

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA No.1393 of 2015
and M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
No.3/137, Salamedu,
Vazhuthareddy,
Villupuram - 605 602.

... Appellant / Respondent

vs.

1.Pachaiyammal @ Pachammal
2.Saraswathi
3.Minor Veeravalli
4.Minor Kalaiselvan
[Mother 1st Respondent is the
next friend and guardian of the
3rd & 4th minor respondents]
5.Amirtham @ amirtham
6.Nagappan

... Respondents/Petitioners

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 07.03.2014 made in MCOP No.174 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Judge, Villupuram.

For Appellant : M/s.K.J.Sivakumar

J U D G M E N T

The appeal has been preferred by the Transport Corporation against the award of Rs.6,32,000/- as compensation awarded by the tribunal to the respondents/claimants for the death of one Parasuraman, aged about 39 years, a mason and agricultural coolie, alleged to be earning a sum of Rs.9,000/- per month, who died in the accident occurred on 28.12.2011.

2. Heard Mr.K.J.Sivakumar, learned counsel appearing for the appellant/transport corporation.

3. The only question to be decided is the quantum of compensation awarded by the tribunal. The accident occurred on 28.12.2011. Though the respondents/claimants claimed a sum of Rs.9,000/- as the monthly income of the deceased, the tribunal, in the absence of any substantial evidence, took Rs.4,500/- as the monthly income and deducting 1/4th towards personal expenses and applying appropriate multiplier 14, awarded a sum of Rs.5,67,000/- towards loss of dependency. Including all other amounts, a sum of Rs.6,32,000/- is awarded as compensation.

4. In my considered opinion, the monthly income determined by the tribunal at Rs.4,500/- is on the lower side. Even in the year 2011, it is not possible to get a manual labour for a sum of Rs.4,500/- per month. The Hon'ble Supreme Court, in Syed Sadiq Etc vs Divisional Manager, United India Ins. Co., determined the monthly income at Rs.6,500/- for a vegetable vendor who sustained injury in the accident occurred in the year 2008. After adding future prospects at 50%, the Hon'ble Supreme Court in the above cited case determined the monthly income at Rs.9,750/-. Following the said judgment, this Court re-determines the monthly income of the deceased including future prospects at Rs.6,500/-. Since the size of the family is five, the personal expenses should be taken as 1/5th as per the judgment of the Hon'ble Supreme Court in Sarla Verma & Ors vs Delhi Transport Corp'n. reported in 2009 (2) TANMAC 1 and therefore , the loss of income is calculated as follows -

$$\text{Rs.6,500} \times 12 = \text{Rs.78000} \text{ Less } 1/5^{\text{th}} = \text{Rs.62,400} \times 14 = \text{Rs.8,73,600/-}$$

5. Only a sum of Rs.10,000/- is awarded towards loss of consortium to the 1st respondent, the wife of the deceased. She has lost her husband at the age of 36 years. Losing husband itself is very painful, that too at the age of 36 years. Following the judgment of the Hon'ble Supreme Court in Rajesh & Ors. vs. Rajbir Singh & ors. reported in 2013 (3) CTC 883 , a sum of Rs.1,00,000/- is hereby awarded towards loss of consortium. Similarly, only a sum of Rs.50,000/- is awarded towards loss of love & affection to the respondents/claimants 2 to 6 which is very low and the same is enhanced to Rs.1,00,000/- awarding Rs.20,000/- to each of the claimants. It is very shocking to note that no amount was awarded towards funeral expenses. Therefore, a sum of Rs.25,000/- is awarded under this head. Thus, the amount of Rs.6,32,000/- awarded by the tribunal is hereby enhanced to Rs.10,98,600/-, rounded off to Rs.11,00,000/-, break-up as follows -

1. Loss of dependency	...	Rs. 8,73,600/-
2. Loss of consortium	...	Rs. 1,00,000/-
3. Loss of love & affection	...	Rs. 1,00,000/-
4. Funeral expenses	...	Rs. 25,000/-

Total	...	Rs.10,98,600/-
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Rounded off to Rs.11,00,000/-.

The rate of interest awarded by the tribunal @ 6% is very reasonable and the same is confirmed.

6. Though the appeal has been preferred by the transport corporation, this court, re-appreciating the evidence on record and applying the latest law of the Hon'ble Supreme Court, suo motto enhances the compensation from Rs.6,32,000/- to Rs.11,00,000/- even in the absence of any appeal / cross objection filed by the respondents/claimants invoking Order 41 Rule 33. What is required is only a just compensation which the tribunal failed to award and therefore, in an endeavour to award a just compensation, this court enhanced the amount.

7. The appellant/transport corporation is directed to deposit the entire amount awarded by this Court, alongwith interest and costs within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/claimant is permitted to withdraw a sum of Rs.3,25,000/- alongwith proportionate interest and costs. The respondents/claimants 2 to 4, being the children of the deceased are entitled to a sum of Rs.1,75,000/- each alongwith proportionate interest and costs. The respondents/claimants 5 and 6, being the parents of the deceased are permitted to withdraw a sum of Rs.1,25,000/- each alongwith proportionate interest and costs.

8. The tribunal is directed to deposit the share of the minor claimants 3 and 4 in any one of the Nationalised Bank, in an interest bearing fixed deposit, till they attain majority. In the event of failure on the part of the appellant/Transport Corporation to deposit the entire award amount alongwith interest and costs, on the aforesaid date, the Chairman cum Managing Director, the Financial Advisor and Chief Accounts Officer shall appear before this Court on the said date.

9. In the result, this Civil Miscellaneous Appeal is dismissed enhancing the compensation to Rs.11,00,000/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit. No costs. Consequently, connected Miscellaneous Petition is closed.

10. Since the appeal has been dismissed at the admission stage itself and the enhancement is being made, the respondents/claimants may not be in a position to know the enhancement of compensation. Therefore, registry is directed to sent a copy of this order directly to the respondents/claimants, free of cost. The Tribunal is directed to collect the requisite court fee for the enhanced compensation from the respondents/claimants, within a period of two weeks from the date of receipt of a copy of the order.

-s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

rgr

To

1.The Special Judge,
Motor Accident Claims Tribunal,
Villupuram.

2.Pachaiyammal @ Pachammal
W/O Late Parasuraman.

3.Saraswathi D/O Parasuraman

4.Minor Veeravalli -do-

5.Minor Kalaiselvan S/O -do-

6.Amirtham @ amirtham w/o Nagappan

7.Nagappan

All are residing at Mariamman Koil Street (colony)
Kaspakaranai, Villupuram Taluk,
Villupuram District

+1 cc to Mr.K.J.Sivakumar Advocate sr.37464

CMA No.1393 of 2015

aa10/08/2015