

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1714 of 2015
and
M.P.Nos.1 and 2 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
No.3/137, Salamedu,
Vazhuthareddy,
Villupuram 605 602. Appellant/Respondent

Versus

1.Punithavathi
2.Pushpavalli Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 26.02.2014 made in M.C.O.P.No.215 of 2012 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Chidambaram.

For Appellant :: Mr.K.J.Sivakumar
For Respondents :: Mr.T.Gobinath

J U D G M E N T

This civil miscellaneous appeal has been directed against the impugned award passed by the learned Motor Accident Claims Tribunal cum Subordinate Court, Chidambaram in M.C.O.P.No.215 of 2012 dated 26.02.2014 awarding a sum of Rs.10,95,000/- as against the claim of Rs.15,00,000/- for the loss of life of the deceased aged about 35 years at the time of accident on 26.06.2011 at about 10.45 p.m.

2.Learned counsel for the appellant Transport corporation, assailing the impugned award, would submit that the learned Tribunal, merely relying on the evidence of PW1, being the wife of the deceased, who had not even seen the occurrence, wrongly came to the conclusion that the accident had occurred only due to the rash and negligent driving of the bus belonging to the Transport Corporation by its driver, causing fatal injuries to her husband on 26.06.2011 at about 10.45 p.m. When the wife was

not even an eyewitness to the accident, her evidence ought not to have been accepted. Merely corroborating the contents of the FIR registered by Puthur police station in Crime No.90/2011 under sections 279 and 304(A) IPC against the driver of the vehicle bearing Registration No.TN32N3292, the learned Tribunal has completely fixed the negligence on the driver and thereupon vicariously held the Transport Corporation responsible for payment of the entire compensation. He would further submit that when the deceased was working as a Mason on the date of accident, in the absence of supporting documentary evidence, the learned Tribunal has fixed the notional income of the deceased at Rs.7,500/- per month by considering the fact that the deceased, being a mason, would have earned Rs.250/- per day. That approach is also unacceptable for the reason that no evidence has been produced to prove his income. The Tribunal has wrongly awarded a sum of Rs.10,20,000/- towards loss of dependency and again adding some compensation towards conventional damages, awarded the total compensation of Rs.10,95,000/-, which needs to be interfered with by this court. Finally, the learned counsel for the appellant would submit that the learned Tribunal has wrongly applied the multiplier '17', instead of 16, multiplier. If proper multiplier 16 is adopted, then the amount towards loss of dependency would come to Rs.9,60,000/-. This grave error committed by the learned Tribunal is liable to be set right by this court.

3.Opposing the above contentions, the learned counsel appearing for the claimants/respondents urges this court to dismiss this appeal for the following reasons. Firstly, he contended that the learned Tribunal having seen that the deceased aged about 35 years had died in the accident while he was crossing the road on the left side of the road from Chidambaram to Kattumannarkoil on 26.06.2011 at about 10.45 p.m., due to the fault of the offending vehicle driven by the driver of the bus belonging to the Transport corporation bearing Registration TN32N32902 which hit the deceased and as a result, he suffered fatal injuries and finally, he died leaving behind his wife and widowed mother, has fixed the negligence on the driver. Therefore, due to the death of the sole breadwinner, the claim petition was filed by his wife and widowed mother claiming a sum of Rs.15,00,000/-. In support of such claim of compensation, they produced a certificate issued by Tamilnadu Construction Workers Welfare Board marked as Ex.A4 that the deceased was working as Mason at the time of accident. Therefore, the learned Tribunal, considering the fact that the deceased at the time of accident on 26.06.2011 at about 10.45 p.m. was working as a Mason came to the conclusion that a mason could have earned a minimum of Rs.250/- per day, which comes to Rs.7,500/- as monthly income. However, considering the fact that the deceased was aged about 35 years at the time of

accident, the learned Tribunal after deducting 1/3 of his monthly income towards personal and living expenses, has awarded a sum of Rs.10,20,000/- (Rs.7500X1/3= Rs.5,000X12X17) towards loss of dependency. Since the deceased left behind a young widow aged about 32 years and also his widowed mother, the learned Tribunal has rightly considered the certificate issued by the Tamilnadu Construction Workers Welfare Board showing that he was employed as a Mason and rightly came to the conclusion that a Mason could be earning a minimum of Rs.250/- per day, which will come to Rs.7,500/- per month. Accordingly, the learned Tribunal fixed Rs.7,500/- as the notional income and adopted the multiplier of '17'. In addition thereto, the learned Tribunal has awarded Rs.10,000/- towards loss of love and affection, Rs.50,000/- towards loss of consortium, Rs.10,000/- towards funeral expenses and Rs.5000/- towards transport. He would submit that as per the ratio laid down by the Hon'ble Apex Court in the case of Rajesh vs. Rajbir Singh reported in 2013(9) SCC 54, it would be just and reasonable that the courts award at least Rupees one lakh for loss of consortium. By awarding such sum towards loss of consortium, it has been held by the Apex Court that the Courts 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. It has further held that the loss of companionship, love, care and protection, etc., to which the spouse is entitled to, has to be compensated appropriately. Since the concept of non pecuniary damage for loss of consortium is one of the major heads of award in other parts of the world, more particularly, in United States of America, Australia, etc., English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. Therefore, a minimum of Rupees one lakh for loss of consortium should be given. Taking the principle laid down in the above case, instead of 50,000/- awarded by the Tribunal, this Court could enhance the amount to Rs.1,00,000/- towards loss of consortium. Hence, the impugned award does not call for any interference, he pleaded.

4. This court finds merits on the submission of the learned counsel for the claimant. No doubt, the deceased died at the age of 35 years viz., on 26.06.2011 at about 10.45 p.m. while he was crossing the road as he was hit by the offending vehicle belonging to the appellant transport corporation bearing Registration No. TN32N3292, as a result, the deceased/husband of the claimant sustained fatal injuries and died leaving behind the young wife and also his widowed mother as orphan. Since he was working as a Mason and based on the certificate issued by the Tamilnadu Construction Workers Welfare Board Association marked as Ex.A4, the learned Tribunal has fixed Rs.250/- per day, which comes to Rs.7500/- as the monthly income. As per

Sarala Verma's case reported in 2009(2)TNMAC 13, as the deceased falls in the age group of 31-35, proper multiplier would be 16. But the learned Tribunal wrongly adopted 17 multiplier. While fixing Rs.7,500/- as notional monthly income and adopting 16 multiplier, after deducting 1/3 of his income towards personal expenses, loss of dependency would be Rs.9,60,000/- (Rs.5000X12X16). Hence, this court awards the said amount towards loss of dependency, instead of Rs.10,20,000/- awarded by the Tribunal.

5.However, with regard to the compensation towards loss of consortium, the learned Tribunal has fixed Rs.50,000/- alone. In the decision of the Hon'ble Supreme Court reported in the case of Rajesh vs Rajbir Singh reported in 2013(9) SCC 54,, at paragraph No.17, it is held that atleast Rs.1,00,000/- should be given towards loss of consortium. For better clarity, paragraph No.17 is extracted hereunder:

"17.The ratio of a decision of this court, on a legal issue is 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 revisited, as observed in Santosh Devi case reported in 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.2500 to Rs.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 case reported in (2009) 6 SCC 121, it was held that compensation for loss of consortium should be in the range of Rs.5000 to 10,000. In legal parlance, "consortium" is the right of the 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 courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts 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."

6.A bare perusal of the above observation shows that the deceased, in the present case, has left behind his young wife and widowed mother and the award of Rs.50,000/- towards loss of consortium has to be reassessed. Accordingly, as per the ratio laid down by the Apex Court in the decision (cited supra), this court has no hesitation to award Rs.1,00,000/-, instead of Rs.50,000/-, towards loss of consortium, which is just and reasonable compensation and another Rs.10,000/- is awarded towards loss of love and affection. Thus, the impugned award of the Tribunal does not call for interference so far as the total compensation is concerned. The award of the Tribunal is confirmed and accordingly, the civil miscellaneous appeal fails and the same is dismissed. No costs. The connected miscellaneous petitions are also dismissed.

7.The appellant Transport corporation is directed to deposit the balance amount with interest at the rate of 7.5%p.a. within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the same by moving appropriate application before the Tribunal as per the apportionment in the ratio of 60:40 as ordered by the Tribunal.

सत्यमेव जयते
Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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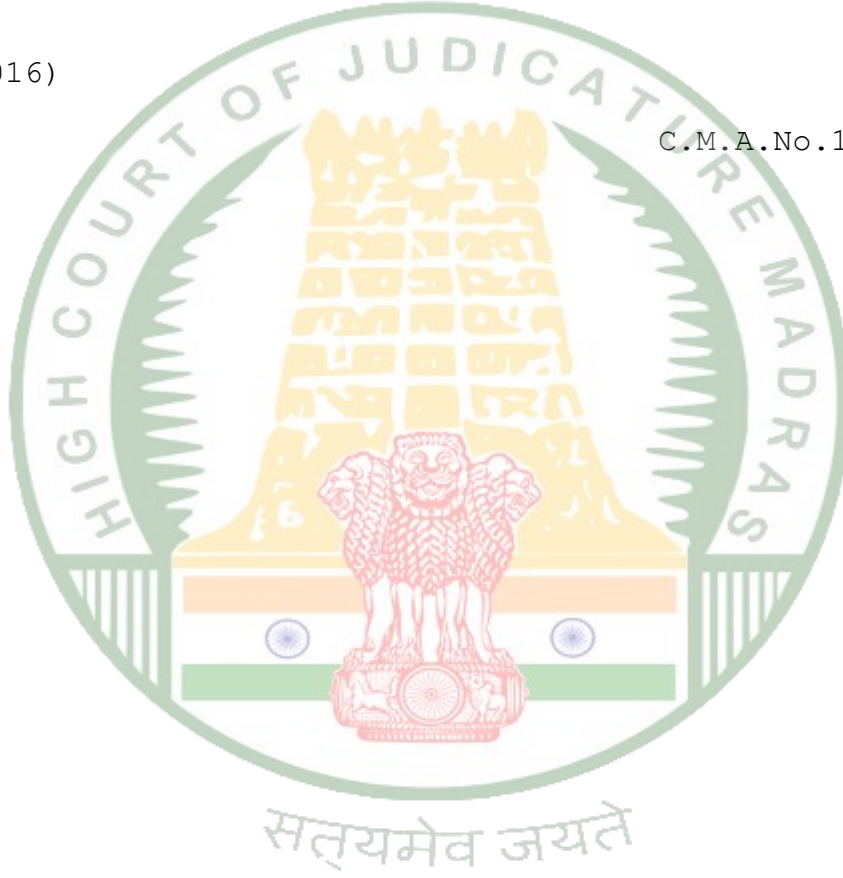
To

The Motor Accident Claims Tribunal,
Sub Judge,
Chidambaram.

+1cc to Mr.K.J. Sivakumar, Advocate, S.R.No.1586
+1cc to Mr.T. Gobinath, Advocate, S.R.No.1615

UG(CO)
EU(1/06/2016)

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