

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2015

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.NO.2658 OF 2015  
and M.P.NO.1 OF 2015

The Managing Director,  
Tamil Nadu State Transport  
Corporation,  
Kancheepuram Region.

... Appellant/Respondent

Vs

1. Vasantha
2. Gopal
3. Murugan

... Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1989 against the Judgment and Decree passed by the Motor Accident Claims Tribunal, Poonamallee, (II Additional District Court, Poonamallee) in M.C.O.P.No.506 of 2013, dated 26.03.2015.

For Appellant : Mr.P.Paramasiva Doss

J U D G E M E N T

Assailing the impugned award dated 26.03.2015 in M.C.O.P.No.506 of 2013 passed by the Motor Accident Claims Tribunal, (II Additional District Court, Poonamallee, awarding a sum of Rs.8,11,000/-, as against the claim of Rs.12,00,000/-, the appellant has filed this Civil Miscellaneous Appeal.

2.1. Mr.P.Paramasiva Doss, learned counsel for the appellant, submitted that there are two apparent errors committed by the learned II Additional District Judge (Motor Accident Claims Tribunal), Poonamallee, in the impugned Award.

2.2. Firstly, in the absence of any evidence, whatsoever produced by the claimants, to show that the deceased was employed, the fixation of notional monthly income at Rs.7500/- is unreasonable and untenable. Therefore, the consequential award passed in favour of the claimants is liable to be set aside.

2.3. Secondly, he would submit that when the deceased was admittedly a bachelor, while making deduction in the notional monthly income of the deceased at Rs.7500/-, as per the law laid down by the Apex Court in Sarla Verma (Smt) Others V. Delhi Transport Corporation and Another, reported in (2009) 6 SCC 121, 50% of Rs.7500/- should have been deducted, whereas, regrettably, the learned II Additional District Judge, (Motor Accident Claims Tribunal), Poonamallee, has deducted only 1/3<sup>rd</sup> of Rs.7500/-.

2.4. He submitted that therefore, these two errors, which are impermissible in law, cannot be allowed to stand and the impugned award is liable to be set aside.

3. This Court is still not able to persuade itself to agree with the said contentions.

4. Admittedly, it is not in dispute that at the time of unfortunate death of the deceased, while he was walking on the road, on 06.05.2013 at about 2.30 p.m. from Pappanguzhi Bus Stop to Riyaj Hotel, the offending vehicle belonging to the appellant transport corporation driven by its Driver hit the backside of the deceased, who was a pedestrian. Immediately the deceased, who suffered multiple injuries at that time, was admitted in Sriperumbudur Government Hospital and died on the same day at 3.00 p.m. Therefore, the claim was made by his parents that he was employed as a Cook on daily wages basis in Riyaj Hotel for Rs.750/- per day. But the learned Tribunal, considering the plight of the claimants that they were unable to produce any document to substantiate that the Daily Wage of the deceased was Rs.750/- per day, fixed the wages at Rs.300/- per day as a notional daily wages and thereupon reached Rs.7500/- as notional monthly income as it is well-known fact that a Cook employed in a Hotel normally has been paid a sum of Rs.300/- per day. Therefore, fixing notional monthly income of Rs.7500/- on the basis of Rs.300/- per day cannot be found fault with. Hence, the first contention of the learned counsel for the appellant, that fixing notional monthly income in the absence of any document has to fail.

5. The second contention of Mr.Paramasiva Doss, learned counsel for the appellant, that the learned Tribunal Judge, instead of deducting 50% of the notional monthly income, since the deceased was a Bachelor, has deducted only 1/3<sup>rd</sup> of the notional monthly income of Rs.7500/- and the same is impermissible, no doubt, has to be accepted.

6. The Tribunal has not fixed anything towards loss of future prospects. Reliance could be placed on the judgment of the Apex Court in the case of Sarla Verma (Smt) Others V. Delhi Transport Corporation and Another, reported in (2009) 6 SCC 121

for making deduction of 50% from the monthly income of unmarried bachelor. If the said proposition is applied, then the Tribunal ought to have added 50% of monthly income towards future prospects. In the absence of any proof of income, minimum 30% of the monthly notional income should have been added as future prospects. In the present case, the Tribunal has failed to add anything towards the future prospects.

7. Admittedly, paltry amount of Rs.15000/- has been fixed towards loss of love and affection. Therefore, this Court is not able to find any infirmity in the award passed by the Tribunal. Accordingly, this Civil Miscellaneous Appeal fails and the same is dismissed and the award passed by the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee, dated 26.03.2015 in M.C.O.P.No.506 of 2013 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

8. The appellant is directed to deposit the entire balance amount, except the statutory deposit of Rs.25,000/- already deposited and any other amount deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, it is open to the claimants to withdraw the amount so deposited along with interest accrued thereon.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gg

To

The Motor Accident Claims Tribunal,  
(II Additional District Court),  
Poonamallee.

+ 1 cc to Mr. P.Paramasivadoss, Advocate SR.67357

CMA.No.2658 OF 2015

CA(CO)  
EU 25.1.16