

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 3176 of 2013

&

Cross-Objection No. 48 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
(Kumbakonam Division II) Ltd.,
Trichirapalli.

..Appellant in C.M.A. No.
3176/2013/respondent in
Cross-Objection No.48/2015

Vs.

1. Yusuf Nachiyal
2. S. Sulthan
3. S. Jainambu Beevi

..Respondents C.M.A. No.
3176/2013/Cross-Objectors

Prayer: Civil Miscellaneous Appeal and Cross-Objection as against the judgment and decree dated 01.02.2013 passed by the Motor Accidents Claims Tribunal (Principal District Court), Cuddalore in M.C.O.P. No. 1071 of 2010.

For Appellant in C.M.A. No.
3176/2010/Respondent in
Cross-Objection No. 48/
2015

:: Mr.D. Venkatachalam

For Respondents in C.M.A.
No.3176/2010/Cross-
Objectors

:: Mr.U.M. Ravichandran

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred by the Transport Corporation as against the award of Rs. 12,45,000/- passed by the Motor Accidents Claims Tribunal (Principal District Court), Cuddalore, for the death of one Kader Gowse, husband of the 1st respondent in the appeal, who was aged about 32 years, alleged to have been working in Abudhabi as Moulding Maker Assistant and earning about Rs.50,000/- per month, in the accident, which occurred on 05.05.2010. The claimants have also preferred Cross-Objection No. 48 of 2015 challenging the very same award.

2. Heard Mr.D. Venkatachalam, learned counsel for the Transport Corporation and Mr. U.M. Ravichandran, learned counsel for the claimants.

3. The only point in issue is the quantum of compensation awarded by the Tribunal.

4. Mr.D. Venkatachalam, learned counsel for the Transport Corporation would contend that there is no proof that the deceased was earning about a sum of Rs.10,000/-, which the Tribunal determined, even in the absence of any positive evidence. Therefore, he seeks to reduce the compensation awarded by the Tribunal by reducing the monthly income.

5. However, Mr.U.M. Ravichandran, learned counsel for the claimants would support the award passed by the Tribunal.

6. A perusal of the records would show that though the deceased was stated to be working in Abudhabi and earning about Rs.50,000/- per month, the xerox copy of the salary certificate of the deceased, dated July, 2009, which was marked as Ex-P6, would show that he was earning about Rs.12,643/- per month. The original document was not produced and no other document was produced to prove his income. That apart, copy of the visa was not marked to prove that he was employed abroad. Therefore, Ex-P6, xerox copy of the salary certificate of the deceased, may not be of any use to the claimants. However, considering the fact that the accident occurred in 2010, even in the absence of any positive evidence regarding the monthly income of the deceased, in the light of the judgment of the Honourable Apex Court rendered in Syed Sadiq V. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), this Court fixes Rs.6500/- as the monthly income of the deceased and adds 50% towards "Future Prospects" and arrives at Rs.9,750/- rounded off to Rs.10,000/- as total monthly income of the deceased, which is the same amount fixed by the Tribunal. Since the number of dependants of the deceased are three, the Tribunal rightly deducted one-third towards "Personal Expenses". Applying the said deduction, "Monthly Contribution of the deceased to his family" would be,

Total Monthly Income	::	Rs.10,000/-
Less: One-third deduction towards "Personal Expenses"	::	Rs.10,000/- (-) 1/3 (Rs.10,000/-)
Monthly Contribution of the deceased to his family	::	Rs. 6667/-

Though the age of the deceased was claimed to be 32 years, the Tribunal, based on Ex-P8, Passport and Ex-P5, Driving Licence, took the age of the deceased as 36 years and applied multiplier 15, as per the judgment of the Honourable Apex Court in Smt. Sarla Verma and Others V. Delhi Transport Corporation and another reported in 2009 6 SCC 121. Hence, applying the very same multiplier, "Loss of Income" is calculated as follows:

Loss of Income :: Rs.6667 x 12 x 15 :: Rs.12,00,060/-

The sum of Rs.10,000/- awarded towards "Loss of Consortium" is too low as the wife of the deceased/1st respondent in the appeal was aged about 26 years at the relevant point of time. Hence, a sum of Rs.1 lakh is awarded towards "Loss of Consortium" following the judgment of the Honourable Apex Court in Rajesh and others V. Rajbir Singh and Others reported in 2013 3 CTC 883. The amount of Rs.2500/- awarded each towards "Funeral Expenses" and "Ambulance Charges" are too low and the same are enhanced to **Rs.25,000/-*** in toto. A sum of Rs.25,000/- is awarded towards "Loss of Estate". The sum of Rs.30,000/- awarded towards "Loss of love and affection" to the parents of the deceased/respondents 2 and 3 in the appeal is enhanced to Rs.50,000/-. In all, a sum of Rs. 14,00,060/-, rounded off to Rs.14,00,000/- is payable as compensation to the claimants. The rate of interest awarded by the Tribunal @ 6% per annum is modified to 7.5% per annum.

7. The appellant Transport Corporation is directed to hand over either cheques or Demand Drafts, for the respective amounts, payable to claimants, in their names, directly to them, by calling the parties to the office of the Transport Corporation, within a period of four weeks from the date of receipt of a copy of this order. The apportionment of the award amount shall be as per the ratio fixed by the Tribunal. The claimants shall pay additional court-fee for the enhanced amount, if any.

8. In the result, the Civil Miscellaneous Appeal in C.M.A. No. 3176 of 2010 is dismissed and Cross-Objection No. 48 of 2015 is partly allowed, enhancing the award passed by the Tribunal from Rs.12,45,000/- to Rs.14,00,000/-. No costs.

-s/d-

Assistant Registrar(CS-II)
dt. 14.07.2015

amended as per order of this
Court dated 7.09.2015 in CMA.3176/2013
and Cross Objection No.48/2015.

True Copy

-s/d-

Assistant Registrar(CS-II)
dt. 21.09.2015

Sub-Assistant Registrar

nv

To

The MACT (Prl. Dist. Court), Cuddalore.

Copy to

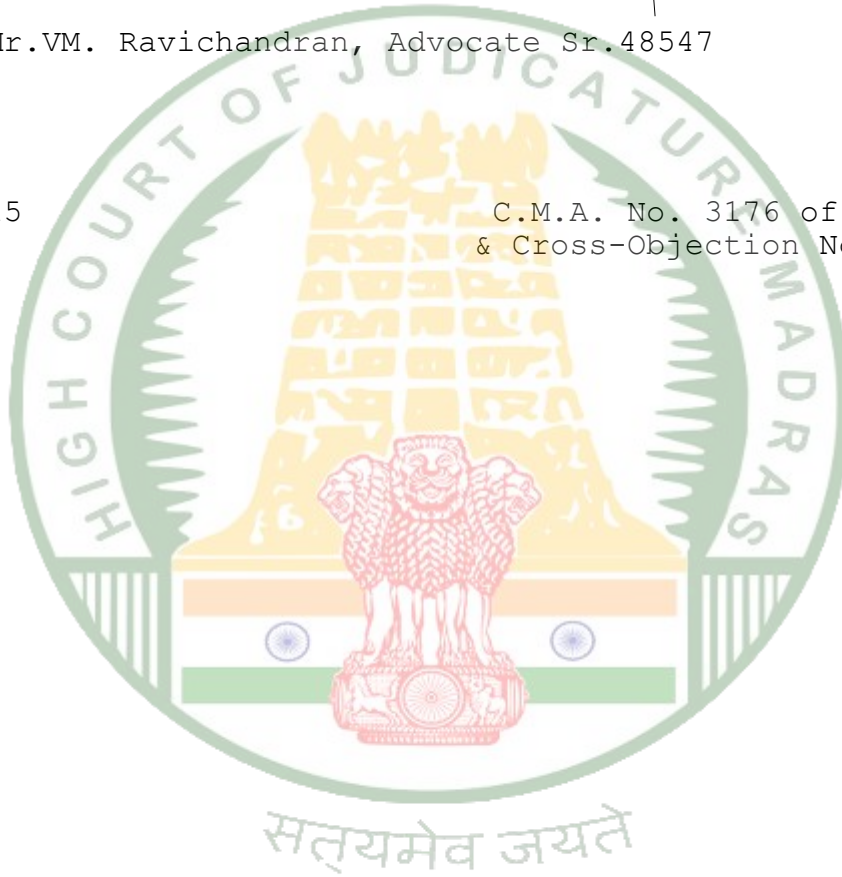
The Section Officer,
V.R.Section, High Court,
Madras.

To be substituted to the
order already despatched
on 15.07.2015

+ 1 cc t Mr.VM. Ravichandran, Advocate Sr.48547

svi(co)
prk 14/7
EU 23.09.15

C.M.A. No. 3176 of 2013
& Cross-Objection No. 48 of 2015



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