

(2011) 04 MAD CK 0331

Madras High Court

Case No: Civil Miscellaneous Appeal No. 2986 of 2008 and M.P. No. 1 of 2010

The Managing Director, Tamil
Nadu State Transport
Corporation Ltd.

APPELLANT

Vs

Ganesan, Matheswari and Babi

RESPONDENT

Date of Decision: April 20, 2011

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

Bench: Single Bench

Advocate: B. Vijayalakshmi, for the Appellant; M.R. Sivakumar, for the Respondent

Final Decision: Allowed

Judgement

C.S. Karnan, J.

The above Civil Miscellaneous Appeal has been filed by the Appellant / State Transport Corporation Limited against the award and decree made in M.C.O.P. No. 720 of 2006, dated 03.12.2007 on the file of the Motor Vehicles Accident Claims Tribunal, Principal District Judge, Salem.

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

On 17.01.2006, at around 1.15 p.m., the deceased Gopinath had been riding the motorcycle along with one Srinivasan as pillion rider, on the Kallakurichi to Athur National Highways Road, at that time, the Respondent Corporation bus bearing Registration No. TN32-N-1511 coming in the same direction and driven by its driver in a rash and negligent manner, dashed against the motorcyclist. In the result, the rider of the motorcycle had succumbed to his injuries. Hence, the legal-heirs of the deceased have filed the claim petition against the Respondents for compensation of a sum of Rs. 10,00,000/-with interest.

3. The Transport Corporation had filed a counter statement and resisted the claim petition. The Respondent denied that the accident was committed by the driver of the bus. The age, income and occupation of the deceased were denied. Actually, the

deceased had driven the motorcycle at a high speed and tried to overtake the bus. As a result, the accident had happened. In the said accident, the owner of the motorcycle and the Insurance Company are also necessary parties, but they have not been impleaded.

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

(i) Whether the accident was committed by the driver of the bus due to his rash and negligent driving?

(ii) Whether the claimants are entitled to receive compensation? If so, what is the quantum of compensation?

5. On the side of the claimants, three witnesses had been examined and nine documents were marked viz., First Information Report, Postmortem Report, Motor Vehicle Inspector's Report, Rough Sketch, Charge Sheet, School Certificate of the deceased, legal-heir certificate and salary certificate of the deceased.

On the side of the Respondent, the driver was examined.

6. PW1 had adduced evidence, stating that on 17.01.2006, his son, Gopinath and his friend Srinivasan, (PW2) had travelled on the motorcycle from Kallakurichi to Athur and at that time, the driver of the bus had driven the vehicle on the same direction and dashed against the motorcyclist. In the result, the rider of the motorcycle had succumbed to his injuries. PW2, is an eyewitness, who also spoke on the same lines, as that of PW1, regarding the accident. RW1 had adduced evidence stating that the rider of the motorcycle had tried to overtake the bus and as a result, the motorcycle had dashed against the bus, as such, the accident had occurred.

7. PW1 further adduced evidence stating that the deceased's age was 18 years and he was earning Rs. 10,000/-per month maintaining the harvesting machines, which is owned by PW3. PW3 also confirmed the evidence of PW1 regarding the employment and income of the deceased.

8. Considering the age, income of the deceased, the Tribunal had awarded a sum of Rs. 6,79,000/-together with interest at the rate of 7.5% per annum. The breakup of compensation is as follows:

Rs. 50,000/- towards loss of love and affection;

Rs. 50,000/- towards pain and suffering;

Rs. 5,76,000/- towards loss of income;

(Rs. 3,000 x 12 x 16)

Rs. 3,000/- for funeral expenses;

9. Aggrieved by the said award, the Appellant has filed the above appeal.

10. The learned Counsel for the Appellant argued that the Tribunal had awarded a sum of Rs. 50,000/- under the head of "loss of love and affection", which was on the higher side. Besides, Rs. 50,000/- had been awarded under the head of "pain and suffering", which is not pertinent in this case. The Tribunal had fixed the income of the deceased as Rs. 3,000/- per month, which is on the higher side. Actually, the deceased had committed the said accident. Therefore, contributory negligence is to be attributed.

11. The learned Counsel for the claimant argued that the deceased age was 18 and he was maintaining the harvesting machines of PW3, who is the employer of the deceased. PW3 had issued salary certificate and had adduced evidence stating that the deceased was paid a sum of Rs. 10,000/- per month as salary.

12. On considering the facts and circumstances of the case and arguments advanced by the learned Counsels on either side and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that the Tribunal's award of a sum of Rs. 50,000/- under the head of "pain and suffering" is not pertinent in this case. Therefore, this Court modifies the compensation as follows:

Rs. 5,76,000/- towards loss of income;

Rs. 45,000/- towards love and affection;

Rs. 10,000/- towards funeral expenses;

In total, this Court awards Rs. 6,31,000/- as compensation with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation. Therefore, this Court scales down the compensation from Rs. 6,79,000/- to Rs. 6,31,000/- as it is found to be fair and equitable in the instant case.

13. On 24.09.2008, this Court imposed a condition on the Appellant to deposit a sum of Rs. 4,00,000/- together with proportionate interest and entire costs to the credit of M.C.O.P. No. 720 of 2006 on the file of the Motor Vehicles Accident Claims Tribunal, Principal District Court, Salem. Now, this Court directs Appellant to deposit the balance compensation amount, as mentioned above with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation to the credit of M.C.O.P. No. 720 of 2006 on the file of the Motor Vehicles Accident Claims Tribunal, Principal District Court, Salem within a period of six weeks from the date of receipt of this order. After such a deposit has been made, it is open to the claimants to withdraw their apportioned share amount as fixed by the Tribunal's ratio lying in the credit of M.C.O.P. No. 720 of 2006 on the file of the Motor Vehicles Accident Claims Tribunal, Principal District Judge, Salem, after filing a Memo along with this order.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal, Principal District Court, Salem, made in M.C.O.P. No. 720 of 2006, dated 03.12.2007 is modified. There

is no order as to costs. Consequently, connected miscellaneous petition is closed.