

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

AND

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Civil Miscellaneous Appeal No.2093 of 2016

C.M.P.No.15246 of 2016

The Managing Director
Tamil Nadu State Express Transport
Corporation Limited, Chennai. ... Appellant / Respondent

v.

1. Lioni @ Lionimary
2. Pascaline Deepa
3. Johnlnico ... Respondents/ Petitioner

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 23.12.2014, made in M.C.O.P.No.11 of 2012 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Mettur.

For appellant : Mr.K.J.Sivakumar

For respondents: Mr.R.Murugabharathi

J U D G M E N T

(Judgment of the Court was made by S.MANIKUMAR, J.)

Challenge in this appeal is to the judgment and decree, made in M.C.O.P.No.11 of 2012, dated 23/12/2014, on the file of the learned Special Subordinate Judge, Mettur. A sum of Rs.16,05,752/- has been awarded as compensation, with interest, at the rate of 7.5% p.a., from the date of claim, till realisation, as hereunder:-

Loss of contribution to the family	... Rs.12,91,752/-
Transportation	... Rs. 3,000/-
Damages to clothes	... Rs. 2,000/-
Medical expenses	... Rs. 4,000/-
Funeral expenses	... Rs. 5,000/-
Loss of consortium	... Rs. 1,00,000/-
Loss of income to the family	... Rs. 2,00,000/-

Rs.16,05,752/-

2. With the consent of the learned counsel for the parties, Civil Miscellaneous Appeal is taken up for hearing.

3. Though contentions have been made, questioning the finding fixing negligence on the driver of the appellant-Transport Corporation, Mr.K.J.Sivakumar, learned counsel for the appellant-Transport Corporation, restricted the challenge, only in respect of quantum of compensation. By placing on record, his submission, there is no need to advert to the finding, on negligence.

4. In the accident which occurred on 01.04.2010, Devakumar, husband of the first respondent, aged about 50 years, an Office Assistant, in Fathima Girls Higher Secondary School, Omalur, died. Legal representatives, viz., wife, daughter and son, filed M.C.O.P.No.11 of 2012, on the file of the Motor Accident Claims Tribunal, Mettur, claiming compensation of Rs.20 lakhs. According to them, at the time of accident, the deceased was aged 50 years and children were studying in College. To support employment and earning, the respondents/claimants have filed Ex.P6 - Salary Certificate. Though wife of the deceased/first respondent contended that at the time of accident, the deceased, as Office Assistant, earned Rs.15,000/- per month, upon perusal of Ex.P6 - Salary Certificate, the Tribunal fixed monthly income of the deceased as Rs.10,786/-. Though the dependants are three in numbers, the Tribunal inadvertently has taken note of the same as four and deducted only Rs.1,000/-, towards the personal and living expenses of the deceased and after applying '11' multiplier, computed the loss of contribution to the family, as Rs.12,91,752/-.

5. The deceased is survived by his wife and two children. In terms of Sarla Verma v. Delhi Transport Corporation Ltd., reported in 2009 (2) TNMAC 1 (SC), the Tribunal ought to have deducted $1/3^{\text{rd}}$ towards personal and living expenses of the deceased. The Claims Tribunal has failed to take note of awarding compensation for future prospects, in terms of the decision made in Santhosh Devi v. National Insurance Co. Ltd., reported in 2012 (6) SCC 421. Considering the age of the deceased, this Court is inclined to add 15% of the income i.e, Rs.1,618/- towards future prospects. After deducting $1/3^{\text{rd}}$ towards personal and living expenses of the deceased, the loss of contribution to the family works out to Rs.10,91,508/-. ($12,404 \times 2/3 \times 11 \times 12$).

6. Though wife, aged about 45 years and children aged about 25 and 21 years respectively, have lost the love and affection of the bread winner of the family, the Tribunal has awarded an overall compensation of Rs.1 lakh only, under the head loss of

love and affection and loss of consortium. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owned by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." Consortium is not a pecuniary loss. It is certainly a conventional damage awarded to a widow, who has lost her husband. In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Apex Court, while observing that at least a sum of Rs.1 Lakh has to be awarded to the widow, for loss of consortium, held as follows:

"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 recognized 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 atleast Rupees one lakh for Loss of Consortium."

In the light of the above, this Court is inclined to grant a sum of Rs.1 lakh to the wife, for loss of consortium.

7. Legal representatives of the deceased, in particular, children have lost the love and affection of the deceased. In Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55, the Hon'ble Apex Court has awarded Rs.1,00,000/- each, to the legal representatives of the deceased, towards the loss of love and affection. Daughter and son were aged 25 and 21 years respectively. Loss of love and affection, for the rest of their lifetime, cannot be measured, in terms of money. But the same has to be just. Therefore, a sum of Rs.1,00,000/- (Rs.50,000/- each), can be awarded, under the head, loss of love and affection to the children.

8. Quantum of Compensation of Rs.5,000/- awarded under the head, funeral expenses, is less. On the aspect of quantum of compensation, under the head, funeral expenses, the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883, held as follows:

"21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

In the light of the above decision, compensation for funeral expenses is enhanced from Rs.5,000/- to Rs.25,000/-.

9. A sum of Rs.2,000/- awarded under the head damage to clothes and articles, is reasonable, and the same is confirmed. A sum of Rs.4,000/- has been awarded under the head medical expenses. As the deceased died on the next day, the said amount is unaltered. Compensation of Rs.3,000/- awarded towards transportation, is sustained.

10. In view of the above decision and reworking, the respondents are entitled to Rs.15,25,508/-, with interest at the rate of 7.5% per annum, from the date of claim, till the date of realisation, as apportioned hereunder:

Loss of contribution to the family	...	Rs.10,91,508/-
Transportation	...	Rs. 3,000/-
Damages to clothes	...	Rs. 2,000/-
Medical expenses	...	Rs. 4,000/-
Funeral expenses	...	Rs. 25,000/-
Loss of consortium	...	Rs. 1,00,000/-
Loss of love and affection	...	Rs. 1,00,000/-
Loss of income to the family	...	Rs. 2,00,000/-

		Rs.15,25,508/-

11. In view of the above, this Civil Miscellaneous Appeal is partly allowed. Quantum of compensation is reduced by

Rs.80,244/-. A sum of Rs.8,05,752/- apportioned to the wife, is retained. A sum of Rs.3,59,878/- each, is apportioned as compensation to the daughter and son, respondents 2 and 3 in this appeal. The appellant-Transport Corporation is directed to deposit the amount, now determined by this Court, less the amount already deposited, with proportionate interest and accrued costs, to the credit of M.C.O.P.No.11 of 2012 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Mettur, within a period of four weeks, from the date of receipt of a copy of this order. On such deposit being made, the respondents/claimants are permitted to withdraw the amount, lying in the deposit. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

skm

To

The Subordinate Judge
The Motor Accident Claims Tribunal,
Mettur.

1 cc to Mr.K.J. Sivakumar, Advocate, Sr. 54371
1 cc to Mr.R. Murugabharathi, Advocate, Sr. 54377

सत्यमेव जयते C.M.A.No.2093 of 2016

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