

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 06.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.1871 of 2016

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Anna Salai, Chennai - 600 002. .. Appellant

Vs

1.S.Prabha
2.R.Vidhyalakshmi
3.S.Ranjithkumar ... Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 08.07.2015, made in MCOP.No.2255 of 2013 on the file of the IV Judge of Small Causes Court, Motor Accident Claims Tribunal, Chennai.

For appellant : Mr.S.S.Swaminathan
For Respondents : Mr.K.Suriyanarayanan
for Mr.S.Ravikumar (Caveator)

JUDGMENT

This appeal is filed against the judgment and decree dated 08.07.2015, made in MCOP.No.2255 of 2013 on the file of the IV Judge of Small Causes Court, Motor Accident Claims Tribunal, Chennai, in and by which, the Tribunal has awarded a sum of Rs.14,56,000/- as against the claim of Rs.15,00,000/- for the death of one Ravikumar, breadwinner of the claimants' family.

2. On 05.02.2013 at about 14.00 hrs., while the deceased was crossing the road in the pedestrian crossing at the Shanthi Colony, near Gangothri Sweet Stall, Anna Nagar, Chennai, a bus belonging to the appellant Transport Corporation bearing Registration No.TN-01-N-5548 coming from East to West driven by its driver in a rash and negligent manner, dashed against the deceased and thereafter, he was immediately admitted in the Sundaram Medical Foundation Hospital, Chennai, where he unfortunately died on 06.02.2013. Thus, the claimants, being the wife, son and daughter of the deceased, have filed the claim petition claiming a sum of Rs.15,00,000/- as compensation.

3. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation and awarded a sum of Rs.14,56,000/- with interest at 7.5% per annum. Aggrieved by the same, the appellant-Transport Corporation has filed the present appeal.

4. Learned counsel appearing for the appellant Transport Corporation mainly questioned the compensation granted under the heads of loss of consortium and loss of love and affection as the Tribunal has awarded a sum of Rs.2,00,000/- and Rs.3,00,000/- respectively. According to him, the Tribunal ought to have awarded a sum Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection as per the judgment of the Hon'ble Apex Court in the case of Rajesh and others v. Rajbir Singh and others (2013 (3) CTC 883 (SC)). It is further contended that the Tribunal ought to have deducted 1/3rd towards personal expense of the deceased while computing compensation towards loss of dependency, because, as per the judgment of the Hon'ble Apex Court in SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER reported in (2009) 4 MLJ 997, 1/3rd should be deducted where the number of dependent family members is 2 to 3, thus, he contended, the Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased as the family members of the deceased is only three members, instead of 1/4th deduction. With these submissions, he prayed for modification of the award passed by the Tribunal.

5. Assailing the contention of the learned counsel for the appellant that the Tribunal has awarded exorbitant amount towards the loss of consortium and loss of love and affection, learned counsel for the respondents / claimants, taking support from a recent judgment of the Hon'ble Division Bench of this Court in the case of Manager, Oriental Insurance Co. Ltd., v. Sawarasmwathi and others [2016 (2) TN MAC 145 (DB)], wherein the Division Bench of this Court has upheld the award amount of Rs.3,00,000/- each towards loss of love and affection and pain and sufferings, submitted that the compensation awarded under the heads of loss of consortium and loss of love and affection by the Tribunal need not be interfered with. It is also his further submission that to prove the monthly salary of the deceased, though the claimants have produced a copy of the salary certificate given by the employer to substantiate that he was earning a sum of Rs.12,000/- per month, the Tribunal has wrongly fixed a sum of Rs.10,000/- as monthly income of the deceased, therefore, he prayed for modification of the award amount under the head of loss of dependency.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. At the time of death, the deceased was 60 years and he was a pensioner and was also working as Security Guard in GPS Security Services, Chennai. It is also seen that the claimants have produced a document obtained from the employer-Apollo Security and Intelligence Service, in which, it is seen that the employer has certified that the deceased was earning a sum of Rs.12,000/- per month. While such being the admitted position, it is not known how the Tribunal has fixed a sum of Rs.10,000/- per month, therefore, the same stands modified by fixing a sum of Rs.12,000/- per month as monthly salary of the deceased. As stated by the learned counsel for the appellant Transport Corporation, the Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased, instead of 1/4th deduction as per the judgment of the Hon'ble Apex Court in Sarla Verma's case (cited supra), since there are three claimants. Accordingly, now the award amount under the head of loss of dependency stands modified and this Court hereby awards a sum of Rs.8,64,000/- (8000 x 12 x 9) towards loss of dependency.

8. Another contention of the learned counsel for the appellant Transport Corporation is that the Tribunal has awarded exorbitant amount of Rs.2,00,000/- towards loss of consortium and Rs.3,00,000/- towards loss of love and affection. Such contention of the learned counsel for the appellant cannot be sustained in view of a recent judgment of the Hon'ble Division Bench of this Court in Saraswathi's case (cited supra), wherein the Division Bench of this Court upheld compensation awarded by the Tribunal in awarding a sum of Rs.3,00,000/- towards loss of consortium and Rs.3,00,000/- towards loss of love and affection and in the said case also, the deceased was 64 years old at the time of death. For better appreciation, relevant portions of the said judgment are extracted below:

"9. The only serious issue which was stressed mainly by the learned Counsel for the appellant before us was the fact that Rs.6,00,000/- has been awarded by the Tribunal at the rate of Rs.3,00,000/- to each of the claimants, towards general damages for pain and sufferings, loss of love and affection on account of demise of the deceased Ramanujam. This was objected to by the learned Counsel for the appellant on the ground that it was an exorbitant amount.

10. There is no contra material let in by the appellant Insurance Company before the Tribunal, whereas the claimants have clearly brought out as to how the deceased Ramanujam has come up in life the hard way which they have demonstrated beyond any pale of doubt. With regard to the earning

capabilities of the deceased Ramanujam, after his discharge from Indian Army, he worked for Brakes India Limited. He was consecutively awarded cash incentives in recognition of his meritorious service by that company. After getting superannuated from Brakes India Limited, the deceased Ramanujam took up employment with Turbo Energy Limited. Even that company, handsomely rewarded the deceased by a cash incentive of Rs.36,000/-. After leaving the employment of Turbo Energy Limited, the deceased Ramanujam established a Manpower Supply Firm, for which, licence was granted by the competent authority incorporating the name of Ramanujam therein. Therefore, there is hardly any doubt with regard to the nature of work ethics and dedication to work which Ramanujam possessed as a characteristic element. It is so obvious that the discipline which he has imbibed while serving the Indian Army, has been made a character to stay with him forever. Ex.P.14 reflects the academic bent of mind of Ramanujam. At the age of 60, we find hardly anyone pursuing, a Doctoral Degree programme, after obtaining M.A., and M.Phil., Degrees from Madurai Kamaraj University. Whereas the deceased Ramanujam has pursued his Doctoral Degree and he seems to have submitted his Thesis for evaluation and he is waiting for a turn to undergo viva-vice test to defend his Thesis. The first claimant, being a widow of the deceased Ramanujam, is the one who would have been impacted most due to the untimely death of the deceased Ramanujam. She lost her companionship, love and affection of the deceased. Therefore, awarding of Rs.3,00,000/- to her towards general compensation cannot be taken exception to. 11. That brings us to quantum of general damages to Rs.3,00,000/- awarded to the second claimant, who is the son of the deceased Ramanujam. It is the second claimant who lost the parental supervision and guidance due to the untimely death of the deceased Ramanujam. From a man of the experience of the deceased, if only he was alive, the second respondent would have surely received guidance more usefully than others. The deceased could have helped more than one way in shaping up the life of the second claimant. Looked at from this

perspective, awarding Rs.3,00,000/- towards general compensation, we do not find it any exorbitant."

9. In view of the above, this Court is unable to accept the contention of the appellant Transport Corporation that the Tribunal has awarded exorbitant amount of Rs.2,00,000/- towards loss of consortium and Rs.3,00,000/- towards loss of love and affection and accordingly, this Court hereby confirms the compensation awarded by the Tribunal in those two heads. Apart from this, the Tribunal, in perusing the medical bills-marked as Ex.P9, has also awarded a sum of Rs.1,20,600/- towards medical expenses and Rs.25,000/- towards funeral expenses, which, in my view, are just and reasonable compensation, as the deceased after the accident was admitted in Sundaram Medical Foundation Hospital, Chennai due to the head injuries and multiple injuries leading to death for two days.

10. Therefore, for the reasons stated above, th the Civil Miscellaneous Appeal is dismissed. The appellant-Transport Corporation is directed to deposit the entire award amount of Rs.15,10,000/- (round off figure) with interest at 7.5% from the date of petition till the date of realization, to the credit of MCOP No.2255 of 2013, on the file of the Motor Accidents Claims Tribunal, IV Judge of Small Causes Court, Chennai, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective share amount as apportioned by the Tribunal along with the accrued interest therein, by moving appropriate application. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

The Motor Accident Claims Tribunal,
IVth Judge of Small Causes Court,
Chennai.

Copy to:

The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.S.S.Swaminathan,advocate,sr.57723

+1 cc to Mr.S.Ravikumar, advocate,sr.57757

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