(2010) 09 MAD CK 0360

Madras High Court (Madurai Bench)

Case No: Civil Miscellaneous Appeal (MD) No. 78 of 2005 and M.P. (MD) No. 757 of 2005

State Express Transport Corporation Ltd.		APPELLANT
	Vs	
Tayamathi and Others		RESPONDENT

Date of Decision: Sept. 24, 2010

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 279, 304(A), 337

Citation: (2010) 09 MAD CK 0360

Hon'ble Judges: S. Nagamuthu, J; P. Jyothimani, J

Bench: Division Bench

Advocate: K. Gokul, for the Appellant; A.K. Bhaskara Pandian, for the Respondent

Judgement

S. Nagamuthu, J.
This appeal is directed against the award made in MCOP No. 609 of 2002 on the file of the Motor Accident Claims

Tribunal cum Chief Judicial Magistrate, Karur. The respondents 1 to 4 are the claimants. The 1st respondent is the wife, the respondents 2 and 3

are the children and the 4th respondent is the mother of the deceased.

2. According to the claimants, on 14.05.2002 at about 9.00 p.m. at Padalur, near Sethave Mangalam Pirivu Road, Padalur, when the deceased

Mr. P. Chinnamuthu was proceeding from south to north, in his motor cycle bearing Regn. No. TN 46 8988, the bus bearing Regn. No. TN-01 N

6727, belonging to the appellant Corporation, came from South towards North in a great speed, rashly and negligently, and dashed against the

motor cycle. The deceased sustained grievance injuries and immediately he was rushed to the nearby Kaveri Medical Centre at Trichy and

admitted as an in-patient. Unfortunately, he succumbed to the injuries on the next day. In respect of the said accident, on a complaint duly

preferred, a case has been registered against the driver of the bus in Crime No. 93/2002 under Sections 279, 337 and 304(A) IPC. At the time of

his death, the deceased was working as Veterinary Doctor. He was aged 42 years. The claimants made a claim for a sum of Rs. 65,27,000/-

altogether with interest and costs.

3. Before the Tribunal, it was contended by the appellant that the accident was not due to any rashness and negligence on the part of the driver of

the bus but, it was solely due to the rashness and negligence on the part of the deceased. Therefore, according to the appellant, the appellant is not

liable to pay any compensation to the claimants. In respect of the quantum of compensation also, it was contended before the Tribunal by the

appellant that the claimants are not entitled for so much as claimed in the petition.

4. Before the Tribunal, on the side of the claimants, the 1st respondent was examined as P.W.1 and one Cinnasamy was examined as P.W.2.

Besides, 10 documents were exhibited as Ex.P-1 to P-10. On the side of the appellant, the driver of the bus by name Ulaganathan was examined

as R.W. No other document was exhibited on the side of the appellants. Having considered all the above materials, the Tribunal found that the

accident was solely due to the rashness and negligence on the part of the driver of the appellant transport Corporation bus and therefore the

appellant is liable to pay compensation to the claimants.

5. In respect of the quantum, the Tribunal found that the claimants are entitled for a total sum of Rs. 18,20,000/-, together with interest at the rate

of 9% per annum and proportionate costs and accordingly passed the award. The appellant is aggrieved by the same and that is how the appellant

is now before this Court with this appeal.

6. We have heard the learned Counsel for the appellant. There is no representation for respondents 1 to 4. We have also heard the learned

Counsel appearing for the 5th respondent.

7. The 5th respondent has been added as a party to the proceedings because the motor cycle in which the deceased was proceeding was owned

by the deceased and was covered by a valid insurance policy issued by the 5th respondent.

8. Let us now consider the dispute regarding the finding of the Tribunal on the question of rashness and negligence on the part of the driver of the

bus. In order to prove the said fact, on the side of the claimants P.W.2 has been examined, who happened to be the eye-witness. He has narrated

the accident in a vivid manner. Though P.W.2 has been subjected to a lengthy cross-examination, nothing could be brought on record to

disbelieve the evidence of P.W.2. Apart from that, the criminal case has also been registered only against the driver of the bus. It is not as though

the police have dropped the case against the driver. The tribunal has believed the evidence of P.W.2, together with other materials, such as FIR,

etc. But, the learned Counsel for the appellant would submit that the evidence of R.W.1 ought to have been believed by the Tribunal instead of

believing the evidence of P.W.2. In our considered opinion, it is not correct. We have perused the evidence of R.W.1. Though he happened to be

the driver and he has spoken about the manner of accident, we are not inspired by his evidence. The tribunal has given cogent reasons as to why it

preferred the evidence of P.W.2 rather than the evidence of R.W.1. The learned Counsel for the appellant is not able to point out any infirmity in

the finding of the tribunal. Therefore, we do not find any reason to take a different view than that of the one taken by the Tribunal in holding that the

accident was due to the rashness and negligence on the part of the driver of the bus and, therefore, the appellant is liable to pay compensation to

the claimants.

9. Coming to the quantum of compensation, admittedly, the deceased was working as Veterinary Doctor at the time of his death and his monthly

salary, as is evidenced from the salary certificate marked as Ex.P-8 was Rs. 16,800/-. He was aged 42 years at the time of accident and it is not

disputed. As per the law laid down by the Hon''ble Supreme Court in Sarla Verma v. Delhi Transport Corporation reported in III (2009) ACC

708 (SC), Case, since the deceased was having a permanent job and that his age was 42 years, 30% of the monthly salary has to be added for the

purpose of calculating compensation. If it is done, the amount works out to Rs. 21,840/-. From this, we have to work out the yearly income, which

works out to Rs. 2,62,080/-. Out of this amount, non-refundable deductions are to be made. It is not in evidence that there was any other

deduction made, except income tax. For the relevant Assessment year, the income tax slab was like this.

Net Income Range: Income Tax Rates

Up to Rs. 50,000/- Nil

Rs. 50,000/- to Rs. 60,000/- 10%

Rs. 60,000/- to Rs. 1,50,000/- 20%

Rs. 1,50,000/- and above 30%

2% surcharge on tax payable.

10. Therefore, as per the said slab, for a sum of Rs. .2,62,080/-, the deceased would have paid income tax to the tune of Rs. 53,680/- The

balance amount shall be Rs. 2,08,400/- and the same should be taken as income loss. Now, we have to give 1/3 deduction towards personal

expenses of the deceased. After doing so, the balance amount namely Rs. 1,38,933/- shall represent the annual income loss to the family. Now

coming to the question of multiplier, the tribunal applied the multiplier of 15. But, as per Sarla Verma case referred to supra, the appropriate

multiplier shall be 14. Applying the same, if the loss of income to the family members is calculated, it comes to Rs. 19,45,066/-. Besides this, the

1st respondent shall be entitled for Rs. 50,000/- towards loss of consortium and the other respondents are entitled for Rs. 10,000/- each towards

loss of love and affection. Rs. 5,000/- is to be awarded towards transport charges and Rs. 5,000/- towards funeral expenses. Thus the total

compensation comes to Rs. 20,15,066/-.

11. Having regard to the facts and circumstances, the Tribunal has granted an award only for a sum of Rs. 18,20,000/-. But, the claimants have

not preferred any appeal. In our considered opinion, the said amount represents the just compensation which does not require any interference at

the hands of this Court. In the result, the civil miscellaneous appeal fails and the same is dismissed. No costs. Connected CMP(MD) No. 757 of

2005 is also dismissed.