IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 1111 of 2015
&
M.P. No. 1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Vellore. ... Appellant/2nd Respondent

Vs.

1. Sivagami
2. Raja
3. Mayan
4. Soundarajan ... Respondents/2,3 & 5 Petitioners /1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act as against the judgment and decree dated 19.06.2014 passed in M.C.O.P. No. 129 of 2006 by the Motor Accidents Claims Tribunal, Arani.

For Appellant : Mr. P. Paramasiva Doss

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Transport Corporation as against the award of 4,91,500/- passed by the Motor Accidents Claims Tribunal, Arani, for the death of one Pappammal, who is the mother of respondents 1 to 3, aged about 50 years, working as an agricultural coolie, in the accident, which occurred on 29.08.2004.

2. Heard Mr.P. Paramasivadoss, learned counsel for the appellant, who would vehemently and strenuously argue that the Tribunal erred in fixing the monthly income at Rs.4500/-, especially,

when the claimants themselves stated that the deceased was earning only Rs.3000/- as monthly income. Therefore, he seeks reduction of the monthly income fixed by the Tribunal.

3. However, from a perusal of the records, it is seen that the claimants did not produce any proof regarding the income of the deceased. In the absence of any positive evidence regarding the income of the deceased, the Tribunal rightly fixed the monthly income at Rs.4500/-. Strict law of pleadings and evidence cannot be applied in summary proceedings like Motor Accidents Claims proceedings. Merely because it is stated that the deceased was earning about Rs.3000/- per month, it will not preclude the claimants from adducing evidence to show that the deceased was earning more nor prevent the Tribunal from fixing a higher amount as monthly income. In Lata Wadhwa and Others V. State of Bihar and Others reported in (2001) 8 SCC 197, the Honourable Apex Court, for a house wife, who died in the fire accident, which took place during a function organized by Tata Iron and Steel Company, Jamshedpur, in 1997, determined Rs.3000/- as monthly income. Subsequently, in respect of a house wife, even in the absence of any income proof, the Honourable Apex Court, in the judgment rendered in New India Assurance Company Limited V. Smt.Kalpana and Others reported in 2007 (1) Supreme 514 determined the monthly contribution as Rs.3000/-. The accident in the said case took place in the year 1998 whereas the accident in the case on hand took place on 29.08.2004. Though a higher amount is required to be fixed as monthly income, however, this Court only fixes Rs.4500/- as monthly income, as has been done by the Tribunal. Since the size of the family of the deceased was five, one-fourth deduction was rightly done by the Tribunal towards "Personal Expenses", following the judgment in Sarla Verma's case (2009 6 SCC 121). Accordingly, "Monthly contribution of the deceased to her family" was calculated as,

Monthly Income	::	Rs.4500/-
Less: One-fourth towards "Personal Expenses "	::	Rs.4500/- (-) ¼ (Rs.4500/-)
Monthly contribution of the deceased to her family	::	Rs.3375/-

Though the age of the deceased, as per the claim petition, was 50 years, the Tribunal, based on Ex-P2, took 55 years as the age of the deceased and applied multiplier 11. Adopting the very same multiplier, "Loss of Income" is calculated as follows:

Loss of Income	::	Rs.3375 x 12 x 11
	::	Rs.4,45,500/-

The sum of Rs. 30,000/- awarded towards "Loss of love and affection” to respondents 2 to 5 is low and the same is enhanced to Rs.40,000/-. The amounts awarded towards “Transportation Expenses”, “Damage to Articles” and “Funeral Expenses”, namely, Rs.5,000/-, Rs.1000/- and Rs.10,000/- are reasonable and are confirmed. In all, a sum of Rs.5,01,500/- is payable as compensation to the appellants. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

4. Though the appeal has been filed by the Transport Corporation against the award of the Tribunal, this Court, suo motu, has enhanced the compensation to the tune of Rs.5,01,500/-, invoking XLI Rule 33 CPC by re-appreciating the evidence on record and applying the correct law, as on date. What is to be awarded is just and reasonable compensation and therefore, this Court, even in the absence of appeal/cross-appeal by the claimants/respondents and even in the absence of the respondents, has enhanced the compensation.

5. The appellant Transport Corporation is directed to deposit the entire amount, as per the modified award passed by this Court,with interest and costs, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order failing which the Chairman cum Managing Director as well as Financial Advisor cum Chief Accounts Officer of the appellant Transport Corporation shall appear before this Court on expiry of the said period. On such deposit being made, the respondents/claimants are permitted to withdraw the entire amount within a period of one week thereafter.The claimants shall pay additional court-fee for the enhanced amount, if any.

6. In the result, the Civil Miscellaneous Appeal is dismissed and the award of the Tribunal, to the tune of Rs. 4,91,500/- is enhanced to Rs.5,01,500/-. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nv

To

1.The MACT, Arni.

2.The Financial Advisor Cum Chief Accounts Office,
TamilNadu State Transport Corporation Ltd.,
Vellore.

3.Sivagami 4.Raja 5.Mayan	All Residing at Vazhiur Village and Post, Polur (T), Thiruvannamalai District.

Copy To

The Chairman cum Managing Director,
TamilNadu State Transport Corporation Ltd.,
Vellore.

+1cc to M/s.P.Parama Siva Dass, Advocate, S.R.No.35293

C.M.A. No. 1111 of 2015

UG(CO)
CA(21/08/2015)