IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA No.1052 of 2015
and M.P.No.1 of 2015

The Managing Director
M/s.Tamil State Transport Corporation
Limited, Villupuram. ... Appellant / Respondent

vs.

Lino ... Respondent/Petitioner

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the judgment and decree passed by the Motor Accident Claims Tribunal, Judge, I Additional District Court, Tindivanam in MCOP No.155 of 2013 dated 30.06.2014.

For Appellant : Mr.P.Parmasivadoss
For Respondent : Mr.P.Mani

J U D G M E N T

The appeal has been preferred by the Transport Corporation aggrieved over the quantum of Rs.5,00,000/- awarded as compensation for the death of one Anandha Paul Raj, aged about 47 years, a hotel supervior claiming to have earned about Rs.8,000/- per month who died in the accident occurred on 22.02.2012.

2. Heard Mr.P.Paramasivadoss, learned counsel appearing for the appellant and Mr.P.Mani, learned counsel appearing for the respondent/claimant.

3. Mr.P.Paramasivadoss, learned counsel for the appellant very elaborately and strenuously argued that in the absence of any positive evidence towards monthly income, the tribunal erred in fixing the monthly income at Rs.4,500/-. He would also find fault with the deduction of 1/3rd towards personal expenses, especially when the claimant is the only daughter and therefore seeks 50% deduction towards personal expenses of the deceased.

4. On the other hand, Mr.P.Mani, learned counsel for the respondent/claimant would support the award passed by the tribunal.

5. It is seen from the records that in the absence of any material evidence, the tribunal fixed the notional monthly income at Rs.4,500/-. The accident occurred on 22.02.2012. At that time, it is very difficult to get even a manual labour for a monthly salary of Rs.6,000/-. Hence, this Court, cannot accept the positive evidence in fixing the monthly income of the deceased. If that yardstick is to be applied, more than 50% of the population in India have no evidence to prove their income. Therefore, instead of Rs.4,500/- fixed by the tribunal as monthly income of the decased, this Court, suo motu, pre-determines the monthly income at Rs.6,000/-. As per Ex.P3, post mortem certificate, the age of the deceased was 47 years. Therefore, for the person in the age group of 47 years, 30% is added towards future prospects and the monthly income would be Rs.7,800/- (Rs.6000 + 30%). The proper multiplier to be applied as per Sarla Verma Vs. Delhi Transport Corporation & Anr. reported in 2009 (2) TN MAC 1 (SC), is 13.

6. Even though it is the contention of Mr.P.Paramasivadoss, learned counsel for the appellant that 50% has to be deducted towards personal expenses of the deceased, the claimant is the only daughter and hence the said preposition lacks any statutory backing nor judicial precedence. Even as per the statute, 1/3rd has to be deducted except for the bacherlors where 50% is required to be deducted. Therefore, the deduction of 1/3rd towards personal expenses adopted by the tribunal does not require any interference by this Court. Thus, the loss of income is calcuated as follows -

Rs.7800 x 2/3 x 12 x 13 = Rs.8,11,200/-

7. Moreover, the tribunal has awarded a sum of Rs.20,000/- towards loss of love and affection which seems to be very low. The claimant lost the only surviving member of the family, i.e. father, as the mother has already pre-deceased. The claimant is unmarried and therefore she has to suffer and she herself cannot seek alliance which is the duty and responsibility of the elders in the family who have been lost in the accident. Even in the absence of mother, the responsibility of the father is more important for an unmarried daughter and therefore Rs.20,000/- awarded by the tribunal is hereby enhanced to Rs.1,00,000/-. Similarly, Rs.6,000/- awarded towards funeral expenses is enhanced to Rs.25,000/- and Rs.6,000/- awarded towards transportation is enhanced to Rs.10,000/-. Thus, the award of Rs.5,00,000/- awarded by the tribunal is hereby enhanced to Rs.9,47,000/-, break-up as follows -

(1)	Loss of income	...	Rs. 8,11,200/-
(2)	Loss of love & affection		Rs. 1,00,000/-
(3)	Funeral expenses	...	Rs. 25,000/-
(4)	Transportation	...	Rs. 10,000/-
			Rs.9,46,200/-

Rounded off to Rs.9,47,000/-.

The rate of interest awarded by the tribunal @ 7.5% per annum remains unaltered.

8. Though the appeal has been preferred by the Transport Corporation, considering the facts and circumstances of the case, this Court, suo motu, has enhanced the compensation from Rs.5,00,000/- to 9,46,200/-, rounded off to Rs.9,47,000/-, even in the absence of any appeal/cross-appeal by the claimant and even without notice to the respondent/claimant, invoking Order XLI Rule 33 CPC, in an endeavour to award just and reasonable compensation. This Court has got power and juridiction to enhance the compensation as the provisions of Motor Vehicles Act are beneficial in nature.

9. The appellant Transport Corporation is directed to bring a cheque or Demand Draft, for the compensation amount payable to the claimant, before this Court, on 15th July, 2015 and the same shall be received by the Secretary, Tamil Nadu Legal Services Authority, High Court, Madras, who shall hand over the same to the claimant directly. In the event of failure on the part of the appellant Transport Corporation to produce the Demand Draft or cheque for the compensation amount on the aforesaid date, the Chairman cum Managing Director, the Financial Advisor and Chief Accounts Officer shall appear before this Court on that day.

10. In the result, this Civil Miscellaneous Appeal is disposed of enhancing the compensation to Rs.9,47,000/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit. No costs. Consequently, connected Miscellaneous Petition is closed.

11. The trial court is directed to insist upon the respondent/claimant for payment of requisite court fee for the enhanced award amount, while disbursing the payments to her.

12. Call the matter on 16.07.2015 for reporting compliance. Registry is directed to forward a copy of this order directly to the respondents/claimant, free of cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rgr

To

1.The I Additional District Judge,
Motor Accident Claims Tribunal,
Tindivanam.

2.Lino, D/o.Aanda Paul Raj, No.5/80,
Puthiyam Puthur Village, Othapaidaran Taluk, Thoothukudi District,

3.The Managing Director, Tamil Nadu State Transport Corporation Ltd., Villupuram

4.The Finance Advisor and Chief Accounts Officer, Tamil Nadu State Transport Corporation, Villupuram.

5. The Secretary, Tamil Nadu Legal Services Authority,
High Court, Madras.

1 cc to Mr.P.Mani ,Advocate, SR.No.26735

CMA No.1052 of 2015

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pmk.9.6.2015