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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:9.7.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.73 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
Villupuram
Div., Villupuram.

... Appellant/Respondent

-Versus-

1.Devagi
2.Devakrishnan (Minor)
3.Anbuselvan (Minor)
(2nd & 3rd Minors are rep. by their
Mother Devagi as NG & NF)
4.Pavunu
5.Kathavarayan

... Respondents/Petitioners

The civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act 1988 against the judgement and decree dated 05.03.2014 made in M.C.O.P.No.3242 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Ms.Vasanthamala
for Mr.U.M.Ravichandran
for RR 1 to 5

J U D G E M E N T

The appeal has been preferred by the Tamil Nadu State Transport Corporation against the award of Rs.10,18,000/- for the death of one Harikrishnan 30 years in the accident occurred on 24.4.2012. He was alleged to be earning about a sum of Rs.15,000/- per month at the time of accident 24.4.2012.

2. Heard. Mr.K.J.Sivakumar, learned counsel appearing for the appellant and Mrs.Vasanthamala, learned counsel appearing for the respondents/claimants.



WEB GATE

3. Though, Mr.K.J.Sivakumar, learned counsel appearing for the appellant would submit that the deceased was travelling on the foot board and dashed against the electrical pole thereby he invited the accident/death, The Tribunal taking into consideration of filing of FIR Ex.P1 and Ex.P5, Charge Sheet laid against the Driver of the bus and based on PW2 eye witness, who spoke about the manner of accident, rightly found that the accident occurred because of rash and negligent driving by the driver of the Transport Corporation bus.

4. Though it is seen from the records, that the accident occurred because of foot board travel as per the evidence of RW1, there was no counter complaint given by the driver of the bus. Moreover, it is revealed that departmental action has been taken against the driver of the Transport Corporation bus namely, RW1.

5. In those circumstances, the negligence fixed on the driver of the Transport Corporation bus cannot be interfered with. The only question to be decided is with regard to quantum of compensation. Though, Mr.K.J.Sivakumar, learned counsel appearing for the appellant would submit that the quantum is not questioned, cross objection has been filed by the claimants and therefore, this Court has to necessarily decide the quantum of compensation.

6. In the absence of any material evidence to show that the deceased was earning about Rs.15,000/-, the Tribunal fixed the monthly income at Rs.6000/- including the future prospects. The said determination is on the lower side. Though the learned counsel appearing for the respondents/claimants relied upon the judgement of the Hon'ble Supreme Court in NEETA W/O KALLAPPA KADOLKAR & ORS.ETC. Vs. DIV. MANAGER, MSRTC, KOLHAPUR reported in 2015 AIR (SCW) 832 contending that the Supreme Court determined the monthly income for a 19 years old deceased at Rs.12,000/- per month as per Minimum Wages Act 1948 and notification issued by the State of Karnataka. This Court determines the monthly income of the deceased at Rs.6500/- as per the judgement of the Hon'ble Supreme Court in Syed Sadiq v. Divisional Manager, United India Insurance Company Limited reported in 2014 (1) TNMAC 457, wherein the Hon'ble Supreme Court determined the monthly income for a vegetable vendor at Rs.6500/- per month and added 50% towards future prospects. Since the deceased in this case was aged about 30 years, as per the judgement of Sarla Warma Santosh Devi vs National Insurance Co.Ltd., 50% is required to be added towards future prospects.

7. Therefore, as per the size of the family $1/4$ is required to be deducted towards personal expenses. The Tribunal rightly adopted multiplier 17 as per the age of the deceased and Therefore, the loss of income would be $\text{Rs.6500/-} + 50\% - \frac{1}{4} \times 12 \times 17 = \text{Rs.14,91,750/-}$. Only a sum of Rs.25,000/- was awarded towards loss of consortium to the first respondent, who lost her husband at the young age of 28, which is on the lower side and therefore, a sum of Rs.1,00,000/- is awarded following the judgement of the Rajesh & others vs. Rajbir



Singh & others, reported in 2013 (3) CTC 883. Similarly, 5 years and 4 years minor children lost their father's love and affection and therefore, in an endeavor to compensate themselves a sum of Rs.1,00,000/- is awarded enhancing from Rs.30,000/-. The Parents of the deceased namely, respondents 4 and 5 are entitled to each a sum of Rs.25,000/- towards loss of love and affection. Rs.15,000/- awarded towards funeral expenses is confirmed. The award of Rs.10,18,000/- is enhanced to Rs.17,56,750/- along with interest at 7.5% per annum. The first respondent is entitled to Rs.6,00,000/-, the minors, second and third respondents are entitled to Rs.4,00,000/- each. The respondents 4 and 5 parents are entitled to each a sum of Rs.1,78,375/-. The respondents/claimants are directed to pay additional court fee if any.

8. The appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vk

To

1. The Motor Accident Claims Tribunal,
IV Small Causes Court, Chennai.

2. The Section Officer,
Vr Section, High Court, Madras.

Copy to: The Sub Assistant Registrar, A.E. Section
(for Collecting Additional Court Fee)

+1cc to Mr.K.J. Srivakumar, Advocate, S.R.No.34620
+1cc to Mr.U.M. Ravichandran, Advocate, S.R.No.34628

BVR(CO)
EU(10/08/2015

C.M.A.No.73 of 2015