

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.05.2008

CORAM:

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

C.M.A.No.1169 of 2003

Tamilnadu State Transport Corporation (K-Dn I) Ltd.,
Kumbakonam rep. By the Managing Director.

... Appellant/Respondent

Vs.

1.John,S/o.Logaiah
2.Usha,W/o.John

... Respondents/Petitioners

Prayer: Appeal filed against the Judgment and Decree dated 12.04.2001 made in M.A.C.T.O.P.No.397 of 1999 on the file of the Motor Accidents Claims Tribunal (Additional Tribunal Judge) at Virudhachalam.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.A.Murugan

JUDGMENT

The award directing the Tamilnadu State Transport Corporation (K-Dn I) Limited, Kumbakonam represented by its Managing Director, the appellant herein to pay sum of Rs.1,00,000/- as compensation along with interest at 9% per annum from the date of petition till date of deposit, in regard to the death of a 3 years minor girl to the respondents/petitioners is under challenge in this appeal.

2.The Motor Accidents Claims Tribunal, Virudhachalam in M.A.C.T.O.P.No.397 of 1999 filed by the claimants/ respondents has passed the award dated 12.04.2001 granting a total compensation of Rs.1,00,000/- to the claimants.

3.The material facts leading to the filing of the claim are as follows:-

On 17.05.1999 at about 12 hours at Authur while the deceased minor was standing on the left side of the road, the respondent bus TN.49/N.0328 driven by its driver coming from west to east dashed against the minor causing fatal injuries. The first claimant is the father and the second claimant is the mother. The deceased minor

girl is the only daughter to the claimants. The claimants have lost their affectionate daughter in the accident. The same could not be compensated in terms of money. However, the claimants estimate the loss to a sum of Rs.1,50,000/- by means of compensation along with interest and costs.

The appellant Transport Corporation in the counter has taken a stand that on 17.05.1999 when its driver drove the bus TN.49/N.0328 with great care and caution, at about 11.45 a.m. near Authur bus stand, in the bus stand road the child of the claimants suddenly ran below the bus and thereby met with an accident and that because of the contributory negligence on the part of the deceased, the accident took place.

Before the Tribunal on the side of claimants witness P.W.1 was examined and Exs.A.1 to A.5 were marked. On the side of the respondent, R.W.1 was examined and no documents were marked.

On appreciation of oral and documentary evidence the Claims Tribunal has passed an award of Rs.1,00,000/- as total compensation in favour of the claimants, payable by the appellant/Transport Corporation along with interest at 9% per annum from the date of filing of the petition till date of deposit.

4. According to the appellant, the Tribunal went wrong in holding that the bus driver was rash and negligent in driving and was responsible for the accident and that the Tribunal ought to have accepted the evidence of R.W.1-driver and in any event, the Tribunal should have come to the conclusion that the deceased also had contributed to the accident by her careless and negligent act and therefore, prays for allowing the appeal.

5. A legal plea is taken on behalf of the appellant that the Tribunal has awarded an excess sum of Rs.1,00,000/- for the death of a minor girl aged 3 years although it has referred to the decision 2000 L.W. Page 338 wherein an amount of Rs.75,000/- was awarded for the death of a minor child aged 3 years and resulting in miscarriage of justice.

6. In order to prove negligence the first claimant was examined as P.W.1 before the Tribunal. Ex.A.1 is the xerox copy of FIR dated 17.05.1999. The first claimant figures as complainant in Ex.A.1-FIR. R.W.1-Paramanandham, driver of Government Transport Corporation bus TN.49/N.0328 is shown as accused. A perusal of Ex.A.1-FIR goes to show that in Cr.No.336 of 1999 a case under Section 304 (A) of I.P.C. has been registered by the Peralam Police. Ex.A.2 is the M.V. Inspector's Inspection Report dated 18.05.1999 wherein it is stated that the accident is not due to any mechanical defect of the vehicle. Moreover, it is also mentioned

that on account of accident the bus has not sustained any damage. Ex.A.3 is the xerox copy of postmortem certificate in respect of the deceased minor girl.

7.P.W.1-John, the first claimant in his evidence has deposed that on 17.05.1999 he was returning from Authur along with his family and near the bus stand while they were coming his daughter was proceeding in front of him and at that time the bus TN.49/N.0328 belonging to the Government (town bus) was driven in high speed and negligently and it dashed against his daughter Karthika as a result of which, she was thrown out and sustained grievous injury and that he saw the accident. In Ex.A.1-FIR it is inter alia mentioned that 'his daughter after seeing the bus ran fastly waving the hand and at that time the bus came negligently in high speed driven by its driver-Paramanandham (name later known) dashed against her, as a result of which, she fell down and before ever the driver could stop the bus, the bus left back wheel ran over Karthika's face etc.'. The evidence of P.W.1 in regard to the occurrence is lucid and clear.

8.At this stage, it is relevant to point out that R.W.1, the driver in his evidence has stated that the bus stopped at the bus stand and at that time passengers were getting down and that the children were playing the ball game and after the passengers alighting, the conductor blew the whistle and when he took the bus, the girl who was playing game and fell down before the bus and that there is no mistake on his part. In the cross examination, R.W.1-Paramanandham, the driver has categorically stated that a case has been registered against him by the police. The evidence of R.W.1-Paramanandham, the driver is not to be believed and his testimony is self-serving and therefore, this Court rejects the same.

9.Suffice it to point out that the oral evidence of P.W.1, coupled with Ex.A.1-FIR is trustworthy and therefore, this Court relies on the same by accepting it in toto. Therefore, this Court comes to the conclusion that the accident has occurred due to the negligent driving of the bus by its driver R.W.1-Paramanandham and therefore, he is held responsible for causing the accident and the point is answered accordingly.

10.In regard to the issue of quantum, admittedly, the deceased minor girl Karthika at the time of accident is aged about 3 years. Her name finds a place in Ex.A.5-Family Ration Card, wherein the claimants names are also found along with their son-Anandaraj aged 5 years. Ex.A.4 is the Sterilisation Certificate dated 02.12.1996 issued by the Balaji Nursing Home, Virudhachalam in respect of the second claimant. It is not in dispute that the deceased minor child Karthika is the only daughter to the claimants. In Ex.A.3-xerox copy of postmortem certificate, the age of the deceased minor girl

is mentioned as 3 years. In the claim petition also the age of the deceased minor girl is mentioned as 3 years.

11. It is well accepted principle that in a fatal accident case that the claimants should establish that they have lost a reasonable probability of pecuniary advantage, in the considered opinion of this Court. As a matter of fact, the compensation/damages are not to be granted as solatium but the actual pecuniary loss has to be assessed. It is true that no uniform yardstick for measuring the value of a Homo Sapien's life and the quantum of damages cannot be arrived at with mathematical precision or accuracy.

12. The Tribunal has awarded a sum of Rs.1,00,000/- as compensation for the death of the minor girl Karthika. The grievance of the appellant Corporation is that award of Rs.1,00,000/- is exorbitant. In the decision the Managing Director, Dheeran Chinnamalai Transport Corporation, Trichy V. Thangaraju and another, 1997 1 CTC page 469, for the death of a minor aged 3 years a sum of Rs.75,000/- has been awarded as compensation. In the decision Suniti Mondal V. New India Assurance Company Limited and Others, 2005 ACJ 272, for the death of a minor boy aged 4 years a sum of Rs.1,50,000/- has been awarded. In the decision Nandibrata Tripura V. Branch Manager, United India Insurance Company Limited and Others, 2007 ACJ 382, for the death of a minor boy aged 2 years an award of Rs.62,000/- has been enhanced to Rs.1,60,000/-. It is pertinent to point out that the relevant portion of para 7 of the aforesaid decision wherein it is observed as follows:-

"7. As regards the computation due to the death of the son, it is admitted that his age was only 2 years at the time of accident and according to the structured formula the multiplier is 15. Following the same procedure Rs.10,000 shall be the annual loss to estate which shall be multiplied by 15 to make the amount of Rs.1,50,000. An amount of Rs.10,000 being conventional amount be added to make the amount of Rs.1,60,000/-."

13. The learned counsel for the respondents relies on the decision, Managing Director, Thanthai Periyar Transport Corporation, Villupuram V. Sundaramurthy and another, 2000 L.W. Page 338, wherein a sum of Rs.1,20,000/- has been fixed as compensation for the death of a boy aged 8 years. One vital aspect in the present case on hand is that the second claimant has undergone sterilisation even as early as on 02.12.1996 and therefore, in such circumstance the award of higher compensation is justified. Generally speaking, life of a human being cannot be valued in terms of money. However, in case of death of a human being a just and prudent compensation can be determined having

regard to the overall assessment of the entire gamut of the matter in a given set of facts and circumstances of a case.

14. Bearing in mind the aforesaid principles, this Court comes to the conclusion that the determination of compensation of Rs.1,00,000/- awarded by the Tribunal is just, fair and prudent one, considering the facts and circumstances of the present case and by no stretch of imagination it can be said that the award of Rs.1,00,000/- is excessive or exorbitant and in that view of the matter, this Court is not interfering with the award passed by the Tribunal. Resultantly, the award dated 12.04.2001 in M.A.C.T.O.P.No.397 of 1999 passed by the Motor Accidents Claims Tribunal, Virudhachalam is affirmed for the reasons assigned in this appeal by this Court.

In fine, the Civil Miscellaneous Appeal is dismissed as devoid of merits. However, the parties are directed to bear their own costs in this appeal.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sgl

To

1.The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Virudhachalam.

2.The Section Officer, सत्यमेव जयते
VR Section, High Court, Madras-104.

+1cc to Mr.M.Krishnamoorthy, Advocate SR 26714

TM(CO)
km/12.6.

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