IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2015

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THE HONOURABLE MR. JUSTICE T. RAJA

C.M.A.No.2904 of 2008

1.A.Rajendran
2.T.Stella Mary
3.R.S.Diana .. Appellants/ Claimants

Vs

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Salem Branch, Ramakrishna Road,
Salem. .. Respondent/ Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 22.01.2008, made in M.C.O.P.No.2090 of 2004 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.2, Salem.

For appellants : Mr.P.Jagadeesan

For respondent : Mr.S.V.Vasanthakumar

JUDGMENT

The appeal is preferred by the claimants against the award dated 22.01.2008, made in M.C.O.P.No.2090 of 2004 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.2, Salem, in and by which, the Tribunal has awarded a sum of Rs.13,98,180/- for the death of one Charlas Herbert, aged about 23 years at the time of accident.

2. On 18.07.2004, while the deceased-Charlas Herbert was returning to his home in a two-wheeler on the Bangalore Bye-pass road upon completing the prayer at Kunlandai Esu Peralayam Church, a bus bearing Registration No.TN-27-N-741 belonging to the respondent Transport Corporation driven by its driver in a rash and negligent manner, dashed against the motor cycle near Thirumagal Theatre Junction and as a result, the deceased sustained grievous head injuries. Immediately after the accident, he was taken to Gokulam Hospital, Salem and few days later, he was taken to K.G.Hospital, Coimbatore for further intensive treatment. However, in spite of best efforts, unfortunately, he died on 03.08.2004 at the K.G.Hospital, Coimbatore. The claimants are parents and sister. They claimed a sum of Rs.25,00,000/- as compensation.

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the respondent Transport Corporation and awarded a compensation of Rs.13,98,180/- with interest at 7.5%. Aggrieved by that award, the claimants have filed the present appeal for enhancement.

3. Learned counsel appearing for the claimants / appellants submitted that at the time of accident, the deceased was 23 years old and he was a B.E. Graduate and earning a sum of Rs.17,145/- in Netvision Cybertech Private Limited, Chennai. Therefore, he pleaded, the Tribunal ought to have adopted multiplier 18 as per the judgment of the Hon'ble Apex Court in SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER reported in (2009) 4 MLJ 997, instead of adopting multiplier 8, that too, by considering the age of the parents for multiplier method. Hence, on that basis, learned counsel pleaded for enhancement of compensation towards loss of dependency.

4. By relying upon a judgment of the Hon'ble Apex Court in Ibrahim v. Raju and others reported in 2011 ACJ 2845, learned counsel for the appellants submitted that the Tribunal ought to have awarded more compensation than the amount claimed in the claim petition, for, if multiplier 18 is taken into account as the deceased at the time of death was only 23 years as per the Sarla Varma's case (cited supra), the loss of dependency would come to Rs.27,77,328/- on calculation of 50% of future prospects and after deduction 50% of his income towards personal expenses as he was a bachelor at the time of death. Hence, he prayed, on the basis of Ibrahim's case (cited supra), compensation can be enhanced to Rs.27,77,32/- towards loss of dependency.

5. Learned counsel appearing for the respondent Transport Corporation submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the order of the Tribunal has to be confirmed.

6. Heard the learned counsel appearing on either side and perused the materials available before this Court.

7. It is an admitted fact that at the time of accident, the deceased was a B.E. (EEE) Graduate and was aged about 23 years old. It is also an admitted fact that he was working in Netvision Cybertech Private Limited, Chennai and was earning a sum of Rs.17,145/- per month as seen from the Ex.P10-salary certificate. On 18.07.2004, when the deceased was driving his motor cycle, a bus belonging to the respondent Transport Corporation driven by its driver in a rash and negligent manner, dashed against the motor cycle near Thirumagal Theatre Junction, Salem. Immediately, he was taken to Gokulam Hospital, Salem, wherein the operation was done in

his head so as to remove the blood clot. Thereafter, he was shifted to K.G.Hospital, Coimbatore, for further treatment. However, in spite of best efforts, unfortunately, he died on 03.08.2004 at the K.G. Hospital.

8. On taking note of Ex.P10, though the Tribunal has rightly fixed salary of the deceased at Rs.17,145/- per month, it has not added any amount for future prospects. As stated above, the deceased was a bachelor and was aged about 23 years old at the time accident. The Tribunal deducted 1/3rd of his monthly salary and determined the loss of earning to the family at Rs.11,430/-. In my view, the Tribunal ought to have deducted 50% from his salary towards his personal and living expenses as per the ratio laid down in Sarla Varma's case (cited supra), since he was a bachelor at the time of accident. However, as he died at the age of 23 years, 50% has to be added for future prospects as he was also getting incentive periodically. Thus, adding 50% towards future prospects, his totally income is arrived at Rs.25,718/- (17145+8573) and after deducting 50% towards his personal expenses, the contribution to the family is arrived at Rs.12,859/-. The Tribunal adopted the multiplier of 8 on the basis of the age of parents. The Hon'ble Apex Court in the case case of Amirt Bhanu Shali v. National Insurance Co. Ltd. (2012 (2) TN MAC 321 (SC)) has held as follows:

> "The selection of Multiplier is based on the age of the deceased and not on the basis of the age of dependant. There may be a number of dependants of the deceased whose age may be different and, therefore, the age of dependants has no nexus with the computation of compensation."

Thus, in view of the above, as the deceased was 23 years old at the time of accident, the proper multiplier would be 18 as per Sarla Varma's case (cited supra). Hence, by applying the said multiplier, the loss of dependency is arrived at Rs.27,77,544/- (12859 x 18 x 12).

9. It is seen from the records that the claimants have filed the present claim petition claiming a sum of Rs.25,00,000/- as compensation and in the appeal, they have restricted the compensation to Rs.20,00,000/-. In this context, it is more appropriate to refer to the ratio laid down by the Hon'ble Apex Court in Ibrahim's case (cited supra). For better appreciation, paragraph 21 of the said judgment is extracted below:

> "21. We are conscious of the fact that in the petition filed by him, the appellant had claimed compensation of Rs.3 lacs only with interest and cost. It will be reasonable to presume that due to financial incapacity the appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. However, as the

Tribunal and the High Court and for that reason this Court are duty bound to award just compensation, we deem it proper to enhance the compensation from Rs.1,89,440/- to Rs.6 lacs. This approach is in tune with the judgment in Nagappa v. Gurudayal Singh (2003) 2 SCC 274. In that case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in Municipal Corporation of Greater Bombay v. Kisan Gangaram Hire 1987 ACJ 311 (Bombay), Orissa High Court in Mulla Mod. Abdul Wahid v. Abdul Rahim 1994 ACJ 348 (Orissa) and Punjab and Haryana High Court in Devki Nandan Bangur v. State of Haryana 1995 ACJ 1288 (P&H) and observed:

> "For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition."

From the above said ratio of the Hon'ble Apex Court, it is clear that the Tribunal/High Courts can award more compensation than the amount claimed by the claimants in the claim petition filed before the Tribunal, therefore, by following such ratio laid down by the Hon'ble Apex Court, this Court hereby awards a sum of Rs.27,77,544/- towards loss dependency, though the claimants have preferred this appeal claiming a sum of Rs.20,00,000/- as compensation.

10. Apart from the above, the Tribunal has also awarded a sum of Rs.2,83,900/- towards medical expenses by taking note of medical bills produced by the claimants, which were marked as Exs.P11 to P13, therefore, the same is hereby confirmed. Besides,

the Tribunal has also awarded a sum of Rs.2,000/- towards funeral expenses and Rs.15,000/- towards loss of love and affection, which are modified to Rs.25,000/- and Rs.50,000/- respectively as per the ratio laid down by the Hon'ble Apex Court in Rajesh and others v. Rajbir Singh and others (2013 (3) CTC 883 (SC).

11. Thus, in toto, this Court hereby awards a sum of Rs.31,36,444/- as total compensation. The respondent Transport Corporation is directed to deposit the entire compensation amount along with the accrued interest, less the amount already deposited if any, to the credit of M.C.O.P.No.2090 of 2004 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.2, Salem, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the said amount along with the accrued interest thereon as apportioned by the Tribunal, by moving necessary application before the Tribunal. The claimants are directed to pay the necessary additional Court fee for the enhanced award amount.

12. In fine, for the reasons stated above, the Civil Miscellaneous Appeal stands allowed as indicated above. No Costs.

Sd/-
Asst.Registrar (CS VI )

/true copy/

Sub Asst. Registrar

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To

The Motor Accident Claims Tribunal,
Fast Track Court No.2, Salem.

Copy to

The Section Officer
VR Section,
High Court, Madras

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