

Madras High Court

Managing Director vs Pandiyan on 18 March, 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.3.2009

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.No.622 of 2009
and
M.P.No.1 of 2009

Managing Director,
State Express Transport
Corporation Ltd.,
Pallavan Salai,
Chennai-2.

... Appellant/1st Respondent

vs.

1.Pandiyan,
2.Maheswari,
3.Krishnamurthy,
4.The Divisional Manager,
United India Insurance Company,
Cuddalore.

... Respondents/Petitioners 1 and 2
and respondents 2 and 3

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against

For appellant : Mr.S.S.Swaminathan

JUDGMENT

The State Express Transport Corporation is on appeal challenging the award dated 21.8.2007 passed in M.C.O.P.No.169 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court No.I) Chidambaram.

2. It is a case of fatal accident. The brief facts of the case are as follows:- The accident in this case

happened on 14.9.2003. The deceased Bharathiraja alias Bharathi, a 12 years old student, was travelling in the van belonging to the third respondent herein, the second respondent before the Tribunal. At that time the bus belonging to the appellant transport corporation coming in the opposite direction driven by its driver in a rash and negligent manner hit the van. In that accident, the passengers in both the vehicles suffered injuries. The said Bharathiraja alias Bharathi suffered fatal injuries and taken to Government Hospital, Chidambaram, where he died. The father aged 42 years and the mother aged 37 years filed a claim for compensation in a sum of Rs.4 lakhs.

3. In support of the claim, the father of the deceased was examined as P.W.1

Ex.A-1 is the photocopy of FIR,

Ex.A-2 is the photocopy of Motor Vehicle Inspector's Inspection
Report in respect of bus,

Es.A-3 is the photocopy of Motor Vehicle Inspector's Inspection
Report in respect of van,

Ex.A-4 is the post-mortem certificate,

Ex.A-5 is the record sheet of the deceased and

Ex.A-6 is the ration card.

No oral or documentary evidence was let in on behalf of the appellant transport corporation.

4. On the basis of the oral and documentary evidence, the Tribunal held that the accident in this case happened due to rash and negligent driving of the driver of the appellant transport corporation bus. There is no material on behalf of the appellant transport corporation to controvert the same. Hence, the finding of rash and negligent driving on the part of the driver of the appellant transport corporation bus, as responsible for the accident and the death and the liability fixed on the appellant transport corporation to compensate the claimants cannot and is not disputed by the counsel for the appellant and the same is confirmed. The only contention raised by the learned counsel for the appellant is on the quantum of compensation.

5. The Tribunal considering the facts and circumstances of the case and also the fact that the parents lost their only son in the accident granted a sum of Rs.2,50,000/- as compensation with interest at 7.5% per annum.

6. The only contention raised by the learned counsel for the appellant is on the quantum of compensation, stating that the Tribunal granted the sum of Rs.2,50,000/- as lump sum compensation without any basis. Therefore, the compensation has to be reduced.

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

(i) The accident in this case happened on 14.9.2003.

(ii) The deceased was 12 years old student at that time and studying 7th standard.

(iii) The Apex Court in Manju Devi and another vs. - Musafir Paswan and another reported in 2005 ACJ 99 = 2005(1) TAC 609(SC), granted a sum of Rs.2,25,000/- as compensation on the death of the 12 years old student. In the Apex Court's decision, the accident happened in the year 1999. In this case, the accident happened on 14.9.2003.

(iv) The parents losing their only son at a tender age is a permanent scar in their life and the grief will linger till their life time. In a claim for compensation, in the case of death, the claimants are granted compensation under conventional heads, like loss of love and affection, funeral expenses and miscellaneous expenses and loss of estate in the case of death of an earning member. The entitlement of the claimants/parents for compensation on conventional heads cannot be disputed.

(v) The claimants in this case are father and mother claiming compensation on the death of their only son. The child was given education in a good school. The parents will expect him to do well in life and their expectation of the bright prospects of their son has been shattered due to his untimely death and hence they have to be compensated for loss of love and affection consequent to the death of their child. This will be in addition to compensation on other heads. But, in this case no amount was granted towards loss of love and affection, funeral expenses, loss of estate, etc.

(vi) Considering the above aspects, the total compensation in a sum of Rs.2,50,000/- is justified as also the interest granted at 7.5% as the accident happened in the year 2003 and the award was passed in the year 2007.

8. 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 1 and 2/claimants are entitled to withdraw the same as per the order of the Tribunal. Consequently, connected miscellaneous petition is closed.

ts To The Additional District Judge, Fast Track Court No.I, (The Motor Accidents Claims Tribunal),
Chidambaram