IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA Nos.142 & 2489 of 2013
and
M.P.Nos.1 of 2013 (2 MPs)

The Managing Director,
Tamil Nadu State Transport Corporation,
Coimbatore Division - I Ltd.,
No.37, Mettupalayam Road,
Coimbatore. ... Appellant in both CMAs

vs.

1.N.Sabarinathan ... 1st Respondent in CMA 142/2013

2.S.Mehala ... 2nd Respondent in CMA 142/2013
& 1st Respondent in CMA 2489/2013

3.Minor S.Prabhakaran
Rep. By guardian and
Next friend S.Mehala ... 3rd Respondent in CMA 142/2013
& 2nd Respondent in CMA 2489/2013

4.G.Subramaniam ... 3rd Respondent in CMA 2489/2013

Prayer in CMA No.142/2013 :- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 30.04.2010 and made in MCOP No.184 of 2009 on the file of Motor Accidents Claims Tribunal (Sub Court), Pollachi.

Prayer in CMA No.2489/2013 :- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 07.10.2009 and made in MCOP No.653 of 2008 on the file of Motor Accidents Claims Tribunal (Sub Court), Dharapuram.

For Appellant in both CMAs : M/s.Ponram Rajaa

For Respondents in both CMAs : Mr.Ma.P.Thangavel

J U D G M E N T

These appeals have been preferred by the Transport Corporation against the award of Rs.5,22,000/- and Rs.3,15,000/- respectively as compensation to the respondents/claimants therein in MCOP No.184 of 2009 and 653 of 2008 for the death of one Sarojini aged about 40 years alleged to be earning a sum of Rs.7500/- per month who died in the accident occurred on 17.04.2008.

2. Two claim petitions have been filed, one by the Husband (MCOP No.184/2009) and another by the children (MCOP No.653/2008) of the deceased Sarojini. In the claim petition filed by the children, the husband of Sarojini was not shown as the claimant whereas in the petition filed by the husband, the children were included as the claimants. However, both the MCOPs were ordered awarding a sum of Rs.5,22,000/- and Rs.3,15,000/- respectively by the tribunals. Against the said award only, the present appeals have been preferred.

3. Heard Mr.Ponram Rajaa, learned counsel appearing for the appellant/transport corporation and Mr.Ma.P.Thangavel, learned counsel appearing for the respondents/claimants.

4. At the outset, the order dated 07.10.2009 passed in MCOP No.653 of 2008 is liable to be set aside as the claimants therein had not made the husband of the deceased as a party and therefore the same is dismissed as not maintainable for not impleading the necessary party . Hence, CMA No.2489 of 2013 is allowed setting aside the award passed in MCOP No.653 of 2008 awarding a sum of Rs.3,15,000/-.

5. As the husband of the deceased impleaded the children as claimants in MCOP No.184 of 2009 and award was also passed in favour of both the children of the deceased as well as the husband of the deceased, that appeal, i.e. CMA No.142 of 2013 alone is taken up for hearing.

6. The tribunal, taking Rs.4,000/- per month as the monthly income, deducting 1/3rd towards personal expenses and adopting appropriate multiplier 15 as per the age of the deceased, awarded a sum of Rs.4,80,000/- under the head loss of income. Including other amounts, the tribunal awarded a sum of Rs.5,22,000/- as compensation to the respondents/claimants.

7. Though Mr.Ponram Rajaa, learned counsel appearing for the transport corporation would argue that the amount awarded by the tribunal is excessive and seeks to reduce the compensation, Mr.MA.P.Thangavel, learned counsel for the respondents/claimants would submit that though Rs.7500/- was claimed as the monthly income of the deceased, the tribunal has taken only Rs.4,000/- as the monthly income. Moreover, no amount has been added towards future prospects, he would further submit. The said contention has got force.

8. This Court, agrees with the tribunal with regard to the determination of Rs.4,000/- as the monthly income in the absence of any material evidence regarding the income of the deceased. However, no future prospects has been added as per the judgment of the Hon'ble Supreme Court in Santosh Devi V. National Insurnace Company Limited and Others reported in 2012 ACJ 1428 and Sarla Verma & Ors vs Delhi Transport Corpn. reported in 2009 (2) TANMAC 1. As the deceased was aged about 40 years, 50% is required to be added towards future prospects and the monthly income would be Rs.4000/- Plus 50% = Rs.6000/-. The size of the family is only three and therefore 1/3rd has to be deducted. The appropriate multiplier according to the age of the deceased is 15 which was rightly adopted by the tribunal and hence the loss of income is calculated as follows -

Rs.4000 + 50% = 6000 x 2/3 x 12 x 15 = Rs.7,20,000/-

9. The tribunal awarded a sum of Rs.10,000/- towards funeral expenses and Rs.2000/- towards transportation expenses and the same is enhanced to Rs.20,000/- altogether. Similarly, Rs.10,000/- awarded towards loss of consortium to the husband is too low. In 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 lakh is awarded towards consortium. However, the considering the fact that the accident occurred in the year 2008, this court awards a sum of Rs.50,000/- towards loss of consortium. Similarly, Rs.20,000/- awarded towards loss of love & affection to the respondents/claimants 2 and 3 is also low and the same is hereby enhanced to Rs.50,000/-. Thus, the amount of Rs.5,22,000/- awarded by the tribunal is hereby enhanced to Rs.8,40,000/-, rounded off to Rs.8,40,000/- suo motu by this Court, in the appeal filed by the transport corporation, in favour of the respondents/claimants, even in the absence of appeal / cross appeal by the respondents./claimants, invoking Order XLI Rule 33, by re-appreciating the evidence on record and break-up is as follows -

(1)	Loss of income ...	Rs.7,20,000/-
(2)	Loss of consortium	Rs. 50,000/-
(3)	Loss of love & affection	Rs. 50,000/-
(3)	Funeral expenses and transportation	Rs. 20,000/-
	Total	Rs.8,40,000/-

Rounded off to Rs.8,40,000/-

The rate of interest awarded by the tribunal @ 7.5% is very reasonable and the same is confirmed.

10. The appellant/transport corporation is directed to deposit the entire amount awarded by this Court, alongwith interest and costs on or before 17.08.2015. On such deposit, the 1st respondent/husband is permitted withdraw Rs.3,40,000/- alongwith interest and costs and the respondents 2 and 3 / children of the decesaed are permitted to withdraw Rs.2,50,000/- each, alongwith interest and costs. Since the 3rd respondent/claimant has attained majority, he is also permited to withdraw his share of the compensation amount. In the event of failure on the part of the appellant/Transport Corporation to deposit the entire award amount alongwith interst and costs, on the aforesaid date, the Chairman cum Managing Director, the Financial Advisor and Chief Accounts Officer shall appear before this Court on 17.08.2015.

11. In the result, this CMA No.142 of 2013 is dismissed enhancing the compensation to **(*)Rs.8,40,000/- (Rupees Eight lakhs and forty thousand only)** alongwith interest @ 7.5% per annum from the date of petition till the date of deposit. CMA No.2489 of 2013 is allowed setting aside the award passed in MCOP No.653 of 2008 awarding a sum of Rs.3,15,000/-. No costs. Consequently, connected Miscellaneous Petition are closed.

12. The learned counsel for the respondents/claimants is directed to pay the requisite court fee for the enhanced compensation within a period of ten days from the date of receipt of a copy of this order.

13. Call the matter on 17.08.2015 for reporting compliance. Registry is directed to forward a copy of this order directly to the respondents/claimants, free of cost.

Dt:30.6.2015

This Appeals having been posted on this day of Tuesday, the Eighteenth day of August,2015 For Reporting Compliance in pursuance of the order of this Court dated 30.6.2015 and in the presence of the above said advocates, this Court made the following order:

Though the compensation awarded by this Court by order dated 30.06.2015 is Rs.8,40,000/- as stated in Paragraph 10 of the order, by mistake in Paragraph 11 of the order, the compensation amount has been wrongly stated as Rs.15,50,000/-.

2. After hearing both the counsels after noting about the mistake, this Court substitutes the sum of Rs.8,40,000/- (Rupees eight lakhs and forty thousand only) in the place of Rs.15,50,000/- in Paragrah 11 of the order.

3. The respondents are granted time to report compliance of the judgment dated 30.06.2015 till 21.09.2015, failing which, the Chairman cum Managing Director, and the Chief Accounts Officer shall be present before the Court on that date.

4. Post the matter on 21.09.2015.

Dt:18.8.201

-s/d-
Assistant Registrar
Dt:23.7.2015

(*) Amount substituted as per order of this Court dated 18.8.2015 made in CMA.No.142/2013 & CMA. No.2489/2013 made herein.

Sd/-
Assistant Registrar
Dt:20/8/2015

True Copy

Sub-Assistant Registrar

Note: Registry is directed to forward the records to the court below forthwith.

To
1. The Subordinate Judge,
   Pollachi.

To be substituted for the order already despatched on 27.7.2015.

2. The Subordinate Judge,
   Dharapuram.

2a) The Managing Director,
   TamilNadu State Transport Corporation Ltd.,
   Coimbatore Division I,
   No.37, Mettupalayam Road,
   Coimbatore.

Copy To
1. The Section Officer
   (To send Lower Court records)
   VR Section, High Court, Madras

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

3. Mr.N.Sabarinathan
   S/o Late M.K.Natarajan
   B-10/162, C.T.C.Colony,
   Kottur Road, Pollachi.

4. Ms.S.Mehala, D/o.Sabarinathan,
   81,82,Thandapani Street,
   Pappanaickenpalayam, Coimbatore.

5. Mr.S.Prabhakaran, S/o.Sabarinathan
   81,82,Thandapani Street,
   Pappanaickenpalayam, Coimbatore.

6. The Chief Accounts Officer,
   Tamil Nadu State Transport Corporation,
   Coimbatore.

+1cc to Mr.Ponram Rajaa, Advocate, S.R.No.32821
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.32157

CMA Nos.142 & 2489 of 2013

KU(CO)
prk20/8