IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.Nos.1143 of 2015
&
2651 of 2015

1.Kanniammal
2.Saranya (Minor)
3.Manikandan (Minor)
(Minors 2 and 3 are represented by their mother and NF Kanniammal)
4.Ponni @ Ponniammal
all are residing at
No.18/21, Ragupathi Nagar,
6th Street, Chennai-61.

... Appellants in C.M.A.1143/2015 and respondents in C.M.A.2651/2015

Vs.

The Managing Director,
Tamil Nadu State Transportation Corporation (Kum) Ltd.,
Kumbakonam Railway Station,
New Road, Kumbakonam-612 001.

... Appellant in C.M.A.2651/2015 and respondent in C.M.A.1143/2015

Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 31.07.2014 passed in M.C.O.P.No.551 of 2013, on the file of the Motor Accidents Claims Tribunal, (IV Small Causes Court), Chennai.

For Appellants/claimants in C.M.A.1143/15 and for respondent in C.M.A.2651/15 : Mr.K.Varadha Kamaraj

For respondent/Transport Corporation in CMA.1143/15 and for Appellant in CMA.2651/15 : Mr.D.Venkatachalam

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

While the appellant/Transport Corporation has filed the appeal in C.M.A.No.2651 of 2015, the appellants / claimants have filed the appeal in C.M.A.No.1143 of 2015 challenging the Award dated 31.07.2014 passed by the Motor Accident Claims Tribunal (IV Small Causes Court,) Chennai, made in M.C.O.P.No.551 of 2013.

2. It is a case of fatal accident. On 09.05.2012, at about 10.30 p.m., while the deceased, a pedestrian was walking towards Chengalpattu direction opposite to Samiyar Gate, Peramanur Maraimalai Nagar, the bus belonging to the appellant/Transport Corporation, bearing registration No.TN-68-N-0200, driven by its driver in a rash and negligent manner came in the opposite direction and dashed against the deceased, due to which, he was thrown away and died on the spot. A case was registered against the driver of the bus.

3. The deceased, on the date of accident, was working as Production-In charge, at Sri Akila Castings, Super BCA, Industrial Estate, Guindy, Chennai-32 and was earning a sum of Rs.17,000/- per month. The claimants, viz., wife aged 25 years, daughter aged 10 years, son aged 8 years and mother aged about 51 years, filed claim petition claiming a sum of Rs.30,00,000/- as compensation.

4. In support of the claim petition, the first claimant, viz., the wife of the deceased examined herself as P.W.1, besides P.Ws.2 and 3 viz., C.Ramalingam and M.Lakshmipathy were examined and Exs.P-1 to P-15 were marked, the details of which are as follows:-

Ex.P-1	-	Copy of the First Information Report
Ex.P-2	-	Copy of Death Report
Ex.P-3	-	Copy of Postmortem Certificate
Ex.P-4	-	Copy of Death Certificate
Ex.P-5	-	Copy of Legal-heir Certificate
Ex.P-6	-	Copy of School transfer certificate of deceased
Ex.P-7	-	Copy of X mark list of deceased
Ex.P-8	-	Copy of family card of deceased
Ex.P-9	-	Pay slips
Ex.P-10	-	Copy of sketch

Ex.P-11	-	copy of charge sheet
Ex.P-12	-	Copy of MV Report
Ex.P-13	-	Authorization letter of P3
Ex.P-14	-	Copy of identity card of PW3
Ex.P-15	-	Copy of attendance register

5. On the side of the Transport Corporation, one T.Vasudevan, the driver of the bus was examined as R.W.1 but no documentary evidence was marked.

6. The Tribunal based on the oral evidence of P.Ws.1 to 3, the F.I.R. and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the Transport Corporation to refute the evidence as to the rash and negligent driving of the bus, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the bus, and therefore, the liability was fixed on the Transport Corporation and consequently the Transport Corporation was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads :-

Sl. No.	Description		Amount
1.	Loss of Dependency	-	Rs. 22,84,800.00
2.	Loss of Consortium to petitioner	-	Rs. 50,000.00
3.	Loss of Love, Happiness, Paternal care and Mental Shock	-	Rs. 50,000.00
4.	Funeral Expenses	-	Rs. 10,000.00
		-	Rs. 23,94,800.00

7. In all the Tribunal awarded a compensation of Rs.23,94,800/- with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit with apportionment of Rs.10 Lakhs, Rs.5 Lakhs, Rs.5 Lakhs and Rs.3,94,800/- to claimants 1 to 4 respectively.

8. While the Transport Corporation is before this Court by filing the appeal in C.M.A.No.2651 of 2015 aggrieved by the quantum of compensation, not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the appeal in C.M.A.No.1143 of 2015 claiming enhancement of compensation.

9. Learned counsel appearing for the appellant/Transport Corporation submitted that as per the ratio laid down in the decision in Sarla Verma - Vs - Delhi Transport Corporation & Anr. (2009 (6) SCC 121), where the dependents is four, one-fourth deduction should have been made. However, the Tribunal is adopting one-fifth deduction, which is impermissible. Learned counsel further contended that no amount has been deducted towards income tax. It is further submitted that no documentary evidence, has been filed to prove the age and income of the deceased, though the Tribunal has fixed monthly income of the deceased in a sum of Rs.14,000/- per month, which is on the higher side.

10. Learned counsel appearing for the claimants submitted that the Tribunal has erroneously fixed the income of the deceased at Rs.14,000/- per month though P.W.3 - M.Lakshmipathi has stated that the deceased was earning a monthly income of Rs.17,000/=. The oral evidence of P.W.3 is fortified by Ex.P-9, salary slip. It is also submitted that the compensation awarded on the other heads are on the lower side and this Court may consider enhancing the same.

11. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record. Though it is trite law that the income should be arrived at keeping in mind the avocation of the deceased, the Tribunal, taking into account the evidence of P.W.3 as also Ex.P-9 has fixed the monthly income of the deceased at Rs.14,000/= and this Court finds no reason to interfere with the same. Further, on a careful perusal of the order it is evident that the multiplier adopted in arriving at the compensation is also just and proper and no interference is called for with the same.

12. Insofar as the submission of the learned counsel for the appellant/Transport Corporation that deduction of one-fourth of the income should be made towards personal expenses of the deceased where the number of dependents is four, as has been held in Sarla Verma's case (supra), learned counsel appearing for the claimants acceeded to the same. Accordingly, this Court is inclined to deduct 1/4th from the income towards the personal expenses of the deceased.

13. The contention of the learned counsel appearing for the claimants that no amount has been awarded towards 'Future Prospects' as has been laid down in Sarla Verma's case (supra), merits acceptance. The Tribunal should have awarded future prospects at 50%, which it has failed to award. Accordingly,

this Court is of the considered view that 50% of the income should be awarded towards future prospects.

14. Insofar as the submission that no amount has been deducted towards income tax, it is to be noted that no future prospects has been awarded by the Tribunal, which is not sustainable. This Court has awarded 50% future prospects and once the same is added, the total income of the deceased would fall within the taxable limit and, therefore, tax has to be deducted from the taxable salary of the deceased.

15. In such view of the matter, this Court modifies the compensation awarded under the head "Loss of Income" as under :-

Rs.21000 X 12	=	Rs. 2,52,000/=
Less : Standard Dedn.	=	Rs. 2,00,000/=
Taxable Income	=	Rs. 52,000/=
Tax on income	=	Rs. 5,200/=
Surcharge @ 3%	=	Rs. 156/=
Total	=	Rs. 5,356/=
Total income per year	=	Rs. 2,46,644/=
1/4th dedn. towards personal exp.	=	Rs. 61,661/=
Loss of income to family	=	Rs. 1,84,983 X 17
	=	Rs.31,44,711/=

16. Accordingly, the compensation awarded by the Tribunal is modified as hereunder :-

	Compensation awarded by the Tribunal	Compensation awarded by this Court
Loss of Dependency	Rs. 22,84,800.00	Rs. 31,44,711.00
Loss of Consortium to 1st claimant	Rs. 50,000.00	Rs. 50,000.00
Loss of Love, Happiness, Paternal care and Mental Shock to claimants 2 & 3	Rs. 50,000.00	Rs. 50,000.00
Funeral Expenses	Rs. 10,000.00	Rs. 10,000.00
	Rs. 23,94,800.00	Rs. 32,54,711.00

17. Though compensation in a sum of 32,54,711/= is payable to the the claimants, however, the claimants have restricted their claim to Rs.30,00,000/=. Accordingly, C.M.A. No.1143 of 2015 filed by the claimants is allowed and the compensation is

enhanced to Rs.30,00,000/= with interest at the rate of 7.5%. C.M.A.No.2651 of 2015 filed by the Transport Corporation is dismissed. The Transport Corporation is directed to deposit the entire award amount as ordered above, less the amount already deposited, to the credit of M.C.O.P.No.551 of 2013 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, while the major claimants are permitted to withdraw the award amount as per apportionment made to them by the Tribunal the share of the minors, viz., claimants 2 and 3 shall be deposited in the name of the minors in Indian Bank, Madras High Court Branch, initially for a period of three years to be renewed periodically till they attain majority. The mother of the minor claimants, viz., first claimant is permitted to withdraw the accrued interest once in three months directly from the bank. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Small Causes Court,
   Motor Accidents Claims Tribunal,
   Chennai.

2. The Record Keeper,
   V.R. Section,
   High Court, Madras.

Copy to:

The Branch Manager,
Indian Bank,
Madras High Court,
Chennai.-600 104.

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.20469
+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.49685

GJ(CO)
CA(15/06/2016)