

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2008

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THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.No.4066 of 2008
and
M.P.No.1 of 2008

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Periyamilaguparai,
Trichy-1.

... Appellant/Respondent

vs.

1.Marimuthammal,
2.Minor Senthil,
3.Minor Senthilkumar,
4.Minor Palani.
(Minor respondents 2 to 4
are represented by their
mother Marimuthammal,
the first respondent)

... Respondents/Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 24.12.2007 passed in M.C.O.P.No.84 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court), Ariyalur.

For appellant : Mrs.B.Vijayalakshmi

JUDGMENT

State Transport Corporation is on appeal challenging the award dated 24.12.2007 passed in M.C.O.P.No.84 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court), Ariyalur.

2. The only contention raised by the counsel for the appellant is on the quantum of compensation awarded by the Tribunal.

3. It is a case of fatal accident. The brief facts of the case are as follows:- The accident in this case happened on 1.3.2003. The deceased Gnanavelmurugan, aged 23 years and working in a private

company, was travelling on a two wheeler and was hit by the appellant transport corporation bus driven by its driver in a rash and negligent manner. In that accident, the said Gnanavelmurugan died. The mother aged 45 years and minor brothers aged 17, 17 and 15 years respectively filed a claim for compensation in a sum of Rs.10 lakhs stating that the deceased was earning a sum of Rs.3,000/- per month.

4. The Tribunal tried this claim along with connected M.C.O.P.No.750 of 2003. In support of this claim, the mother of the deceased was examined as P.W.1. One Nallammal, the claimant in M.C.O.P.No.750 of 2003 was examined as P.W.2. The brother of the deceased in this case, the second respondent minor Senthil, the eye witness to the accident was examined as P.W.3. Exs.P-1 to P-9 were marked, the details of which are as follows:-

Ex.P-1 is the copy of F.I.R.,

Ex.P-2 is the post-mortem certificate of the deceased Nallathambi in M.C.O.P.No.750 of 2003,

Ex.P-3 is the copy of driving licence of the deceased in this case,

Es.P-4 is the copy of service certificate,

Ex.P-5 is the copy of lorry RC Book issued in the name of the deceased Nallathambi,

Ex.P-6 is the post-mortem certificate,

Ex.P-7 is the computer diploma certificate,

Ex.P-8 is the college transfer certificate and

Ex.P-9 is the copy of passport.

The conductor of the appellant transport corporation bus was examined as R.W.1. No document was marked on behalf of the appellant transport corporation, the respondent before the Tribunal.

5. As regards the negligence, this Court has already confirmed the finding of the Tribunal in C.M.A.No.3855 of 2008 in respect of another claim under the same accident. The same reason will apply to the present case as well.

6. As far as the compensation is concerned, the Tribunal in this case fixed the income of the deceased at Rs.1,500/- per month and after deducting 1/3 towards personal expenses of the deceased, the contribution to the family of the deceased was fixed at Rs.1,000/- per month. The age of the deceased was fixed at 40 years based on the post-mortem certificate Ex.P-2. In terms of second schedule to Section 163A

of the Motor Vehicles Act, the Tribunal adopted 15 multiplier and fixed the loss of pecuniary benefits to the family of the deceased at Rs.2,04,000/- (Rs.1,000/- x 12 x 17 = Rs.2,04,000/-). In addition, the Tribunal granted compensation under conventional heads. In all, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.N o.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the dependents	Rs.2,04,000/-
2	Loss of love and affection to the mother and three brothers	Rs. 5,000/-
3	Funeral expenses	Rs. 2,000/-
4	Conveyance expenses	Rs. 3,000/-
	Total	Rs.2,14,000/-

7. The only contention raised by the counsel for the appellant is on the quantum of compensation stating that the multiplier of 17 adopted by the Tribunal in a case of 40 years old deceased is on the higher side and therefore, the compensation has to be reduced.

8. On perusing the award of the Tribunal, this Court is not inclined to interfere with the award and to reduce the quantum of compensation for the following reasons:-

- (i) The accident in this case happened on 1.3.2003. The deceased admittedly was a earning member.
- (ii) While determining the income, the following two decisions can be taken into consideration:-

(a) A Division Bench of this Court in B.Anandhi - vs. - Latha reported in 2002 ACJ 233 (P.SATHASIVAM, J., as he then was) observed that a coolie would earn Rs.100/- per day. In that case, the accident happened in the year 1995.

(b) The Apex Court in State of Haryana and another - vs. - Jasbir Kaur and others reported in 2004-1 Law Weekly, was of the view that an agriculturist would earn Rs.3,000/- per month. In that case, the accident happened in the year 1999.

In the above cited cases, the income of the deceased was taken at Rs.3,000/- per month for the year 1995 and 1999 respectively, whereas in the present case, the accident happened in the year 2003. In this case, the income of the deceased was taken as Rs.1,500/- per month which is meagre.

- (iii) Based on the above decisions, the income in this case should have been fixed at Rs.3,000/- per month as claimed.
- (iv) Since the income of the deceased was fixed as Rs.1,500/- per month the higher multiplier adopted by the Tribunal will compensate the same. Therefore, the compensation in a sum of Rs.2,04,000/- granted towards loss of pecuniary benefits does not require further reduction only on the ground that the multiplier is higher.
- (v) In any event, the other amounts granted by the Tribunal under conventional heads, like loss of love and affection to the mother and three brothers is a paltry sum of Rs.5,000/-.
- (vi) Considering the Apex Court's decision in Manju Devi and another - Musafir Paswan and another 2005 ACJ 99 = 2005(1) TAC 609(SC) = 2004 (2) TNMAC 262(SC), wherein for the death of 13 years old boy, the parents were granted a sum of Rs.2,25,000/-, the compensation granted in this case does not require any reduction as also the interest at 7.5% as the accident in this case happened in the year 2003 and the award was passed in the year 2007.

9. Finding no merit, this Civil Miscellaneous Appeal is dismissed at the admission stage. Counsel for the appellant seeks for eight weeks' time to deposit the award amount and is granted and on such deposit, the respondents/claimants are entitled to withdraw the same as per the order of the Tribunal. Consequently, connected miscellaneous petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. Additional District Judge,
Fast Track Court,
(The Motor Accidents Claims Tribunal),
Ariyalur.

1 cc To Mrs.B.Vijayalakshmi, Advocate, SR.72526.

C.M.A.No.4066 of 2008

GV(CO)

RVL 30.01.2009