. Further, regarding the income, as per salary and batta, his income is Rs.2,400/- per month, but the Tribunal has only taken Rs.1,750/- per month towards salary, which is very reasonable. Further, considering the age and batta and income of the deceased, the Tribunal has taken the multiplier as 17, and the Tribunal has deducted 1/3rd from total income and awarded the compensation of Rs.2,38,000/- as compensation for loss of income to the petitioners. Further, the Tribunal has awarded Rs.10,000/- for consortium and Rs.500/- for damage to clothes. In total Rs.2,48,500/- was awarded as compensation by the Tribunal. As such, this Court could not find any discrepancy in the learned Tribunals award and hence confirms the award passed in MCOP No.1128 of 1997 dated 22.09.2004 with interest at 9% from the date of filing the petition till date of payment of compensation.

17. The above civil miscellaneous appeal came before this Court on 07.04.2005, when this Court directed the appellant/Transport Corporation to deposit the entire compensation amount including interest and cost to the credit of MCOP NO.1128 of 1997 on the file of the VI Judge, Small Causes Court, Chennai. The conditional order was complied with by the appellant. The Court further ordered that the claimants 1 and 4 are entitled to withdraw 50% of the amount apportioned to each one of them together with interest accrued thereon. The shares of minor claimants 2 and 3 shall be invested in a nationalised bank initially for three years and thereafter to be renewed periodically every two years.

18. As the accident happened in the year 1996, it is open to the first and fourth claimant to receive their balance amount lying to the credit of MCOP NO.1128 of 1997 on the file of the Motor Accident Claims Tribunal/VI Small Cause Court Judge, Chennai by filing necessary payment out application in accordance with law. The share of the second and third minor claimants shall continue to lie as fixed deposit in the nationalised bank till they become major. The first claimant is permitted to withdraw the interest once in six months from the bank directly on behalf of the second and third minor claimants.

20. In the result, the civil miscellaneous appeal is dismissed and the award passed by the Motor Accident Claims Tribunal/VI Small Cause Court Judge, Chennai in MCOP NO.1128 of 1997 dated 22.09.2004 is confirmed. The parties are directed to bear their own cost in this appeal. JIKR To The VI Judge, Small Cause Court. Motor Accidents Claims Tribunal Chennai

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