IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 03.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.1960 of 2016 & Cross Objection No.66 of 2016

The Managing Director,
Tamil nadu State Transport Corporation
(Villupuram) Ltd.,
Thiruvannamalai region,
thiruvannamalai. ... Appellant in CMA.1960/16
& respondent in Cr.Obj.66/16

Vs

1.Kavitha
2.Minor Jegan
3.Minor Janani
4.Minor Jayasri
5.Vembu
(respondents 2 to 4 are represented
by their mother/1st respondent)
... Respondents in CMA 1960/16
& Cross Objectors in Cr.Obj.66/16

C.M.A.No.1960 of 2016 is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 28.02.2013, made in MCOP .No.980 of 2010, on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

Cross Objection No.66 of 2016 is filed under Order 41 Rule 22 of the Code of Civil Procedure against the judgment and decree dated 28.02.2013, made in MCOP .No.980 of 2010, on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.



CMA No.1960 of 2016

For Appellant : Mr.S.V.Vasanthakumar
For Respondents : Ms.M.Malar

Cross Obj.No.66 of 2016

For Cross Objectors : Ms.M.Malar

For Respondent : Mr.S.V.Vasanthakumar

COMMON JUDGMENT

C.M.A.No.1960 of 2016 is preferred by the appellant-Transport Corporation against the award dated 28.02.2013, made in MCOP .No.980 of 2010, on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

2.Cross Objection No.66 of 2016 is filed by the claimants against the award dated 28.02.2013, made in MCOP . No.980 of 2010, on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

3. Background of the facts in a nutshell are as follows:

On 27.09.2010 at about 9.50 p.m., while the deceased Harikrishnan was riding his Hero Honda two wheeler bearing Registration No.TN-23-D-4119 on the extreme left side of the road from Bakmarpettai to Polur, a bus bearing Registration No.TN-25-N-0111 belonging to the appellant Transport Corporation driven by its driver in a rash and negligent manner, dashed against the deceased and as a result, the deceased died on the spot. The claimants are wife, minor son, two minor daughters and his mother. They claimed a sum of Rs.40,00,000/- as compensation. 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.6,83,000/- with interest at 7.5% per annum. Aggrieved by that award, the Transport Corporation as well as the claimants have filed the present appeal and cross objection respectively.

4. Learned counsel appearing for the appellant/Transport Corporation questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification. It is further submitted that the Tribunal has failed to look into the fact that the deceased, who had driven his bike with hectic speed, dashed against the right side of the bus, which lead to the fatal accident and therefore, the entire negligence is only on the part of the deceased. He has also further questioned the award amount of Rs.40,000/- towards loss of love and affection. With these submissions, he contended, the award passed by the Tribunal is not in accordance with law and the same is liable to be set aside.

5. Learned counsel appearing for the respondents/claimants, who are the Cross Objectors in Cross Objection No.66 of 2016, submitted that at the time of death, the deceased was working as a driver in the PWD, Tiruvannamalai and was earning a sum of Rs.15,000/- per month and he was only 35 years old. However, the Tribunal, without considering the age, income and future prospects, fixed the monthly income of the deceased at Rs.4,500/- per month and thereafter, instead of deducting 1/4th towards his personal expenses, it has wrongly 1/3rd towards personal expenses.

6. In her further submissions, learned counsel for the respondents/claimants, by relying upon the judgment of the Hon'ble Apex Court in Rajesh and others v. Rajbir Singh and others (2013 (3) CTC 883 (SC), submitted that the Tribunal ought to have awarded a sum of Rs.1,00,000/-, instead of Rs.20,000/- towards loss of consortium as the wife of the deceased was aged about only 27 years at the time of accident and based on the above said judgment, she further prayed before this Court to award a sum of Rs.1,00,000/- towards care and guidance for minor children and a sum of Rs.25,000/- towards funeral expenses by modifying petty amount of Rs.10,000/-each and Rs.10,000/- awarded by the Tribunal respectively. With these submissions, she prayed for enhancement of the compensation arrived at by the Tribunal.

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

8. It is not in dispute that at the time of accident, the deceased was aged about 35 years as could be seen from Ex.P3-Postmortem certificate. According to the claimants, the deceased was working as a Driver in the office of the Superintending Engineer, Public Works Department, Thiruvannamalai, and was earning a sum of Rs.15,000/- per month. However, to substantiate the same, they have not adduced any evidence, therefore, the Tribunal has fixed the monthly income of the deceased at Rs.4,500/- per month. However, I am of the view that going by the present state of economy and the rising prices, the deceased, being a driver employed in the PWD which is a Government Department would have earned a sum of Rs.6,500/- per month and accordingly, a sum of Rs.6,500/- is fixed as his monthly income. Further, as per SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER reported in (2009) 4 MLJ 997, the tribunal ought to have deducted 1/4th towards personal expenses of the deceased, instead of 1/3rd as the number of the dependent family members is 5. Accordingly, 1/4th deduction is hereby made.

9. It is also the contention of the learned counsel for the claimants that the Tribunal did not add 50% of his salary towards future prospects, while arriving compensation towards loss of dependency. Therefore, it is more appropriate to refer to the judgment of the Hon'ble Apex Court in Rajesh's case (cited supra) and for better appreciation, relevant portion of the said judgment is extracted below:

> "8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

A mere perusal of the above said judgment shows that the Court can award 50% of the actual salary to the income of the deceased towards future prospects if the deceased was below 40 years. In the case on hand, as stated above, the deceased was 35 years old at the time accident. Therefore, this Court is of the considered view that the Tribunal ought to have added 50% of his salary towards future prospects. With regard to the adoption of multiplier '17' by the Tribunal, I do not find any error on the same as the said multiplier is in tune with the ratio laid down by the Apex Court in Sarla Varma's case (cited supra). Finally, this Court arrives at the compensation towards loss of dependency as stated below:

Salary of the deceased = Rs.6500/- p.m.
50% of the salary to be added as future prospects = Rs.6500+3250
= Rs.9750/- p.m.
1/4th of Rs.9750/- deducted as personal expenses = Rs.7300/- p.m.
(round of figure)
Loss of income of the deceased after multiplier of 17 is applied (Rs.7300 x 12 x 17)= Rs.14,89,200/-

10. Further, as per the judgment of Rajesh's case (cited supra), this Court, on taking note of the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years, deems fit to award a sum of Rs.1,00,000/- towards loss of consortium to the wife, instead of Rs.20,000/- awarded by the Tribunal, as she was only 27 years at the time of death of her husband. Again, based on the above said judgment, this Court hereby awards a sum of Rs.1,00,000/- towards loss of care and guidance for minor children and Rs.25000/- towards funeral expenses, instead of Rs.40000/- and Rs.10,000/- respectively awarded by the Tribunal. Apart from that, the Tribunal has also awarded a sum of Rs.1000/- towards damages to cloth and articles and the same is hereby confirmed.

11. Thus, in toto, this Court hereby awards a sum of Rs.17,15,200/- as total compensation. The appellant Transport Corporation is directed to deposit the entire award amount along with interest at 7.5% per annum from the date of claim petition till the date of realization, less the amount already deposited if any, to the credit of M.C.O.P.No.980 of 2010, on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1 and 5 are entitled to withdraw their respective share amount, by moving necessary application before the Tribunal. In respect of the minors' shares i.e. Claimants 2 to 4, it is made clear that the same shall continue to be in the deposit in any nationalized bank till they attain the majority. The first claimant is also permitted to withdraw the interest accrued in the deposit of the minors' shares once in three months on making proper application. The claimants are directed to pay the necessary additional Court fee for the enhanced award amount.

12. In fine, for the reasons stated above, the Civil Miscellaneous Appeal filed by the Transport Corporation stands dismissed and the Cross Objection filed by the claimants stands allowed to the extent mentioned above. Consequently, CMP.No.14237 of 2016 is closed. No Costs.



Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rkm

To

The Motor Accidents Claims Tribunal,
District Judge, Thiruvannamalai.

+1cc to Mr.S.V.Vasanthakumar, Advocate sr.56769
+1cc to M/S.M.Malar, Advocate Sr.56855

C.M.A.No.1960 of 2016 &
Cross Objection No.66 of 2016

ctr[co]
srg 03/01/2017