

(2011) 04 MAD CK 0311

Madras High Court

Case No: Civil Miscellaneous Appeal No. 874 of 2011 and M.P. No. 1 of 2011

The Managing Director, Tamil
Nadu State Transport
Corporation Ltd.

APPELLANT

Eswaran and Thulasi

Vs

RESPONDENT

Date of Decision: April 12, 2011

Hon'ble Judges: C.S. Karnan, J

Bench: Single Bench

Advocate: B. Vijayalakshmi, for the Appellant; R.A. Srividyan, for the Respondent

Final Decision: Dismissed

Judgement

C.S. Karnan, J.

The above appeal has been filed by the Appellant/State Transport Corporation against the award and decree dated 04.06.2010 made in M.C.O.P. No. 1039 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, F.T.C. No. 4, Coimbatore at Tiruppur.

2. The short facts of the case are as follows:

On 23.08.2007, at around 16.30 hours, the deceased Babu was going by vehicle bearing Registration No. TN36-K-3933 from Cheyur to Puliyampatty Road, when at that time, the bus bearing Registration No. TN33-N-1917 driven by its driver in a rash and negligent manner and dashed against the deceased's vehicle, as a result he had succumbed to his injuries. Hence, the legal-heirs of the deceased had filed the claim petition for compensation against the Respondent.

3. The Respondent had filed a counter statement and resisted the claim petition. The Respondent submitted that the deceased's vehicle bearing Registration No. TN36-K-3933 also involved in the said accident, therefore insured and the insurer ought to have impleaded them as necessary parties. The rider of the motorcycle was not possessing a valid driving licence, the vehicle did not possess valid records.

Actually, the bus bearing Registration No. TN33-N-1917 driven by its driver with due caution and with moderate speed, but the motorcyclist came in the opposite direction in a reckless manner and dashed against the bus. As such, the accident had happened. The age, income and occupation of the deceased are denied, besides the claim amount is excessive.

4. On the averments of both parties, the Tribunal had framed two issues for consideration, namely;

(i) Whether the accident was due to the rash and negligent act of the driver of the TNSTC bus bearing Registration No. TN33-N-1917?

(ii) Whether the Petitioners are entitled to compensation and if so, what is the quantum?

5. On the side of the claimants three witnesses had been examined and the below mentioned exhibits were marked.

Ex.A1-First Information Report, Ex.A2-Postmortem Certificate, Ex.A3-Death Certificate, Ex.A4-Legal-heir ship Certificate, Ex.A5-copy of the driving licence, Ex.A6-copy of the ration card of the Petitioners.

On the side of the Respondent one witness was examined and no document was marked.

6. PW1 had adduced evidence that he is the father of the deceased, the second claimant is the mother of the deceased. The deceased was proceeding on the motorcycle bearing Registration No. TN36-K-3933 on the Puliampatty Road on 23.08.2007, at around 04.30 p.m. when at that time, the Respondent bus driven by its driver in a rash and negligent manner dashed against the deceased. PW2 is an eyewitness lodged a complaint with PW3, the case was registered against the driver of the offending bus. PW1 further stated that the deceased's age was 23 and he was engaged in the construction work as mason and earning a sum of Rs. 5,460/- per month.

7. On considering the evidence of witnesses and above mentioned exhibits, the learned Motor Accidents Claims Tribunal had awarded a sum of Rs. 4,95,000/- with interest at the rate of 7.5% per annum.

8. Aggrieved by the said award, the State Transport Corporation has filed the above appeal.

9. The learned Counsel for the Appellant argued that the Tribunal had fixed the income of the deceased as Rs. 4,000/- per month and adopted the multiplier method "15", both are on the higher side.

10. Learned Counsel for the claimants argued that the deceased's income was not less than Rs. 6,000/- per month, but the Tribunal fixed the income as Rs. 4,000/- per

month, which is on the lower side besides love and affection at Rs. 5,000/- each and funeral expenses at Rs. 5,000/- are also on the lower side.

11. In view of the facts and circumstances of the case and arguments advanced by the learned Counsels and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that the compensation amount is on the higher side, therefore, this Court modifies the compensation as detailed below:

Rs. 4,50,000/- (Rs. 30,000/- $\diamond 15 =$ Rs. 4,50,000/-), this amount is after deducting the personal expenses of the deceased, the rest of the compensation are reasonable, in total, this Court awards Rs. 4,65,000/-. Therefore, this Court scales down the compensation from Rs. 4,95,000/- to Rs. 4,65,000/-, which is fair and justifiable in the instant case. This compensation amount a sum of Rs. 4,65,000/- will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation. This Court directs the State Transport Corporation to comply with this order within a period of eight weeks from the receipt of this order. After such compliance being made, it is open to the first claimant to withdraw his share amount i.e., a sum of Rs. 2,30,000/- with interest and the second claimant's share i.e., a sum of Rs. 2,35,000/- with interest and costs as mentioned above lying in the credit of M.C.O.P. No. 1039 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, F.T.C. No. 4, Coimbatore at Tiruppur, after filing a Memo along with this order.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal on the file of Additional District and Sessions Judge, F.T.C. No. 4, Coimbatore at Tiruppur made in M.C.O.P. No. 1039 of 2007, dated 04.06.2010 is modified. There is no order as to costs. Consequently, connected miscellaneous petition is closed.