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The General Manager. Vs. V.Jeyabharathi

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Court : Chennai

Decided On : Jul-19-2012

Judge : R.Banumathi; M.Sathyanarayanan, Jj.

Acts : Motor Vehicles Act, 1988 - Section 173; Indian Penal Code(IPC) - Sections 04(A), 337 and 338

Appeal No. : C.M.A.(MD) No.655 of 2011 AND CROSS OBJECTION No.28 of 2011

Appellant : The General Manager

Respondent : V.Jeyabharathi

Advocate for Def. : Mr.D.Senthil, Adv

Advocate for Pet/Ap. : Mr.M.Prakash Adv.

Judgement :

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 29.09.2009 in M.C.O.P.No.147 of 2007 on the file of Motor Accident Claims Tribunal (Additional District Judge-cum- Fast Track Court), Ramanathapuram.

Cross Objection filed under Order 41, Rule 22 of Civil Procedure Code against the Judgment and Decree dated 29.09.2009 made in M.C.O.P.No.147 of 2007 on the

file of Motor Accident Claims Tribunal (Additional District Judge-cum- Fast Track Court), Ramanathapuram.

COMMON JUDGMENT

R.BANUMATHI,J.

1. Being aggrieved with the quantum of compensation of Rs.37,53,000/- awarded to the Claimants for the death of deceased Balamurugesan in the road traffic accident on 17.11.2006, Appellant-Tamil Nadu State Transport Corporation has preferred C.M.A.(MD) No.655 of 2011. Being dissatisfied with the quantum of compensation, Claimants have filed Cross Objection (MD) No.28 of 2011 seeking for enhancement.

2. Brief facts are that the deceased Balamurugesan was working as a Post Graduate Teacher in Kendriya Vidyalaya Sangathan, Trichy. On 17.11.2006, the deceased was travelling in State Transport Corporation bus bearing registration No.TN-63 N 0922 from Mudukulathoor and proceeding towards his residence at Trichy. When the bus was nearing Mandaiyur, the driver of the bus drove the same speedily in a negligent manner and dashed against the lorry laden with bamboo sticks parked on the left side of the road and the bamboo sticks smashed the wind screen glass of the bus and caused fatal injuries to Balamurugesan and another passenger Kamala, who died instantaneously in the spot and several others were injured. A criminal case was registered against the bus driver in Crime No.74 of 2006 of Mandaiyur Police Station. At the time of accident, deceased Balamurugesan was aged 40 years and was working as Post Graduate Teacher in Kendriya Vidyalaya Sangathan, Trichy and was earning Rs.19,313/- per month. Alleging that the accident was due to rash and negligent driving of the Appellant - Transport Corporation bus driver and that the family has lost the support of the sole bread winner, the Claimants who are wife, children and mother of the deceased Balamurugesan have filed the Claim Petition claiming compensation of Rs.50,00,000/-.

3. Resisting the Claimant Petition, Appellant-Transport Corporation filed counter contending that on 17.11.2006 at about 11.45 p.m., the bus bearing registration No.TN-63 N 0922 was on its regular trip from Paramakudi to Trichy in Paramakudi-Trichy road and the bus was proceeding near Mandaiyur. The driver was driving the bus in a slow speed with all care and caution was proceeding. At that time the lorry which was going ahead suddenly stopped without showing any indications. Due to the impact, the accident occurred and the accident happened only due to the rash and negligent driving of the lorry and not due to the negligence of the bus driver and therefore, Appellant-Transport Corporation is not liable to pay the compensation to the Claimants. Appellant-Transport Corporation also denied the age, nature of work and income of the deceased and contended that the compensation claimed is excessive and without any basis.

4. Before the Tribunal, 1st Claimant-Jeyabharathi examined herself as P.W.1. Eye-witness (Dhanalakshmi) who also travelled in the bus was examined as P.W.2. The Principal of Kendriya Vidyalaya Sangathan (Muthaiah) was examined as P.W.3. Exs.P1 to P18 were marked. On the side of Appellant-Transport Corporation, the driver of the bus (Muruganandham) was examined as R.W.1. No documents were marked on the side of Appellant-Transport Corporation.

5. Upon consideration of oral and documentary evidence, Tribunal held that on seeing the parked lorry, the bus driver should have slowed down and stopped the bus and the bus which was expected to go into the middle of the road, but the driver of the bus had sewered the bus to the left and dashed against the lorry and the Tribunal held that the driver of the bus alone was negligent. Insofar as the quantum, Tribunal has taken the monthly income of the deceased at Rs.30,800/- and deducting one-third for personal expenses and also adopting multiplier "15", awarded Rs.36,96,000/- for "loss of dependency".

Adding conventional damages, Tribunal awarded total compensation of Rs.37,53,000/- as under:-

Loss of dependency ... Rs.36,96,000.00

Loss of Estate ... Rs. 5,000.00

Loss of Love and Affection ... Rs. 20,000.00

Loss of Consortium ... Rs. 15,000.00

Transport Charges ... Rs. 15,000.00

Funeral Expenses ... Rs. 2,000.00

Total ... Rs.37,53,000.00

Challenging the fastening of liability as well as quantum of compensation, Appellant-Transport Corporation has preferred the appeal.

6. Mr.M.Prakash, learned counsel for Appellant-Transport Corporation contended that Tribunal erred in holding that Appellant's driver was rash and negligent in driving the bus and responsible for the accident. It was further contended that mere registration of FIR cannot be a ground to hold that the bus driver was negligent and the Tribunal erred in not appreciating the evidence of R.W.1-bus driver. Learned counsel for Appellant would further contend that upon consideration of Ex.P1-FIR and other documents, Tribunal ought to have fixed the entire or atleast contributory negligence upon the driver of the lorry who parked the lorry on the left side of the road without parking lights/red lights.

7. Drawing Court's attention to the evidence of P.W.2, Mr.D.Senthil, learned counsel for Claimants contended that upon appreciation of the evidence of P.W.2 and Exs.P1 and P2, Tribunal has rightly held that the accident was due to the negligence of the bus driver and the said factual finding cannot be interfered with.

8. P.W.2-Dhanalakshmi a Nurse then working in Primary Health Centre, Thirukostiyur. P.W.2 travelled in the same bus along with her neighbour deceased Kamala. Deceased Balamurugesan and deceased Kamala travelled in the same bus seated in the front left side seats. P.W.2 was seated in the back side of the driver seat. In her evidence, P.W.2 has stated that the driver of the bus drove the

bus rashly and negligently and forcibly hit behind the stationary lorry laden with bamboo sticks. The bamboo sticks which were protruding away from the body of the lorry, pierced the wind screen of the bus and then pierced the body of Balamurugesan and Kamala, due to which, both of them died on the spot. On the complaint lodged by P.W.2, a case was registered in Crime No.74 of 2006 of Mandaiyur Police Station under Section 304(A), 337 and 338 IPC against the bus driver. In her evidence, P.W.2 has clearly stated that the accident was due to rash and negligent driving of the bus driver.

9. Per contra, in his evidence, R.W.1, the driver of the bus has stated that the stationed lorry was parked without switching on the red parking light on its rear side and without tied of red cloth on the tip of the bamboo sticks and therefore, the parked lorry was not visible. The contention of Appellant- Transport Corporation is that the lorry was parked on the left side of the road without parking red light on its rear and on the tip of the bamboo sticks and during the night time, the lorry was not visible and therefore, the accident was solely due to the negligence of the parked lorry.

10. The road Pudukottai-Trichy is a National Highways and the width of the road is nearly 100 feet. By perusal of Ex.P2-rough sketch, it is seen that there is also a Sodium Vapour light in the light post nearby place of accident. Therefore, the contention that the parked lorry was not visible to the bus driver cannot be countenanced. In any event, as pointed out by the Tribunal, the bus was proceeding in National Highways road and with its head light, the bus driver could have seen the lorry atleast 50 feet distance and if the bus driver was careful and cautious, R.W.1 could have averted the accident by proceeding on the right side of the road or if the bus driver had applied the breaks and slowed down the bus, he could have avoided the accident or comparatively the damage to the bus would have been less.

11. Appellant-Transport Corporation had also not adduced any independent evidence to substantiate its defence plea. Tribunal observed that even for argument sake, if the stationed lorry was parked on the left side with red light burning is not a composite negligence. Tribunal was wrong in making such an

observation that parking without red light may not amount to composite negligence. In any event, Appellant-Transport Corporation has not adduced any independent evidence to substantiate its defence plea of contributory negligence. That apart Appellant-Transport Corporation has not taken any steps to implead the lorry bearing registration No.MDB 9367 and its owner as Respondents in the Claim Petition. When the Appellant-Transport Corporation has not taken any steps to implead the owner of the lorry and also its insurer, upon analysis of the available materials, we find that question of composite negligence cannot be effectively resolved. The Tribunal has rightly held that the accident was due to rash and negligent driving of the bus driver and that the Appellant-Transport Corporation is liable to pay the compensation to the Claimants and we do not find any reason to take a different view.

12. Quantum - Deceased Balamurugesan was a Post Graduate Teacher in Kendriya Vidyalaya Sangathan, Trichy Ex.P15 is the Service Register and Ex.P9 is the Last Pay Certificate of the deceased. As is seen from Ex.P9, the deceased was getting salary of Rs.19,313/-. To prove the employment and also salary, the Principal of Kendriya Vidyalaya Sangathan, Trichy was examined as P.W.3. In his evidence, P.W.3-Muthaiah has stated that VI Pay Commission was implemented with effect from January 2006 and VIth Pay Commission is also applicable to the deceased Balamurugesan. As per VIth Pay Commission, the deceased would have earned Rs.28,049/-.

13. Tribunal has taken the monthly salary of the deceased at the time of accident at Rs.28,049/-. In his evidence, P.W.3 has stated that in 2026, the deceased would have earned Rs.33,720/- as his monthly salary. Tribunal has taken the then salary and the salary which the deceased would have got in 2026 and calculated the average of the same at Rs.30,885/-, rounded of to Rs.30,800/- . Adopting multiplier "15", the loss of income is calculated at Rs.55,44,000/- and deducting one-third for personal expenses i.e. Rs.18,48,000/- , the Tribunal has calculated the total loss of dependency at Rs.36,96,000/-.

14. Learned counsel for Appellant contended that Tribunal erred in fixing the monthly income of the deceased at Rs.30,800/- without considering the recent

judgment. It was further submitted that Tribunal erred in not making any deduction towards income tax and that 20% deduction has to be made towards income tax.

15. Per contra, learned counsel for Claimants contended that if the deceased alive he would have continued in employment for another 18 years and Tribunal erred in adopting multiplier "15" and Tribunal ought to have adopted multiplier "18". It was further submitted that since the deceased had family consisting of wife, two children and mother, Tribunal ought to have deducted only one-fourth for personal expenses and Tribunal erred in deducting one-third towards personal expenses.

16. Tribunal may not be correct in taking the then income at Rs.28,049/- and the last pay in the year 2026 i.e. Rs.33,720/- and calculate the average of the same at Rs.30,800/- per month. At the time of accident, the deceased was aged 40 years. Insofar as future prospects, in Sarla Verma's case, [(2009) 6 SCC 121], the Supreme Court observed that suitable addition should be made for "future prospects" and in Paragraph (24), it was held as under:-

"24. In Susamma Thomas (1994) 2 SCC 176 this Court increased the income by nearly 100%, in Sarla Dixit (1996) 3 SCC 179 the income was increased only by 50% and in Abati Bezbaruah (2003) 2 SCC 148 the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

17. As per Ex.P15-Service Register, the date of birth of the deceased Balamurugesan is 25.5.1966. At the time of accident, deceased was aged 40 years, five months. Applying the ratio laid down in Sarla Verma's case, 30% has to be added to the salary towards future prospects i.e. the present salary at Rs.28,049/- plus 30% at Rs.8414/-, totalling Rs.36,463.70 Therefore, the monthly income of the deceased is taken at Rs.36,463/-.

18. Deduction towards income tax - Tribunal has not given any deduction towards income tax. In [(2008) 2 SCC 763 (National Insurance Co. Ltd. v. Indira Srivastava and others) and 2009 (1) TNMAC 134 (SC) (Oriental Insurance Co. Ltd. v. Ram Prasad Varma and others], the Supreme Court held that the income tax payable has to be deducted from the compensation. Applying the standard rate applicable, 20% has to be deducted towards income tax i.e. Rs.7292.60, rounded of to Rs.7200/-. Thus deducting 20% from Rs.36,463/- towards income tax, the monthly income of the deceased is calculated at Rs.29,263/-, rounded of to Rs.29,300/- per month.

19. Deduction towards personal expenses - Learned counsel for Claimants contended that Tribunal ought to have deducted only one-fourth for personal expenses and Tribunal erred in deducting one-third towards personal expenses. In a number of decisions, the Supreme Court has taken a consistent view that one-third deduction to be made for personal expenses. In 2009 (1) TN MAC 629 (SC) : 2009 (8) SCALE 194 (Oriental Insurance Company Ltd. v. Deo Patodi and others), the Supreme Court held that "deduction of one-third towards personal expenses is the ordinary rule in India". Like wise in 2004 (1) TN MAC 190 (SC) : 2004 (2) SCC 473, the Supreme Court deducted one-third towards personal expenses. Similar view was taken in (2008) 4 SCC 259 [Bilkish v. United India Insurance Company Limited] and 2009 (2) TN MAC 118 (SC) : 2008 (5) SCC 142 (Bangalore Metropolitan Transport Corporation v. Sarojamma and another). Applying the ratio of the above decisions, for personal expenses deducting one- third from Rs.29,300/- i.e. Rs.9766/- (Rs.29,300 v 3 = Rs.9766/-), the monthly contribution of the deceased to the family is calculated at Rs.19,534/-, rounded of to Rs.19,500/-.

20. The deceased was aged 40 years and 5 months at the time of accident. As per Second Schedule to M.V. Act, the proper multiplier to be applied is "15". Applying multiplier "15", the "loss of dependency" is calculated at Rs.35,10,000/- (Rs.19,500 x 12 x 15 = Rs.35,10,000/-).

21. Insofar as conventional damages, Tribunal has awarded Rs.5000/- for "loss of estate", Rs.15,000/- for "loss of consortium"; Rs.15,000/- for "transport charges" and Rs.2000/- for "funeral expenses" and the same are maintained. Tribunal has awarded Rs.5000/- each towards "loss of love and affection" i.e. Rs.20,000/-. Claimants 2 and 3 have lost the love and affection of their father at the young age of 10 and 5 years respectively at the time of accident. Like wise, the 4th Claimant, mother of the deceased also lost the love and affection of her son at the evening of the life. Therefore, compensation of Rs.5000/- each awarded to the Claimants towards "loss of love and affection" is maintained.

22. In modification, the total compensation of Rs.37,53,000/- awarded by the Tribunal is reduced to Rs.35,,000/- as under:-

Loss of dependency : Rs.35,10,000.00 (Rs.19,500 x 12 x 15)

Loss of Estate : Rs. 5,000.00

Loss of Consortium : Rs. 15,000.00

Loss of love and affection : Rs. 20,000.00

Funeral expenses : Rs. 2,000.00

Transport charges : Rs. 15,000.00

Total : Rs.35,67,000.00

Tribunal has awarded interest at the rate of 7.5% per annum and the same is maintained. The reduced compensation of Rs.35,67,000/- is to be apportioned

amongst the Claimants as follows:- First Claimant is entitled to Rs.15,67,000/-; Second and Third Minor Claimants are entitled to Rs.9,00,000/- each and Fourth Claimant is entitled to Rs.2,00,000/-.

23. In the result, the compensation of Rs.37,53,000/- awarded by the Tribunal in M.C.O.P.No.147 of 2007 dated 29.09.2009 on the file of Additional District and Sessions Judge, Fast Track Court, Ramanathapuram is reduced to Rs.35,67,000/- payable with interest at the rate of 7.5% per annum from the date of Petition till the date of deposit and the appeal is partly allowed. The Cross Objection No.28 of 2011, preferred by the Claimants is dismissed.

It was stated before us that the Appellant Transport Corporation has deposited a sum of Rs.22,00,000/- to the credit of M.C.O.P.No.147 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court, Ramanathapuram. Claimants 1 and 4 are permitted to immediately withdraw the entire share of compensation apportioned to them along with proportionate accrued interest. Insofar as the compensation payable to the minor Claimants 2 and 3, the compensation amount is ordered to be invested in anyone of the nationalised bank till they attain majority. The first Claimant/mother is permitted to withdraw the accrued interest periodically once in three months directly from the bank. The Appellant Transport Corporation is directed to deposit the balance compensation amount along with accrued interest within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the Claimants, 1 and 4 are permitted to withdraw their respective share of compensation amount. Insofar as the share of balance compensation in respect of minor Claimants 2 and 3, the same shall also be invested with permission to the 1st Claimant - mother to withdraw the interest as stated above. Consequently, connected M.P. is closed. There is no order as to costs in this appeal.

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