IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

C.M.A.No.1719 of 2015
& M.P.No.1 of 2015

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Kancheepuram. .. Appellant/Respondents

.. Vs ..

1. Anjalai
2.Minor Madan
3.Minor Sowmiya
4.Minor Mathumitha
5.Kullammal .. Respondents/Claimants (Petitioners)
(Minors RR2 to 4 are represented by their mother, 1st respondent)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, against the judgment and decree passed in M.C.O.P.No.203 of 2009, dated 18.04.2013, on the file of the Motor Accident Claims Tribunal, (Subordinate Judge) Arani, Thiruvannamalai District.

For Appellant : Mr.S.Sairaman

For 5th Respondent : Mr.T.S.N.Prabhakaran

JUDGMENT

(Judgment of this Court was made by S.Manikumar, J.)

Being aggrieved by the determination of monthly income at Rs.10,000/- for the purpose of computing the loss of contribution to the family, comprising of wife, aged about 30 years, minor son and daughters, aged 15, 12 and 9 years respectively and mother aged about 60 years and the consequential award of Rs.20,93,000/-, with interest at the rate of 7.5% per annum, the appellant has preferred this appeal.

2. Though several grounds have been raised, learned counsel for the appellant-Transport Corporation confined his submission only to the fixation of monthly income of Rs.10,000/- by the Claims Tribunal. It is the case of the respondents/claimants that at the

time of accident, the deceased, aged 37 years, lorry driver in AKR Parcel Service, Chennai and earned Rs.10,000/- per month. To prove the avocation and monthly income of the deceased, one Mr.Jeevadayalan, PW.2, Marketing Executive of the abovesaid company, has been examined. On behalf of the claimants, Ex.P4 - Driving Licence of the deceased has been marked. Even though the claimants have not produced the Salary Certificate, considering the fact that the deceased was the sole breadwinner of the family, consisting of five members, the Claims Tribunal, has fixed the monthly income of the deceased at Rs.10,000/- and the same is disputed by the appellant-Transport Corporation.

3. In Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Ltd., reported in 2011 (2) TNMAC 190 SC, a sum of Rs.4,500/- has been claimed as monthly wages for the deceased, stated to be a coolie. The claims tribunal has taken Rs.3,000/- for the purpose of computing the loss of contribution to the family. However, when the matter was taken up on appeal, the Hon'ble Supreme Court having regard to the wages of a labourer, during the relevant period (2004 - between Rs.100 to Rs.150/- per day) found fault with the tribunal for reducing the income from Rs.4,500/- to Rs.3,000/- and determined the same at Rs.4,500/-.

4. In Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459, the Hon'ble Supreme Court, has determined Rs.6,500/- as the monthly income of a vegetable vendor, who sustained injuries in the accident, which occurred in February 2008.

5. In the case on hand, the accident has occurred on 20.08.2009. The respondents/claimants have claimed that the deceased as a lorry driver in AKR Parcel Service, Chennai, earned Rs.10,000/- per month. PW.2, Mr.Jeevadayalan, Marketing Executive of the abovesaid company, has deposed that the deceased was working as a lorry driver in his company and earned Rs.6,000/- per month. He has further deposed that in addition to monthly salary, the deceased earned daily batta.

6. To provide food, shelter, clothing, education and to meet out the regular expenditure, such as payment of electricity charges and other incidental expenses and to provide basic amenities to the dependents, it could be reasonably presumed that the deceased, as a driver, would have earned a reasonable income. Having regard to the avocation pleaded and proved by examining the Marketing Executive of the Company, determination of Rs.10,000/- per month, in the year 2009, for computing the loss of contribution to a family comprising of 5 persons, cannot be said to be without any basis.

7. At the time of accident, the deceased was aged 37 years. Even if a lesser amount of Rs.7,500/- is fixed and as per Sathosh Devi v. National Insurance Co. Ltd., reported in 2012 AIR SCW 2892, adding up 30% towards future prospects, the monthly income would be Rs.10,000/-.

8. Taking the number of dependants, five, the Claims Tribunal has rightly made 1/4th deduction towards personal expenses. After deduction, the loss of annual income to the family, works out to Rs.1,35,000/-. At the time of accident, the deceased was aged 37 years. The proper multiplier as per Sarla verma's case is '15' and therefore, the Claims Tribunal has rightly determined the loss of dependency as Rs.20,25,000/- (Rs.1,35,000 x 15).

9. Only a sum of Rs.20,000/- has been awarded towards loss of consortium to the 1st respondent-wife. As per the judgment of the Hon'ble Apex Court in Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, at least a sum of Rs.1 Lakh has to be awarded to the widow, for loss of consortium.

10. The minor respondents 2, 3 and 4/claimants were aged about 15, 12 and 9 years respectively. For proper upbringing of the children, father's care, protection, love and affection are necessary, which they have lost, at their young age. The said loss cannot be compensated monetarily. A sum of Rs.30,000/-, awarded by the Claims Tribunal, for loss of love and affection, in the opinion of this Court, is less. The 5th respondent, mother of the deceased, is also entitled to just compensation, towards loss of love and affection.

11. A sum of Rs.5,000/-, awarded towards funeral expenses, is very meagre and not in terms of the judgment of the Apex Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883. Similarly, further compensation of Rs.2,000/- and Rs.1,000/- awarded towards transportation and damages to clothes, is also less. Now the respondent/claimant is left without any support of a male member. Considering the totality of the case, determination of monthly income at Rs.10,000/- for a lorry driver, cannot be said to be manifestly illegal.

12. In the light of the discussions and decisions, the quantum of compensation awarded by the Tribunal, cannot be said to be excessive and does not warrant interference. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Transport Corporation is directed to deposit the entire award amount with proportionate accrued interest and costs, if not already deposited, to the credit of M.C.O.P.No.203 of 2009, on the file of the Motor Accident Claims Tribunal, Arani, Thiruvannamalai District, within a period of four (4) weeks from the date of receipt of a copy of this order. The share of the minors shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the guardian once in three months, till they attain majority. On such deposit being made, except the minors, the respondents/claimants are permitted to withdraw their respective shares, by making necessary application

before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

skm

To

The Subordinate Judge,
(Motor Accidents Claims Tribunal)
Arani, Thiruvannamalai District.

+1 cc to Mr.S.Sairaman, Advocate, sr.49182

C.M.A.No.1719 of 2015

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