

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2008

CORAM:

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

C.M.A.No.1828 of 2003

The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division I) Limited,
37, Mettupalayam Road, Coimbatore. ... Appellant / 1st Respondent

Vs.

1.Baby
2.Minor Ramya
3.Minor Karthick
4.Nachimuthu
5.Mayangathal ... Respondents / Petitioners

(R2 & R3 Minor rep, by Natural
Guardian and Mother R1 Baby)

Prayer: Appeal filed under Section 173 of M.V.Act (1988) against the
Judgment and Decree dated 28.2.2003 made in M.C.O.P.No.1085 of 1999 on
the file of the Motor Accident Claims Tribunal (Sub Judge), Tiruppur and
praying to set aside the same.

For Appellant : Mr.Rajnish Pathiyil

For Respondents : Mr.D.Selvaraju

JUDGMENT

The Civil Miscellaneous Appeal is preferred by the Tamil Nadu State
Transport Corporation (Coimbatore Division I) Limited by its Managing
Director, Coimbatore, against the award of the Motor Accident Claims
Tribunal viz., Sub Judge, Tiruppur dated 28.2.2003 passed in
M.C.O.P.No.1085 of 1999, granting compensation of Rs.6,30,000/-.

2.The respondents being the wife, children and parents of the
deceased have filed M.C.O.P.No.1085 of 1999 claiming a restricted
compensation of Rs.15,00,000/-.

3.The short facts paving the way to the present appeal are
summarised as follows:-

On 07.02.1999 at about 21.30 hours when the deceased Govindasamy was riding his motorcycle bearing Registration No.T.N.39.H.1110, the bus bearing Registration No.T.N.38.N.0423 came in a rash and negligent manner and dashed against the deceased, as a result of which he was thrown out and died due to injuries. The accident was caused due to the rash and negligent driving of the driver of the appellant/Transport Corporation and hence, the appellant is liable to pay compensation to the claimants.

The appellant/Transport Corporation pleaded that the driver of the bus did not drive the bus either rashly or negligently and that the driver of the bus was driving the vehicle from Erode to Coimbatore observing the road rules in its 7.50 p.m. Trip and when the bus stopped at Citra bus stop, after the passengers alight and got into the bus, the bus moved near Aravindh Eye Hospital and the conductor gave signal and the bus slow down to stop and at that point of time, the deceased came in a Bullet Motor Bike bearing Registration No.T.N.39.H.1110 in a high speed on the opposite direction, overtook a lorry and lost control and dashed against the front side of the bus and fell down. The pillion rider also fell down and therefore, the deceased was responsible for his death and that the claimants should prove that the deceased had a valid driving licence at the time of accident and in any event, the deceased was responsible for his contributory negligence and that the appellant/respondent Corporation is not liable to pay any compensation.

4.The Tribunal examined witnesses P.W.1 to P.W.3 on the side of claimants and marked Exs.A.1 to A.8 and on the side of appellant/respondent, R.W.1 was examined and no exhibits were marked. On appreciation of oral and documentary evidence, the Tribunal came to the conclusion that the accident took place due to the negligence of the appellant/ respondent bus driver and passed an award of Rs.6,30,000/- (Rupees six lakhs and thirty thousand only) with interest at 9% per annum from the date of petition till date of payment. Assailing the same, the Transport Corporation has projected the instant appeal.

5.P.W.2-Shanmugam in his cross examination has deposed that he witness the accident and that he has not complaint before the Police and that the bus without stopping came in high speed. Ex.A.1 is the xerox copy of FIR dated 07.02.1999. In this, the name of the informant is mentioned as Gurumath Singh, Coimbatore. A perusal of Ex.A.1-Xerox copy of FIR clearly points out that in Crime No.135 of 1999 under Section 279, 304 A I.P.C., a case has been registered against the driver of the bus Rajee, bearing Registration No.T.N.38.N.0423. Admittedly, the complainant Gurumath Singh was not examined before the Tribunal. However, in Ex.A.1-Xerox copy of FIR, it is inter alia mentioned as follows:

"Today 7.23.1999 I have gone to hopes for Private Business and when I was returning to my restaurant on my two wheeler T.N.37.F.3949 along the Avanashi road from west to east, when

at about 21.30 hrs I noticed two persons going ahead of me on the two wheeler at P.S.G. Arts College the above two persons travelling on a Bullet had gone a little of the Centre of Road. When all of a sudden the Bus (Govt. Bus) which was coming from east to west along the same road hit the motor cyclist and the pillion rider and they were thrown from the vehicle and at the same time the motor cycle was ... in the right front wheel of the bus and ... to the spot where the two persons had been thrown. The motor cyclist and pillion rider suffered severe head injuries and injuries on other parts of the motor cyclist and as result the both Expired on the spot, etc.".

Ex.P.2 is the Xerox copy of M.V. Inspection Report. In this, it is candidly mentioned that "the accident was not due to any mechanical defect of the vehicle". Ex.A.3 is the Xerox copy of the Postmortem Certificate relating to the deceased Govindasamy in which the Doctor has opined that the deceased would appear to have died of multiple injuries sustained by him.

6.R.W.1-Rajee, the driver of the bus has deposed that the driver who drove the motorcycle Bullet bearing Registration No.T.N.39.H.1110, drove the motorcycle under influence of alcohol in high speed and he made an endeavour to overtake the lorry, which was coming in front and while coming to the right side of road, he lost control and dashed against the front right side of the bus and that the deceased Govindasamy, Motorcycle driver was responsible for the accident. Notwithstanding the fact that the complainant Gurumath Singh, who lodged the FIR was not examined in the case, bearing in mind the evidence of P.W.2-Shanmugam (who witness the accident) has stated that the driver drove the bus in high speed without slowing down the same, this Court accepts his evidence and therefore, comes to the conclusion that the accident took place on account of the negligent driving of the driver of the bus and that the driver of the bus was squarely responsible for causing the accident and the point is answered accordingly.

7.According to the learned counsel for the appellant/ Transport Corporation, the Tribunal erred in relying on Ex.A.6-salary certificate which was marked in the case without examining the author of the document and that the Tribunal failed to note that no documentary evidence was produced to prove the occupation and income of the deceased and that the Tribunal was wrong in fixing the monthly income of the deceased Govindasamy at Rs.5,000/- without any basis and in any event, the award of compensation of Rs.6,30,000/- with interest at 9% per annum from the date of filing of the petition etc., is unsustainable in the eye of law.

8.In the claim petition, the age of the deceased Govindasamy is mentioned as 30. In Ex.A.3-Xerox copy of Postmortem Certificate, the age of the deceased Govindasamy is stated to be about 38 years. Ex.A.4 is

the Certified copy of Death Certificate pertaining to deceased Govindasamy, wherein the date of death is mentioned as 07.02.1999. Ex.A.5 is the Legal Heir Certificate dated 07.04.1999 issued by the Tahsildar, Avanashi wherein, the claimants/respondents 1 to 5 names are found. Ex.A.6 is the letter dated 10.03.1999, issued by the S.K. Textiles Proprietor, wherein it is mentioned that the deceased Govindasamy was employed as Supervisor in their concern for the past five years, drawing a monthly salary of Rs.6,000/- etc. No doubt, the author of Ex.A.6-letter dated 10.3.1999 was not examined before the Tribunal to prove the monthly salary of Rs.6,000/-, (relating to the deceased Govindasamy).

9.It is pertinent to point out that marking of a document is one thing and proving the contents of the same is a different one, in the eye of law. Even though, the author of Ex.A.6, letter dated 10.03.1999 was not examined on behalf of the claimants, yet in this case no steps were taken on behalf of the appellant to examine the author of Ex.A.6 to disprove the version projected by the claimants in regard to the monthly salary of Rs.6,000/- of the deceased. But the initial burden rests on the claimants. Thereafter, the burden shifts in the eye of law. It is evident that Ex.A.6, letter dated 10.03.1999 has been filed by the claimants. At this stage, it is useful to refer to the evidence of the Partner-Shanmugam in S.K. Textiles to the effect that the deceased Govindasamy worked in their concern as Supervisor, getting a monthly income of Rs.6,000/-. Besides the evidence of P.W.2 and Ex.A.6-letter dated 10.03.1999, no records or relevant vouchers or salary registers were produced and filed before the Tribunal to know about the exact salary of deceased Govindasamy. In the absence of the same, the Tribunal is not at fault in determining the monthly salary of the deceased Govindasamy at Rs.5,000/-, ignoring the claim of salary of Rs.10,000/-, as spoken to by P.W.1-Baby, the wife of the deceased.

10.Inasmuch as the age of the deceased is stated to be at about 38 in Ex.A.3-Postmortem Certificate dated 08.02.1999, this Court determines the age of the deceased Govindasamy at the time of his death as 38 years. Consequently, the appropriate multiplier to be adopted is 16 as per Second Schedule to Section 163-A of the M.V. Act. The monthly dependency of Rs.5,000/- as fixed by the Tribunal is just and proper, in the opinion of this Court on the facts and circumstances of the instant case on hand. Based on the monthly dependency of Rs.5,000/-, per year it works out to Rs.60,000/-. Adopting the multiplier of 16, then Rs.60,000/- x 16 it comes to Rs.9,60,000/- as compensation. This Court grants Rs.2,500/- towards loss of estate, Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium, in all a sum of Rs.9,500/- towards general damages. Out of a sum of Rs.9,60,000/-, if 1/3rd Rs.3,20,000/- is deducted towards the personal expenses of the deceased Govindasamy, then the balance comes to Rs.6,40,000/-. Thus, the respondents/claimants are entitled to a sum of Rs.6,49,500/- (Rs.6,40,000/- + Rs.9,500/-) as compensation.

11. Accordingly, this Court concludes that the respondents/claimants are entitled to a sum of Rs.6,49,500/- (Rupees six lakhs forty nine thousand and five hundred only) as compensation for the death of the deceased Govindasamy and therefore, the quantum of Rs.6,30,000/-, fixed as rounded off compensation by the Tribunal is inadequate. It is borne in mind that Lord Moris in 1970 AC1 has rightly observed that 'to compensate in money for pain and physical consequences is invariably difficult by ... no other process can be devised than that of making a monetary assessment'. No doubt, it is the bounden duty of the Tribunal to determine the just compensation and apportion the liability. However, since the respondents/claimants have not preferred any appeal against the award of Rs.6,30,000/-, this Court is not disturbing the award of Rs.6,30,000/- as fixed by the Tribunal, at this distance of time to prevent aberration of justice. The lawyer's fee fixed as Rs.13,300/- by the Tribunal is also not disturbed by this Court. Equally, this Court is of the view that nothing whatsoever absolutely has been made out for reducing the rate of interest at 9% per annum awarded by the Tribunal and the interest of 9% per annum is also affirmed.

12. It appears that a sum of Rs.8,65,000/- has been deposited. Earlier, on 31.3.2004 in C.M.P.No.11427 of 2003 while making the interim stay already granted as absolute, this Court has given permission for withdrawal of amounts etc., besides giving directions to the Tribunal to invest the amount in Indian Bank, Tiruppur, etc., as stated therein.

13. In the backdrop of aforesaid detailed discussions and on examination of material evidence on record and on an overall assessment of the facts and circumstances of the case, this Court opines that the appeal is devoid of merits and the same is dismissed for the reasons assigned by this Court in the present appeal, to promote substantial cause of justice. Resultantly, the order passed by the Motor Accident Claims Tribunal viz., Sub Judge, Tiruppur, dated 28.2.2003 in M.C.O.P.No.1085 of 1999 is confirmed.

14. It is open to the respondents/claimants to withdraw the balance amount due to them lying to the credit of M.C.O.P.No.1085 of 1999 on the file of the Motor Accident Claims Tribunal viz., Sub Judge, Tiruppur by filing necessary payment out application in accordance with law. Further, the Tribunal is directed to ensure that the appropriate Court Fee is collected from the respondents/ claimants (if not collected already) before making the balance payment. Bearing in mind the facts and circumstances of the case, there shall be no order as to costs.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

Sgl

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruppur.

2. The Section Officer,
V.R.Section,
High Court,
Madras.

+1 cc to Mr.D.Selvaraju, Advocate, SR.No.26145.

Vsv (co)
krd / 12.6.08

C.M.A.NO.1828 OF 2003



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