

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.107 of 2016
and

CMP No.1037 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Limited,
Villupuram. ... Appellant/Respondent

vs.

1.Pushpa
2.Nithiya
3.Vithya
4.Priya ... Respondents/Claimants

Civil Miscellaneous Appeal filed under Section 173
Motor Vehicles Act, 1988 against the Judgment and decree dated
15.4.2015 passed in M.C.O.P.No.651 of 2012, on the file of the
Motor Accident Claims Tribunal/III Additional District Court,
Thiruvallur.

For Appellant : Mr.K.J.Sivakumar

JUDGMENT

This Appeal is directed against the Judgment and
decree dated 15.4.2015 in M.C.O.P.No.651 of 2012 passed by the
Motor Accident Claims Tribunal/III Additional District Court,
Thiruvallur, awarding a sum of Rs.7,83,000/-, for the loss of
life of one Dakshinamoorthy, aged about 48 years.

2. Learned counsel appearing for the
appellant/Transport Corporation assailing the impugned award
would submit that the Tribunal has wrongly proceeded on the
basis of evidence of PW.1 who is wife of the deceased and who
was not even an eye-witness to the accident and held that the
driver of the bus was responsible for the accident. Adding
further, when the driver of the offending bus was examined as
RW.1, being the competent person to speak about the accident,
has categorically deposed before the Tribunal that one
pedestrian suddenly crossed the road from left to right and on

seeing that he suddenly applied the brake and the pedestrian himself rushed against the bus and hit it. However, the Tribunal has failed to take into account the contributory negligence against the deceased. Adding further, he would submit that even though there was no valid document to substantiate the income of the deceased, the Tribunal has wrongly fixed the notional monthly income of the deceased as Rs.4,500/- per month, which is on the higher side. Awarding a sum of Rs.50,000/- towards loss of love and affection for the claimants/respondents is on the higher side. Therefore, on these grounds, he would submit that the impugned award needs to be interfered with by this Court.

3. This Court hardly finds any merits in any of the above contentions. The reason is that on 21.06.2012 at about 5.30p.m., the deceased alighted at Nerkundram Bus Stop while returning from Porur, and was proceeding from West to East, to go to his house at Mupperi. At that time, the bus (TNSTC) belonging to the appellant/Transport Corporation bearing No.TN 21 N 0870 rushed in a rash and negligent manner and caused the accident. In the accident, the deceased sustained grievous injuries and he was immediately rushed to the Government General Hospital, Chennai, and inspite of treatment, he succumbed to the injuries. A criminal case came to be registered in Crime No.862 of 2012 for the offence under sections 279,337 and 304 (A) of the IPC against the driver of the offending vehicle.

4. The Tribunal, considering the oral and documentary evidence made available from both sides, came to the conclusion that the accident happened only due to the rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation bearing Reg.No.TN 21 N 0870.

5. In the claim petition, it is claimed that the deceased was aged about 48 years, at the time of the accident. The post-mortem certificate Ex.P.2 would reveal that the deceased was 48 years at the time of the accident. The claimants/respondents claimed before the Tribunal that the deceased was working as a security man and was earning a sum of Rs.6,000/- per month. However, to prove this aspect, the claimants have not filed any documents. Disbelieving the statement of the claimants that the deceased was earning a sum of Rs.6,000/- per month, keeping in mind that even a lay man doing any work can earn a sum of Rs.4,500/- per month, the Tribunal fixed the notional monthly income of the deceased as Rs.4,500/-, which cannot be said to be excessive, in view of the decision of the Apex Court Syed Sadiq etc., vs. Divisional Manager, United India Insurance Co.Ltd., reported in 2014 (1) TNMAC 459 (SC). The Tribunal has also rightly applied the multiplier '13', since the deceased was aged 48 years. After

deducting 1/3rd from the notional income of the deceased towards personal expenses of the deceased, the Tribunal calculated the pecuniary loss as Rs.4,68,000 (Rs.3,000 X 12 X 13). The Tribunal awarded a sum of Rs.1,00,000 towards loss of consortium, and each claimant was awarded a sum of Rs.50,000/- towards loss of love and affection. In toto, the Tribunal has awarded a total compensation of Rs.7,83,000/- to the claimants/respondents.

6. In the case of Rajesh and others vs. Rajbir Singh and others [(2013) 9 Surpeme Court Cases 54], the Apex Court has held as follows:-

"17. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisted, as observed in Santhosh Devi v. National Insurance Co.Ltd., [(2012) 6 SCC 421]. We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.25000 to 10,000 in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma's case, it was held that compensation for loss of consortium should be in the range of Rs.5,000 to Rs.10,000. In legal parlance "consortium" is the right of spouse to the company, care, help, comfort guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia etc.,. English Court have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the Court have made an attempt to

compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

7. Following the ratio laid down by the Apex Court in the above judgment and for the reasons stated above, this Court is unable to find any infirmity in the impugned award. The impugned award is sustained. Hence, the Appeal fails and the same is dismissed. No costs. Connected CMP No.1037 of 2016 is closed.

8. The appellant/Transport Corporation is directed to deposit the entire award amount, less if any amount already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimants to move appropriate application before the Tribunal for withdrawal of the award amount.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

asvm
To

1.The Motor Accident Claims Tribunal,
III Additional District Court, Thiruvallur.

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

C.M.A.No.107 of 2016
and
CMP No.1037 of 2016

pvs[co]
srg 26/07/2016