

(2009) 02 MAD CK 0037

Madras High Court

Case No: C.M.A. No. 9 of 2004 and C.M.P. No. 43 of 2004

Metropolitan Transport
Corporation Ltd.

APPELLANT

Vs

A.M.O. Shahul Hameed and
Jaseem Begum

RESPONDENT

Date of Decision: Feb. 17, 2009

Acts Referred:

- Motor Vehicles Act, 1988 - Section 184
- Penal Code, 1860 (IPC) - Section 304(A)

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: S. Ramachandran, for the Appellant; S. Udayakumar, for the Respondent

Judgement

M. Venugopal, J.

This Civil Miscellaneous Appeal is preferred by the Metropolitan Transport Corporation Limited, represented by its

Managing Director, Chennai 23 (formerly known as Dr. Ambedkar Corporation Limited) as an appellant, aggrieved against the award of the

Motor Accident Claims Tribunal viz., III Judge, Court of Small Causes dated 24.11.1998 passed in M.C.O.P. No. 387 of 1995 awarding a total

compensation of Rs. 1,58,100/- with interest at 12% p.a. from the date of filing of the petition till date of deposit.

2. The respondents/claimants have filed a claim petition, claiming a compensation of Rs. 2 lakhs with interest and costs for the death of their son

Sathik in an accident that has taken place on 22.01.1995 at about 20.45 hours at Anna Salai opposite to Trade Fair ground, S.M. Nagar Bus

Stop.

3. The short facts of the present appeal are set out in brief as follows:

On 22.01.1995 at about 20.45 hours at Anna Salai opposite to Trade Fair ground, S.M. Nagar stop, when the deceased Sathik (son of the

claimants) along with his friend boarded the bus TML 1911 (through back side stairs) and without seeing them, the driver of the bus has suddenly

moved it with jerk as a result of which the deceased Sathik fell down from the bus resultantly he sustained grievous injuries and died. The accident

has taken place due to rash and negligent driving of the driver of the bus. The appellant/respondent is the owner of the offending D.A.T.C. Bus

TML 1911 and therefore is vicariously liable to pay the compensation to the respondents/claimants, has claimed in the petition.

4. According to the learned Counsel for the appellant/Transport Corporation, the factum of the accident on 22.01.1995 is denied and that its

Conductor and driver have denied the accident involving in the bus TML 1911 and that they have completed their trips on that day and that the

respondents/claimants cannot claim any amount as compensation unless they prove that the accident is occurred only due to the negligence of the

appellant's driver and in the present case, the Tribunal has not appreciated the evidence of R.W.1 and R.W.2, driver and conductor of the bus

who have denied the accident involving the bus TML 1911 on 22.01.1995 and that the timing chart has not mentioned about any accident in the

scheduled trips on that particular day and further that the Tribunal has committed an error in adopting the multiplier as 16 and the proper multiplier

to be adopted is only 13 and in any event the award of Rs. 1,58,100 together with interest at 12% p.a. from the date of petition till date of

payment is excessive and therefore prays for allowing the appeal in the interest of justice.

5. However, the learned Counsel for the respondents/claimants submits that the Tribunal has awarded a sum of Rs. 1,58,100/- towards

compensation together with interest at 12% p.a. from the date of filing of the petition till the date of payment and in fact, the Tribunal ought to have

awarded more amount and further that this Court has power to enhance the amount of compensation even in the appeal filed by the

appellant/Transport Corporation. It is significant to point that the respondents/claimants have not preferred any appeal praying for enhancement of compensation (than the one awarded by the Tribunal). Hence, this Court is performed to confine itself to the appeal filed by the Transport Corporation.

6. Before the Tribunal on the side of the respondents/claimants, witnesses P.Ws.1 to 3 were examined and Exs.P1 to P5 were marked. On the side of the appellant/Transport Corporation, witnesses R.Ws.1 and 2 were examined and Ex.R1 was marked. The Tribunal on appreciation of oral and documentary evidence has come to the conclusion that the accident has occurred due to rash and negligent driving of the bus by driver and granted a compensation of Rs. 1,58,100/- together with interest at 12% p.a. from the date of filing of the petition till the date of payment. The Tribunal has fixed the Advocates fee at Rs. 6,162/-.

7. It is the evidence of P.W.1/first claimant that he has not seen the occurrence directly and that his son Sathik died in a road accident that is taken place on 22.01.1995 involving a bus and his son died on the way while being taken to the hospital. P.W.2 Sheik Mohamed in his evidence has deposed that on 22.01.1995 at about 08.45 p.m. after witnessing the Trade Fair, when he has been standing outside the Trade Fair waiting for the bus, at that time the bus TML 1911 coming from Parrys has stopped near the Trade Fair bus stop and he along with his friend Sathik boarded the bus on its back side entrance when the bus has proceeded to a short distance (after its start), the driver of the bus has applied a sudden brake and as a result of which his friend Sathik has fallen down from the bus and the sharp long rod which has been protruding on the back side entrance of the bus has pierced his ribs deeply resulting in an injury and that he has taken his friend Sathik to the Government General Hospital and that the bus has proceeded without stopping and that he has given a police complaint and that the driver of the bus is responsible for the happening of the occurrence.

8. P.W.3 the Sub Inspector of Police has stated that the Inspector of Police in Cr. No. 291/95 has registered a case u/s 304(A) of I.P.C. and as

per Section 184 of the Motor Vehicles Act and after investigation, the charge sheet has been laid against the D.A.T.C. Bus driver Ganesan before

the VI Metropolitan Magistrate, Chennai in C.C. No. 3845/95 and that the case is pending and that the Post Mortem Certificate is Ex.P5.

9. R.W.1, the driver of the bus in his evidence has stated that on 22.01.1995, he has driven the bus TML 1911 and he has taken the bus at 20.45

hours at Parrys and that near the Trade Fair ground no occurrence has taken place and that near the Trade Fair at about 08.50 p.m. on

22.01.1995 his vehicle has reached the place and that the passengers have boarded the bus and since the Traffic Superintendent and the police

have been present there, the accident has not taken place and that the criminal case in connection with the accident is pending against him and that

he has not attended duty on 23.01.1995 and 24.01.1995 respectively. In fact R.W.1 the driver in his cross-examination has specifically denied

that his vehicle has been involved in the accident on 22.01.1995.

10. R.W.2, the Conductor of the bus has deposed that on 22.01.1995 he has been the conductor for the bus Route No. 7B bearing Registration

No. TML 1911 and on that day at about 08.45 p.m., the bus has proceeded from Parrys to Korattur and near the Trade Fair, no occurrence has

taken place and that the bus has 6 + 2 trips to its credit on that day and that the accident has not occurred at Parrys.

11. Ex.R1 is the xerox copy of the time chart. In the instant case, the friend of the deceased Sathik has been examined as P.W.2, who has been an

eyewitness to the occurrence. The categorical evidence of P.W.2 is to the effect that the offending bus driver of the bus TML 1911 has applied the

sudden brake as a result of which his friend deceased Sathik has fallen down from the bus and that the side rod of the bus has pierced his ribs

causing injury and he has taken into the Government General Hospital and that the bus has not proceeded without stopping, etc.,. In Ex.P5, the

Post Mortem Certificate in respect of the deceased Sathik, the doctor has opined that "Died of shock and haemorrhage due to multiple injuries."

Ex.P1 is the xerox copy of the First Information Report. A perusal of Ex.P1 First Information Report indicates that P.W.2 is the complainant.

Further, the offending bus is mentioned as " D.A.T.C. Route No. 7B, bearing Registration No. TML 1911". Inasmuch as the evidence of

eyewitness P.W.2 is unassailable, cogent and convincing (in regard to the manner and happening of occurrence), this Court is of the considered

view that the same is worthy of acceptance and rightly accepts the same. Moreover, P.W.3 the Sub Inspector of Police has also deposed that a

criminal case has been registered against the driver of the bus viz., R.W.1 and later a charge sheet has been filed before the VI Metropolitan

Magistrate, Chennai. Though a plea is taken on the appellant side that no such accident has taken place on 22.01.1995 involving the bus TML

1911 placing reliance on evidence of R.W.1 and R.W.2, this Court rejects their evidence as interested testimonies, besides a self serving one.

Therefore, this Court is in agreement with the finding rendered by the Tribunal that the accident has taken place on account of the rash and

negligent driving of the driver of the bus and resultantly, the appellant's driver R.W.1 is held squarely responsible for causing the accident.

12. Coming next to the quantum of compensation to be awarded, it is to be pointed out that the respondents/claimants (being the parents of the

deceased son Sathik) in the claim petition have claimed the total sum of Rs. 2 lakhs as compensation and the break up details are as follows:

Funeral Expenses : Rs. 2,000

Loss of Estate : Rs. 2,500

Loss of Income : Rs. 1,95,500

13. P.W.1, the father of the deceased in his evidence has stated that his son deceased Sathik at the time of his death has been 20 years of age and

that he has been working as Sales Assistant in an Iron shop at Mannadi getting monthly salary of Rs. 1,500/- and his daily batta has been Rs. 25/-

and that his son after keeping a sum of Rs. 200/- or 300/- for himself will hand over the balance salary to the family and that they depended on his

income and that he has no other income apart from his son's salary and that since he is not keeping well, he is remaining idle and that his son's total

salary has been Rs. 2,000/- inclusive of daily batta. In Ex.P5, the Post Mortem Certificate (in respect of the deceased Sathik) the doctor has noted

down the following injuries:

1. Reddish abrasions over: back of left shoulder 6X2 cm; near left axilla 3X3 cm; right side of hip 7X3cm; upper end of left thigh 10X6cm; left gluteal region 6X4cm; back of trunk near the renal angle 14X6 cm (graze abrasion) tyre marking present.

2. Lacerated wound over right hip 7X2X1cm

3. Fracture of right iliac bone at its middle and fracture of pubic bone on right side.

4. Entire right kidney bruised. Retro peritoneal haematoma near the right kidney, pelvic muscles bruised. Urinary bladder contains clotted blood.

5. Peritoneum contain 1350 ml of fluid blood.

6. Laceration over anterior surface of right lobe of liver 8X3X2cm, etc..

The claimants have filed Ex.P3 Legal Heirship Certificate dated 23.04.1998 issued by the Tahsildar wherein the respondents/claimants have been

mentioned as legal heirs of the deceased, with their relationship as parents. A perusal of Ex.P4 Salary Certificate issued by (employer of the

deceased Sathik) shows that Sathik has been earning Rs. 2,000/- as wages per month by way of wages and other activities in their concern and

this Ex.P4 can be looked into and relied upon by the Tribunal for determining the compensation to be awarded, notwithstanding the fact that no

one from the Company has been examined as witness before the Tribunal, in the considered opinion of this Court, for the simple reason that strict

rules of the Evidence Act are not applicable to the Motor Accident Claims Cases before the Tribunals.

14. As a matter of fact, the trial Court has taken into account a sum of Rs. 1,200/- being the monthly dependancy and it has adopted a multiplier of

16 and has arrived at total sum of Rs. 2,30,400/-. Out of Rs. 2,30,400/-, it has deducted 1/3rd sum of Rs. 76,800/- in consideration of the

expenses which the victim would have incurred towards maintaining himself had he been lived and has arrived at an amount of Rs. 1,53,600/-

being the Compensation amount to which the respondents/claimants are entitled to receive. One cannot ignore an important fact that at the time of

Sathik's death, he has been 20 years of age. Towards funeral expenses, the Tribunal has awarded a sum of Rs. 2,000/-, for loss of Estate, the

Tribunal has awarded Rs. 2,500/-. Thus, it has awarded a total sum of Rs. 1,58,100/- being the compensation amount to the

respondents/claimants.

15. In the decision *Bikish v. United India Insurance Co. Ltd. and Anr.* (2008) 1 TN MAC 307 (SC), for the death of the bachelor deceased

(aged 20 years) the Honourable Supreme Court has applied the multiplier at 12 instead of 11 adopted by the Tribunal and it has also awarded 9%

interest p.a. as against 6% p.a.

16. Since the P.W.1 (father of the deceased)/first claimant in his evidence has stated that his deceased son Sathik will retain Rs. 200 or 300/- p.m.

and will part with the balance amount to the family, this Court fixes the monthly dependency at Rs. 1,300/- as a prudent one and per annum, the

same works out to Rs. 15,600/- (Rs. 1,300 X 12) and applying the proper multiplier at 12, then it comes to Rs. 1,87,200/-, (Rs. 15,600 X 12) to

which sum the claimants are entitled to receive as compensation. Further, out of sum of Rs. 1,87,200/-, if 1/3rd viz., Rs. 62,400/- is deducted

towards personal expenses of the deceased then it comes to a sum of Rs. 1,24,800/- (Rs. 1,87,200/- - Rs. 62,400) to which sum the

respondents/claimants are entitled to receive from the appellant Corporation. Apart from the aforesaid sum of Rs. 1,24,800/-, the

respondents/claimants, the respondents/claimants are entitled to receive a sum of Rs. 2,000/- towards Funeral Expenses and further sum of Rs.

2,500/- towards Loss of Estate in the considered opinion of this Court. Thus in all, the respondents/claimants are entitled to receive a total

compensation of Rs. 1,29,300/- together with interest at 9% p.a. from the date of filing of the petition till the date of payment and the

appellant/Transport Corporation is directed to pay the same. The Lawyer's fee is fixed at Rs. 5,586/- by this Court.

17. In the result, on an overall assessment of the facts and circumstances of the case in an integral fashion and on examination of available materials

and evidence on record, this Court comes to the conclusion that the award of Rs. 1,58,100/- as compensation fixed by the Tribunal to the

respondents/claimants for the death of their son Sathik is on the higher side and the correct multiplier is only 12 and resultantly, awards only a sum

of Rs. 1,29,300/- as just and prudent compensation together with interest at 9% p.a. from the date of filing of the petition till the date of payment

along with proportionate cost and interest and in that view of the matter, allows the Civil Miscellaneous Appeal on above terms. The Lawyer's fee is fixed at Rs. 5,586/-. Consequently, the parties are given liberty to claim/receive their respective balance due amount (less the amount drawn if any) from the Tribunal in the manner known to law by filing necessary application before the Tribunal as per the Civil Rules of Practice. Bearing in mind the facts and circumstances of the case, the parties are directed to bear their own costs. Consequently, the connected miscellaneous petition is closed.