

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1752 of 2016

1. Jayaraman
S/o Palani Naicker
 2. Venkatesan
S/o Jayaraman
 3. Ganapathi
S/o late Mani
 4. Murugan
S/o late Mani
- ... Appellants

-vs-

The Managing Director
Tamil Nadu State Transport Corporation
Villupuram

.. Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 03.09.2009 made in M.A.C.T.O.P.No.435 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Tiruvannamalai.

For Appellant :: Mr.F.Terry Chella Raja

For Respondent :: Mr.S.V.Vasanthakumar

JUDGMENT

It is a case of death of the brother of the first appellant and the paternal uncle of the appellants 2 to 4, aged about 60 years, in the accident. According to the first appellant, on 3.3.2007, at about 11.20 P.M., while his brother Mr.Arumugam, being a coolie, was walking on the left side of the Vettavalam main road on the stretch Tiruvannamalai-Villupuram road, near Moorthy medical shop, a bus bearing Registration No.TN 32 N 2614 belonging to the respondent Corporation coming in the opposite direction, being driven by its driver in a rash and negligent manner, dashed against his brother, thereby he sustained multiple and grievous injuries and despite the treatment, he succumbed to the injuries. Since the deceased was unmarried, when a claim was made by the appellants/claimants, it is not known how the Tribunal has awarded only a sum of Rs.1,63,600/-,

as against the claim of Rs.10,00,000/-, towards compensation. Hence this appeal has been filed for enhancement.

2. Learned counsel for the appellants has submitted that it is a clear case where a walker, being a senior citizen aged 60 years, was hit and killed by the driver of the bus belonging to the respondent Corporation in a rash and negligent manner, especially when he was supporting the appellants monetarily. Even the First Information Report marked as Ex.P1 clearly shows that a case in Crime No.54 of 2007 on the file of Vettavalam Police Station for the offence under Sections 279, 337 and 304-A of IPC has been filed against the driver of the bus for his negligence. Although the Tribunal has accepted the manner of accident and also fixed the liability on the Transport Corporation for the fault of its driver, it has wrongly fixed Rs.2,400/- as the monthly income of the deceased. The Tribunal has also not made any addition towards future prospects. Since the deceased was unmarried, keeping in mind that there are four claimants in the family of the deceased, it has deducted one-third thereof towards his personal expenses, instead of 50%. It has also committed yet another mistake in applying the wrong multiplier '8', instead of the correct multiplier '9' considering the age of the deceased. Even under non-pecuniary heads, it has awarded Rs.2,000/- each towards loss of love and affection and Rs.2,000/- towards funeral expenses. Therefore he pleaded that the impugned award is liable to be interfered with.

3. On the contrary, the learned counsel for the respondent Corporation has submitted that since the deceased was unmarried and the first appellant was his brother and the appellants 2 to 4 are his brother's sons who were in enjoyment of the salary and support of the deceased, the Tribunal has correctly fixed the monthly income of the deceased at Rs.2,400/-, especially when no documentary proof was produced to support his income. Besides, when the accident took place on 3.3.2007, the notional income to be arrived at was also not legally settled. Therefore, it is not open to the claimants to say that as per the ratio laid down by the Apex Court in the case of Syed Sadiq and others v. Divisional Manager, United India Insurance Co.Ltd., 2014 ACJ 627, the notional monthly income of Rs.6,500/- should be fixed in this case.

4. This Court is not able to accept the contention of the learned counsel for the respondent. When the appeal for enhancement of compensation has been filed by the claimants, it is in continuation of the original proceedings. Therefore the subsequent precedents, as laid down by the Apex Court and followed by this Court, for fixation of the notional monthly income ought to be followed. In the present case, when the Tribunal has given a finding that only due to the rash and

negligent driving of the driver of the bus belonging to the respondent Corporation the deceased succumbed to the injuries, in my considered opinion, having fixed the liability on the Corporation, it ought not to have fixed a sum of Rs.2,400/- as the notional monthly income of the deceased. In any event, since the Apex Court in the case of Syed Sadiq and others v. Divisional Manager, United India Insurance Co.Ltd., 2014 ACJ 627, while considering the case of a vegetable vendor, has fixed the notional monthly income at Rs.6,500/-, in the absence of any documentary evidence, this Court is inclined to fix a sum of Rs.6,500/- as the notional monthly income of the deceased, as it has been contended that the deceased was an agricultural coolie earning a sum of Rs.200/- per day. Again in the light of the ratio laid down by the Apex Court in Rajesh and others v. Rajbir Singh & others, 2013 (9) SCC 54, 15% of the said income is added towards future prospects. As the deceased was aged about 60 years at the time of accident, the proper multiplier '9' is to be adopted. Since the deceased was unmarried, 50% deduction is to be made towards his personal expenses. Accordingly, a sum of Rs.4,03,704/- (Rs.3738x12x9=Rs.4,03,704) is arrived at towards the loss of dependency. Since the appellants/claimants are the brother and brother's sons of the deceased, this Court is not inclined to award any amount towards loss of love and affection. Consequently, the award of Rs.2,000/- each by the Tribunal under this head stands set aside. Further, a sum of Rs.25,000/- is awarded towards funeral expenses, instead of Rs.2,000/- awarded by the Tribunal. Finally, the appellants/claimants are entitled to a total compensation of Rs.4,28,704/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realization payable by the respondent Corporation. Out of the said amount, the first appellant is entitled to Rs.3,68,704/- and the appellants 2 to 4 are each entitled to Rs.20,000/-. The civil miscellaneous appeal is ordered accordingly. No costs.

5. The respondent Corporation is directed to deposit the entire amount of compensation to the credit of the M.A.C.T.O.P.No.435 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Tiruvannamalai along with interest within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellants/claimants are entitled to withdraw the entire amount along with accrued interest by moving appropriate applications before the Tribunal.

-s/d-

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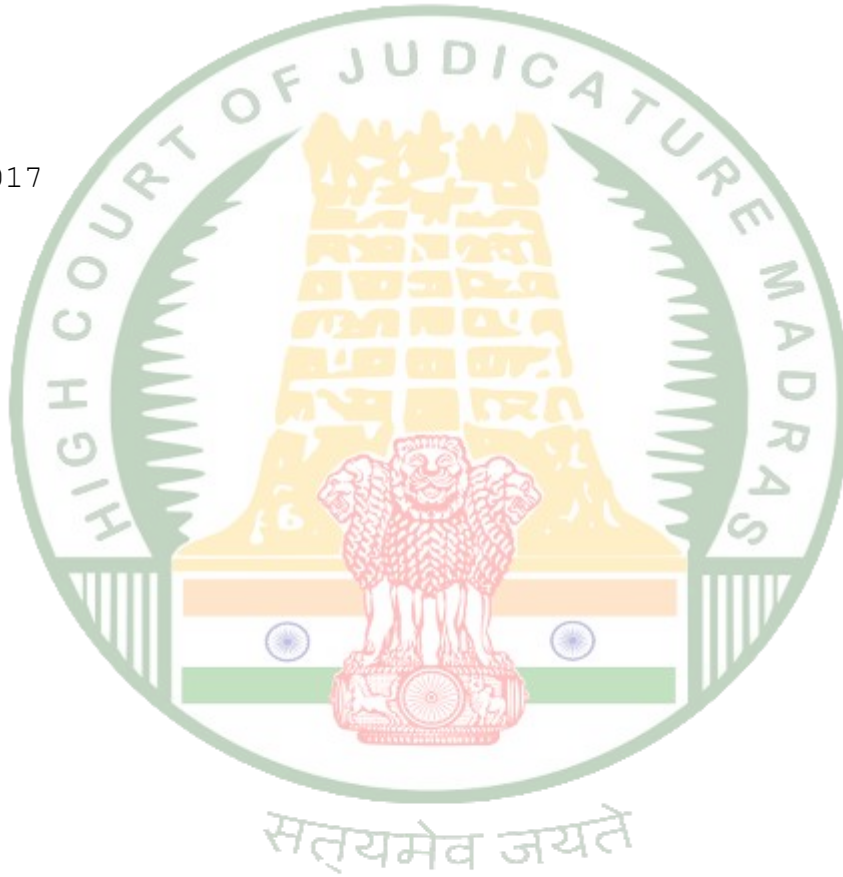
1. The Principal District Judge
Motor Accident Claims Tribunal
Tiruvannamalai

+1 cc to M/s.M.Malar Advocate sr 65714

+1 cc to M/s.S.V.Vasantha Kumar Advocate sr 65680

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