IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.7.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.3137 of 2015

1.Prabavathi
2.Minor Nethra
3.Minor Ariyaman
Minors 2 & 3 are rep. by their
Mother and guardian Prabavathi ... Appellants/Petitioners

Versus

1.Natarajan
2.Oriental Ins.Co.Ltd.,
No.68, Vallal Pachaiyappan Street,
Kancheepuram.
3.Managing Director,
Tamil Nadu State Transport Corpn.Ltd.,
Erode.
... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the judgement and decree dated 27.06.2008 and made in M.C.O.P.No.567 of 2005 on the file of MACT/Principal Sub Court, Gobichettipalayam.

For Appellant : Mr.Ma.P.Thangavel
For Respondents : Mr.M.B.Ragavan for R2

JUDGMENT

The above appeal has been preferred by the claimants against the award amount of Rs.9,20,500/- for the death of one Ravichandran, aged about 40 years, worked as a driver in Tamil Nadu State Transport Corporation and allegedly earning about a sum of Rs.7237/-, in the accident occurred on 15.7.2005.

2. Heard Mr.Ma.P.Thangavel, learned counsel appearing for the appellants and Mr.M.B.Raghavan, learned counsel appearing for the second respondent Insurance Company.

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3. It is proved before the Tribunal through Ex.P9, salary certificate that as a driver, the deceased was earning about a sum of Rs.7237/-. The Tribunal deducted 1/3 towards personal expenses and adopted multiplier-15. The Tribunal awarded a sum of Rs.8,68,500/- towards loss of income and including other amounts Rs.9,20,500/- was awarded as compensation.

4. Though the Tribunal took Rs.7237/- as monthly income, considering the age of the deceased as 40 at the time of accident, 50% is required to be added towards future prospects. As per the judgement of the Hon'ble Supreme Court in Sarla Verma and others v. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC) and Santosh Devi Vs. National Insurance Co. Ltd. & Ors., if 50% is added towards future prospects, the loss of monthly income would be Rs.10,855/-, which is calculated as follows: Rs.7237 + 50% = 10853/-.

5. Though Mr.Ma.P.Thangavel, learned counsel appearing for the appellant would submit that ¼ th is required to be deducted towards personal expenses as the size of the deceased family is four, Mr.M.B.Raghavan, learned counsel appearing for the respondent would point out that even before passing of the award, the mother of the deceased passed away. Therefore, the Tribunal rightly deducted 1/3rd towards personal expenses considering the fact that the mother of the deceased passed away.

6. Considering the fact that the mother of the deceased passed away even before passing of the award, it is appropriate to deduct 1/3rd towards personal expenses as done by the Tribunal and this Court determines the loss of income at Rs.7237/- + 50% - 1/3 = Rs.7236/-. The appropriate multiplier as adopted by the Tribunal, 15 is applied and the loss of income is calculated as follows:

Rs.7236/- + 50% - 1/3 X 12 X 15 = Rs.13,024,80/-.

7. The age of the first appellant at the time of accident was 38 years. As per the judgement of the Hon'ble Supreme Court in Rajesh & others vs. Rajbir Singh & others reported in 2013 (3) CTC 883, atleast Rs.1,00,000/- should be awarded towards loss of consortium. Following the said judgement, this Court awards Rs.1,00,000/- towards loss of consortium, enhancing from Rs.30,000/- awarded by the Tribunal. The age of the minors at the time of accident were 14 and 11 respectively and therefore, a sum of Rs.40,000/- each is awarded making it as Rs.80,000/- towards loss of love and affection. Towards funeral expenses Rs.10,000/- awarded by the Tribunal is enhanced to Rs.15,000/- including transportation expenses. Rs.5,000/- awarded towards loss of estate is confirmed. Totally this court awards Rs.15,02,480/- rounded to Rs.15,00,000/- along with interest at 7.5% per annum.

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8. Mr.M.B.Raghavan, learned counsel appearing for the appellant would submit that Rs.3,68,340/- was awarded by the 3rd respondent, as the employer of the deceased to the family of the deceased under Workmen Compensation Act. The said amount is required to be deducted in the award. The said contention has got force.

9. Even though, Mr.Ma.P.Thangavel learned counsel appearing for the appellant sought no deduction, nobody should be allowed to enrich themselves unjustly. The claimants may not be entitled to compensation under two Acts one under Workmen Compensation Act and another under the Motor Vehicles Act. As this Court passes this order under Motor Vehicles Act, the award granted by the 3rd respondent, the Tamil Nadu Transport Corporation under Workmen Compensation Act, has to be deducted. Accordingly the award amount of Rs.3,68,340/- is deducted. Hence, only a sum of Rs.11,31,660/- is to be deposited by the second respondent-Insurance Company within four weeks from the date of the receipt of a copy of the order and on such deposit, the claimants are permitted to withdraw their respective shares as per the ratio fixed by the Tribunal.

10. It is also pointed out that at the time filing of claim petition the appellants 2 and 3 herein were minors and they have now attained majority. Therefore, the appellant should move necessary application for declaration of minors as major before the Tribunal. If minors have attained majority, the Tribunal is directed to pay their shares to them also as per the ratio fixed by the Tribunal. The appellants are directed to pay additional court fee within two weeks. Accordingly the appeal is disposed of. No. costs.

Sd/-
Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

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To

The MACT/Principal Sub Court, Gobichettipalayam.

copy to:
The Section Officer,
VR Section,
High Court, Madras-104

+1 cc to Mr.Ma.P.Thangavel, Advocate sr.37105
+1 cc to Mr.N.Vijayaraghavan Advocate sr.37233

C.M.A.No.3137 of 2012

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