IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 27.11.2015

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

CMA.No.2595 of 2015
and
M.P.No.1 of 2015

The Managing Director,
Tamilnadu State Transport Corporation,
Kumbakonam. ... Appellant

Vs.

1. Easu Mary
2. Arokiyadass
3. Stella
4. George Vincent ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.02.2015 in MCOP No.46 of 2012 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Chidambaram.

For Appellant : Mr.D.Venkatachalam

For Caveator : Mr.T.Gobinath

JUDGMENT
(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, the Civil Miscellaneous Appeal is taken up for final disposal.

2. The Managing Director of Tamilnadu State Transport Corporation, Kumbakonam, is the appellant and aggrieved by the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Sub Court), Chidambaram, vide award and decree dated 25.02.2015, he has filed this appeal.

3. Facts necessary for the disposal of this appeal are as follows:

The deceased was the rider in a two wheeler bearing Regn.No.TN51Q5220 and while he was proceeding on Chidambaram – Sirkali main road, in the left hand side the bus belonging to the appellant corporation bearing Regn.No.TN49N1635, which came in the opposite direction driven in a rash and negligent manner, dashed against the two wheeler and as a consequence, the rider of the motorcycle died on the spot.

4. The parents, sister and brother, came forward to file MCOP No.46 of 2012 on the file of the MACT (Sub Court), Chidambaram, contending among other things that the deceased after completing 10th standard has got a Heavy Vehicles Licence and for four years, he was employed as a lorry driver in the services of LKS Tours & Travels & Transport Private Limited, Choolaimedu, Chennai and he was getting a monthly salary of Rs.12,000/-, daily batta of Rs.200/- and also collection incentive batta of 5%, aggregating to a sum of Rs.25,000/- per month and maintained the family. It is further stated that the deceased has also applied for passport for the purpose of going abroad to get a good occupation and but for his tragic demise, he would not get employment in abroad and maintain the family very well and hence, claimed the compensation of Rs.20,00,000/-.

5. The respondent corporation filed the counter affidavit denying the averments made in the petition for compensation and took a stand that the vehicle belonging to the transport corporation was driven in accordance with the traffic rules and it was the rider of the motorcycle, who came in the opposite direction driving the vehicle in a rash and negligent manner and he was overtaking a motor bike and though the driver of the bus sounded the horn, he did not take the warning and dashed against the bus and therefore, he alone contributed to the accident, which left to his demise and prayed for dismissal of the claim petition.

6. During the trial of the claim petition, the 1st claimant/mother of the deceased was examined as PW1. Eye witness was examined as PW2 and employer of the deceased was examined as PW3 and on behalf of the claimants, Exs.P1 to P10 were marked. On behalf of the Corporation, driver of the vehicle was examined as RW1. The tribunal on a consideration of

oral and documentary evidence has awarded a sum of Rs.13,81,000/-, being the compensation with interest at the rate of 7.5% per annum from the date of claim, till realisation and aggrieved by the quantum of compensation, the transport Corporation has filed this appeal.

7. The learned counsel appearing for the appellant/transport corporation would contend that admittedly the income of the deceased as projected by the claimants has not been substantiated and as far as dependency is concerned, the deceased died as a Bachelor and therefore, instead of adopting 1/3 value of deduction, it should be 50% and the correct multiplier is '17' and not '18' and hence, prays for a modification of the award.

8. Per contra, learned counsel appearing for the respondents/claimants would contend that the tribunal on proper consideration of oral and documentary evidence has rightly arrived at the compensation of Rs.13,81,000/- and in the absence of any infirmity, interference is not warranted and prays for dismissal of the appeal.

9. This Court has carefully considered the rival submissions and also perused the materials available in the form of typed set of papers.

10. The negligent aspects on the part of the driver of the corporation is not in dispute and the sole issue remains for consideration before this Court is whether the quantum of compensation awarded by the tribunal is excessive / on the higher side and as a consequence, requires modification.

11. It is an admitted fact that the deceased died as a bachelor and according to the claimants he was employed as a lorry driver in a private company and earned a sum of Rs.12,000/- per month and apart from the monthly salary, was earning daily batta of Rs.200/- and collection incentive of 5%, aggregating to a sum of Rs.25,000/- and to establish the said fact, PW3, was examined and through him Ex.P7, Salary certificate dated 09.11.2014 was marked.

12. It is the submission of the learned counsel appearing for the appellant that so far as the income aspect is concerned, monthly salary earned by the deceased as claimed by the respondents has not been substantiated, which, in the considered

opinion of this Court, lacks merits. Apart from marking Ex.P7, dated 09.11.2014, the employer was also examined as PW3 and therefore, this Court is of the view that the claimants have established the fact that the deceased was earning a sum of Rs.25,000/- per month and the tribunal in all fairness has fixed the monthly income only at the rate of Rs.9,000/- per month and therefore, the said finding does not warrants interference.

13. It is the submission of the learned counsel for the appellant/transport corporation that admittedly the deceased died as a bachelor and instead of deducting 50%, only 1/3 deduction has been made and therefore, the said portion of the award warrants interference.

14. This Court heard the submission of the learned counsel for the respondents also who would submit that the deceased while he was alive was supporting his family members consisting of his parents, one unmarried sister and brother and therefore, the tribunal has rightly taken into consideration the said aspect and given 1/3 deduction. It is to be pointed out, at this juncture, that the sister and brother of the deceased were aged 25 and 24 years, respectively, at the time of accident and it is not clear from the averments made in the petition for compensation, whether they are earning members, are not. In so far as mother and father are concerned, they were aged 43 and 45 years respectively and therefore, this Court is of the view that instead of giving deduction of 1/3, 50% deduction towards personal expenses is warranted. Further, the deceased was aged 26 years at the time of accident and the proper multiplier to be adopted as per Smt.Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. reported in 2009(2) TN MAC 1 (SC), is '17', whereas, the tribunal has adopted '18'. The tribunal has also not considered the aspect of future prospects. Therefore, loss of dependency, is reworked as hereunder:

Notional Income fixed at	:	Rs.6,500/-
Future prospects @ 50%	:	Rs.3,250/-
Total Income	:	Rs.9,750/-.
Multiplier	:	17
Deduction towards Personal expenses	:	50%
Loss of dependency	:	(Rs.9,750/- x 12 x17 x 50%)
	:	Rs.9,94,500/-

15. The tribunal has awarded a sum of Rs.25,000/- each to claimants 1 and 2, mother and father, for loss of love and affection and this Court is of the view that it should be enhanced to Rs.75,000/- each. In so far as claimants 3 and 4, brother and sisters are concerned, the tribunal has awarded a sum of Rs.10,000/- each and it has to be increased to a sum of Rs.25,000/- each.

16. The deceased after sustaining the accident was taken to hospital. The tribunal has awarded a sum of Rs.5,000/- towards transportation and it should be increased to Rs.10,000/-. For funeral expenses, the tribunal has awarded a sum of Rs.10,000/- and it has to be increased to Rs.25,000/-.

17. By virtue of modification of the amounts granted under the above said heads, the compensation payable to the claimant works out to a sum of Rs.12,29,500/- and the same is made as hereunder.

Loss of dependency	: Rs.9,94,500/-
Loss of love and affection to mother and father @ Rs.75,000/- each	: Rs.1,50,000/-
Loss of love and affection to brother and sister @ Rs.25,000/- each	: Rs. 50,000/-
Transportation	: Rs. 10,000/-
Funeral Expenses	: Rs. 25,000/-

18. In the result, the Civil Miscellaneous Appeal is partly allowed and the award and decree dated 25.02.2015, is modified to that effect and the claimants are entitled to a sum of Rs.12,29,500/- with interest at the rate of 7.5% per annum from the date of claim petition, till realisation. In so far as apportionment is concerned, the share given by the tribunal is maintained. However, in the circumstances of the case, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

19. It is represented that at the time of filing of the appeal, a sum of Rs.25,000/- alone has been deposited, being the mandatory deposit and the appellant transport corporation is directed to deposit the rest of the compensation amount within a period of eight weeks from the date of receipt of a copy of the judgment and decree.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Subordinate Judge,
Chidambaram.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.64799
+1cc to Mr.T.Gobinath, Advocate, S.R.No.64470

CMA.No.2595 of 2015
and
M.P.No.1 of 2015

UG(CO)
CA(14/12/2015)