

The Managing Director, Vs. 1.Murugesan

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Court : Chennai

Decided On : Feb-21-2013

Judge : C.S.Karnan

Appellant : The Managing Director,

Respondent : 1.Murugesan

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

21. 02/2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN C.M.A.(MD)No.225 of 2012 & M.P.(MD)No.1 of 2012 The Managing Director, Tamil Nadu State Transport Corporation, Pudukkottai. ... Appellant Vs. 1.Murugesan 2.Kalyani 3.Geetha ... Respondents PRAYER Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set-aside the judgment and decree passed in M.C.O.P.No.29 of 2010, dated 08.08.2011, on the file of Motor Accidents Claims Tribunal and Additional District and Sessions Judge cum Fast Track Court, Pudukkottai. !For Appellant ... Mr.M.Prakash ^For Respondents... Mr.N.Balakrishnan - - - :JUDGMENT The appellant / respondent has preferred the present appeal against the judgment and decree passed in M.C.O.P.No.29 of 2010, on the file of Motor Accidents Claims Tribunal and Additional District and Sessions Judge cum Fast Track Court, Pudukkottai.

2. The short facts of the case are as follows:- The petitioners, who are the parents and sister of the (deceased) Chellapandi have filed the claim in M.C.O.P.No.29 of

2010, claiming compensation of a sum of Rs.8,50,000/- from the respondents for the death of the said Chellapandi in a motor vehicle accident. It was submitted that on 18.12.2007, at about 7.50 p.m., when the (deceased) Chellapandi was riding the two wheeler on Gandarvakottai Taluk office, the respondent's bus bearing registration not TN-55- N-0270, coming in the opposite direction and driven by its driver at a high speed and in a rash and negligent manner dashed against the two wheeler and caused the accident. As a result, the (deceased) Chellapandi sustained injuries in his head, chest, face and other parts of his body and died on the spot. At the time of accident, the deceased was aged 22 years and was an agricultural worker and earning Rs.5,000/- per month. Hence, the petitioners have filed the claim against the respondent, viz., Tamil Nadu State Transport Corporation Limited.

3. The respondent, in his counter has denied that their bus was involved in the accident. It was submitted that on 18.02.2007, at about 7.05 p.m., the bus was started from Pudukottai bus stand and was proceeding towards Tanjore and at about 7.50 p.m., when the bus was near Gandarvakottai Taluk Office, the driver of the bus had seen a crowd of people ahead of him and hence the bus driver slowed down the bus. Ahead of the bus there was a heap of straw and there was cut stones around it and an injured person was lying with the motorcycle on him. The people in the crowd requested the bus driver to take the injured to the hospital. Therefore, on humanitarian grounds, the driver of the bus brought the injured to Gandarvakottai Hospital. After admitting the injured person in the hospital, the driver of the bus rushed to the police station, opposite to the Gandarvakottai Hospital and narrated the facts to the inspector of police. But, the crowd entered into the police station with a written complaint and stated that the bus driver dashed his bus against the motorcycle and that the injured died and compelled the Inspector to register the F.I.R. against the bus driver. The inspector asked the bus driver and conductor to wait in the police station for some time. Then, the Inspector went to the place of occurrence and enquired the public and since it was revealed that the bus was not involved in the accident, the inspector allowed the driver and conductor to proceed in their route. It was submitted that the Gandarvakottai police have not filed any case against the bus driver, based on the F.I.R., on the ground of mistake of fact. It was submitted that as the owner and

insurer of the motorcycle have not been added as necessary parties, it renders the claim not maintainable.

4. The Motor Accidents Claims Tribunal framed three issues for consideration in the case, viz., "(i) Whether the accident had been caused due to the rash and negligent driving by the driver of the respondent's bus? (ii) Whether the respondent is liable to pay compensation to the petitioners? (iii) What is the quantum of compensation which the petitioners are entitled to get?" 5. On the petitioners side, two witnesses were examined and four documents were marked as Exs.P1 to P4, viz., Ex.P1-copy of F.I.R., Ex.P2-copy of postmortem certificate, Ex.P3-motor vehicle inspector's report for the bus, Ex.P4-legal-heir certificate of the deceased. On the respondent's side, two witnesses were examined and one document was marked as Ex.R1, viz., final report.

6. P.W.1, the second petitioner, who is the mother of the (deceased) Chellapandi had adduced evidence which is corroborative of the statements made in the claim regarding manner of accident and in support of her evidence, she had marked the exhibits listed as Exs.P1 to P4.

7. P.W.2, Thiru.Ramachandran, the eyewitness to the accident had deposed in his evidence that on 18.02.2007, at about 7.30 p.m., when he was riding his cycle near Gandarvakottai Taluk Office, he had seen a person riding on a motorcycle proceeding ahead of him and that the respondent's bus bearing Registration not TN-55-0270 had dashed against the two wheeler rider. He had deposed that the injured person sustained severe head injury and that he was taken in the same bus to Gandarvakottai Government Hospital, where he was declared dead. He deposed that the accident was caused only by the rash and negligent driving by the driver of the respondent's bus.

8. R.W.1, Rajendran, the driver of the bus had deposed that on 18.02.2007, when he was driving the bus from Pudukkottai to Tanjore and when he was near Gandarvakottai Taluk Office, he had seen a heap of straw ahead of him with one injured person, on the road. 4 or 5 persons stopped the bus and requested him to take the injured to the hospital. Some passengers also requested him to help the injured. Therefore, on humanitarian ground, he took the injured to Gandarvakottai

hospital and that the injured was declared dead in the hospital. He deposed that he gave complaint in the police station opposite to the hospital and that he was asked to bring the bus to the R.T.O. Office on the next day. He deposed that the inspector asked him to come to the police station after one week. After one week, when he visited the police station, the inspector told him that there is no fault on him and that he has referred the case. He deposed that he had given a written report to his management, in respect of the accident.

9. R.W.2, Thiru.MurugaAdaikkalam, working as Assistant in legal section of Pudukkottai Office had adduced evidence that the driver of the bus was not responsible for the accident and to substantiate this contention, he had marked Ex.R1, the final report in Gandarvakottai Police Station in Crime No.40 of 2007, wherein the police have referred the case as mistake of fact.

10. The Tribunal, opined that if the bus had not been involved in the accident, the bus driver would have proceeded with the trip to Tanjore. But as per the evidence of R.W.1., he had come to Pudukkottai and transferred the passengers to another bus and came to the police station and according to him the bus was in the police station the whole night, which all go to show that the bus was directly involved in the accident. The Tribunal, on perusal of Ex.R1, observed that it was a final report and that the letter shows that the inspector has come to a conclusion only to refer the case and that there is no closure of case as mistake of fact and the case was not referred as claimed by the respondent. The Tribunal on observing that no independent witnesses had been examined on the side of the respondents to prove their contention that the bus was not involved in the accident, held that the accident had been caused by the rash and negligent driving by the driver of the respondent's bus and hence held the respondent liable to pay compensation to the first and second petitioners who are the legal-heirs of the deceased as per legal-heir certificate marked as Ex.P4.

11. The Tribunal, on observing that no documentary evidence had been marked to prove the income of the deceased held that the notional monthly income of the deceased could be taken as Rs.3,000/- only. The Tribunal, on adopting a multiplier of '16', as relevant to the average age of the first and second petitioners, i.e., 38.5

years and deducting 1/3 of his income for his personal expenses, awarded a sum of Rs.3,84,000/- as compensation to the petitioners ($\text{Rs.3,000} \times \frac{1}{3} \times 2 \times 12 \times 16$); Rs.3,000/- was awarded towards funeral expenses and Rs.5,000/- was awarded under the head of loss of estate. The Tribunal awarded a sum of Rs.50,000/- under the head of loss of love and affection to the petitioners. In total, the Tribunal awarded a sum of Rs.4,42,000/- as compensation to the petitioners and directed the respondent to pay the said sum together with interest at the rate of 7.5% per annum from the date of numbering of the petition, i.e., 16.02.2009, till the date of realisation, with costs, within 30 days from the date of its order. The claim by the third respondent was dismissed.

12. Aggrieved by the award passed by the Tribunal, the respondent / Tamil Nadu State Transport Corporation, Pudukkottai has preferred the present appeal.

13. The learned counsel for the appellants contended that the tribunal ought to have dismissed the claim petition, as the vehicle belonging to the transport corporation was not involved in the accident. It was contended that the Tribunal failed to note that mere registering of a criminal case against the driver of the bus is not conclusive proof to show that the driver of the bus had been negligent. It was contended that the Tribunal ought to have given credit to the evidence of R.W.1 and R.W.2 and Ex.R1. It was contended that the Tribunal ought to have deducted 1/2 of the income of the deceased for his personal expenses. It was submitted that the multiplier adopted by the Tribunal was high and that a multiplier of '13' was appropriate and award granted under the various heads are excessive and awarded without any basis. Hence, it was prayed to set-aside the award passed by the Tribunal.

14. The learned counsel for the claimants has submitted that the deceased age was 22 years and he was earning Rs.5,000/- per month through agricultural operations. The first and second claimants are parents of the deceased. The deceased was the only son to the first and second claimants. He was fully supporting his parents by way of contributing the entire income of the deceased. Initially, the criminal case has been registered against the driver of the offending vehicle. Subsequently, the case was closed as mistake of facts. But, in order to

substantiate the final report of the investigation officer, the rough sketch was not produced either by the investigation officer or by the respondent. As such, the Transport Corporation cannot be exonerated from liability in paying compensation. The total compensation of a sum of Rs.4,42,000/- is not on the higher side since the age of the deceased was only 22 years and he was an earning person. The learned counsel has cited the following judgment in support of his contentions:- Bilkish v. United India Insurance Company Ltd. reported in 2008 (1) TN MAC 30.(SC) "MOTOR ACCIDENT CLAIM - Compensation - Quantum - Determination - Deceased aged 20 years, a bachelor - Claimants: Parents of deceased aged 47 years and 42 years - Income: Deceased carried business and was income-tax assessee: Income at Rs.31,494/- per annum assessed - Loss of dependency: Tribunal deducting 50% towards personal living expenses, dependency / contribution to family worked out at Rs.15,000/- per annum - Dependency compensation / Loss of income : Tribunal applying multiplier of 11, in view of age of claimants, arrived at Loss of Dependency at Rs.1,65,000/- and also awarded Rs.10,000/- towards loss of estate and funeral expenses - Quantum of compensation at Rs.1,75,000/- awarded by Tribunal affirmed by High Court - Appeal against - Whether deduction of 50% towards personal expenses and loss of dependency at Rs.15,000/- per annum correct? Deceased being a bachelor could not have spent more than 1/3 of total income - Therefore, determining Loss of Dependency by 50% not correct - Supreme Court in Appeal assessed personal spending at 1/3 and 2/3 of income towards contribution to family - Accordingly, loss of dependency worked out at Rs.20,000/- per annum - Multiplier of 11 applied by Tribunal also found to be not correct as per Second Schedule appended to M.V.Act, 1988 - Multiplier fixed at 12 - Applying multiplier of 12 to Rs.20,000/- per annum loss of dependency awarded at Rs.2,40,000/- - Rs.10,000/- awarded towards loss of estate and funeral expenses confirmed - Interest: Awarded at 9% per annum as against 6%." 15. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on going through the impugned award of the Tribunal, this court does not find any irregularities in the conclusions arrived at regarding liability and quantum of compensation. This court is of the further view that the deceased was aged about 22 years, and that he was involved in the agricultural work as a coolie and as

such, he was an earning person and only son to the first and second claimants. Therefore, the quantum of compensation awarded by the Tribunal is not on the higher side, considering that it has been granted under the heads of loss of income, loss of love and affection, transport and funeral expenses. This Court is of the further view that the rough sketch had not been marked through the investigation officer in order to establish that the accident had been caused by the negligence of the deceased himself. Therefore, the liability fastened by the Tribunal on the Transport Corporation is sustainable. Hence, this Court is not inclined to interfere with the impugned order.

16. As per Court records, it is seen that this Court has imposed a condition on the appellant / Tamil Nadu State Transport Corporation to deposit a sum of Rs.3,00,000/- with proportionate interest and costs. Now, this Court directs the appellant / Tamil Nadu State Transport Corporation to deposit the balance compensation amount with accrued interest thereon, within a period of eight weeks from the date of receipt of a copy of this order. After such a deposit being made, it is open to the claimants 1 and 2 to withdraw their apportioned share amount, with accrued interest thereon, as per Tribunal findings, lying in the credit of M.C.O.P.No.29 of 2010, on the file of Motor Accidents Claims Tribunal and Additional District and Sessions Judge cum Fast Track Court, Pudukkottai, after filing a Memo along with a copy of this order.

17. In the result, the above appeal is dismissed. Consequently, the order and decree passed in M.C.O.P.No.29 of 2010, on the file of Motor Accidents Claims Tribunal and Additional District and Sessions Judge cum Fast Track Court, Pudukkottai, dated 08.08.2011, is confirmed. There is no order as to costs. Connected miscellaneous petition is closed. r n s To The Additional District and Sessions Judge cum Fast Track Court, Motor Accidents Claims Tribunal Pudukkottai.

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