

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.631 of 2014
and
M.P.Nos.1 of 2014 & 1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram)Limited.,
Villupuram 605 602.

...Appellant/2nd Respondent

Vs.

1.Anandaselvi
2.Minor.Dinakaran
3.Minor.Diwakar
4.Malliga
(Respondents 2 & 3 are rep.by their
mother and next friend 1st respondent)
5.E.Rajendran
(5th Respondent is given up)

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed by the Motor Accident Claims Tribunal, (Sub Court) Chidambaram in M.C.O.P.No.157 of 2011 dated 26.02.2013 for awarding compensation.

For Appellant : Mr.K.J.Sivakumar

For Respondents 1 to 4 : Mr.T.Gobinath for
M/s.Royan Law Associates

R2 Given up

JUDGMENT

This appeal has been preferred by the Transport Corporation against the award of Rs.11,98,000/- as compensation for the death of one Backiyaraj, aged about 30 years, a metal fitter in the accident

occurred on 11.06.2009.

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

3. The only question is to be decided with regard to the quantum of compensation awarded by the Tribunal.

4. The Tribunal, in the absence of any income proof, determined the monthly income of Rs.7,500/-. According to the learned counsel for the appellant, the said determination is on the higher side. However, the learned counsel for the respondents justified the award.

5. Though the determination of Rs.7,500/- as monthly income in the absence of any material evidence is not justified, the Tribunal failed to add future prospects. Therefore, the determination of Rs.7,500/- as monthly income is reduced to Rs.6,500/-.

6. The learned counsel for the respondents relied upon the Judgment of the Honourable Supreme Court in Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459 wherein it was determined a sum of Rs.6,500/- as monthly income for a vegetable vendor, who sustained injury in the accident occurred on 14.02.2008. In this case, the accident occurred on 11.06.2009. Therefore, this Court is justified to follow the determination made in the aforesaid judgment. Accordingly, a sum of Rs.6,500/- is taken as monthly income of the deceased and 50% is added towards future prospects as the deceased was aged about 30 years at the time of the accident, in the following Judgment of the Honourable Supreme Court in Sarla Verma and Others vs. Delhi Transport Corporation and another reported in 2009(6) Supreme Court Cases 121 and Santhosh Devi vs. National Insurance Company Limited reported in 2012(6) SCC 421 and the monthly income of the deceased is determined at Rs.9,750/-.

7. The Tribunal, after deducting $1/3^{\text{rd}}$ amount towards personal expenses, as per the Judgment of the Hon'ble Supreme Court Sarla Verma and Others vs. Delhi Transport Corporation and others reported in 2009 2 TAN MAC P 9 and $1/3$ may be deducted as the size of the family has more than 3, the loss of income is determined as follows

$$\text{Rs.6,500/-} + 50\% - \frac{1}{3} = \text{Rs.7312.50/-}$$

the appropriate multiplier for the age of the deceased viz., 30, the correct multiplier is 17 as per the judgment of the Hon'ble supreme Court in Sarla Verma, whereas the Tribunal wrongly fixed the multiplier 18 and therefore, the multiplier 17 is adopted. The loss of income is determined as follows:

$$\text{Rs.6,500/-} + 50\% - 1/4 \times 12 \times 17 = \text{Rs.14,91,750/-}$$

8. Rs.8,000/- was awarded towards transportation is enhanced to Rs.10,000/-, Rs.10,000/- awarded towards funeral expenses by the Tribunal is confirmed. No separate amount was awarded towards loss of consortium to the first respondent/wife who lost her husband at the young age of 25. Therefore, this Court is inclined to follow the Judgment in 2013 3 CTC 883 in Rajesh and Others v. Rajbir Singh & Others, Rs.1,50,000/- is awarded as losing her husband at any age will be horrible which cannot be compensated. Therefore, taking into consideration the psychological, physical and mental agony, sorrow and suffering of the first respondent, this Court is inclined to award a sum of Rs.1,50,000/- to the first respondent. Similarly, second respondent is 2 ½ years old and third respondent is 1 ½ years old, who lost their father throughout their life. Love and affection which they would get from the father cannot be determined in terms of money and therefore, in endeavour to compensate the same, Rs.1,00,000/- is awarded towards love and affection. 4th respondent mother lost her son and therefore, a sum of Rs.25,000/- is awarded and Rs.15,000/- is awarded towards loss of estate is awarded.

9. The minors are entitled to each a sum of Rs.5,00,000/- and first respondent is entitled to Rs.5,00,000/-. The minors share to be deposited interest bearing nationalised bank till they majority. The first appellant is permitted to withdraw their interest alone once in two months. The respondents are directed to deposit additional court fee within two weeks from the date of receipt of a copy of this order. This Court on re-appreciating the evidence on record and following the latest Judgment of the Hon'ble Supreme Court, invoking under Order 41 Rule 33 of C.P.C., enhance the compensation from Rs.11,98,000/- to Rs.18,01,750/-. Rounded off to Rs.18,00,000/-.

10. The appellant/Transport Corporation is directed to deposit the entire award amount along with interest and costs on or before 12.08.2015, failing which, the Chairman cum Managing Director and Financial Adviser cum Chief Accountant Officer of the Corporation shall appear before this Court on 13.07.2015. On such deposit being made, the first and fourth respondents/claimants are permitted to withdraw their respective shares within one week.

11 In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Motor Accident Claims Tribunal,
(Sub Court) Chidambaram.

2. The Chairman cum Managing Director
and Financial Adviser cum
Chief Accountant Officer
of the Transport Corporation,
Villupuram - 605 602.

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

1 CC to M/s.Royan Law Associates, Advocate SR.No. 35215

1 CC to Mr.K.J.Sivakumar, Advocate SR.No. 35276

सत्यमेव जयते

C.M.A.NO.631 of 2014 and
M.P.No.1 of 2014 and 1 of 2015

KJI (CO)
PSI (15.07.2015)

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