IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:04.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2152 of 2016

1.C.Malarkodi
2.Kalpana
3.Kavitha
4.Dhanammal .. Appellants/Petitioners

Versus

The Metropolitan Transport Corporation Ltd.,
Rep. by its Managing Director,
Pallavan House,
Chennai-600 002. .. Respondent/Respondent
(Cause title accepted vide order
of court dt.7.7.05 and made in
CMP.No.9840/05)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the award and Decree of the Motor Accidents Claims Tribunal, (III Judge, Small Causes Court, Chennai) in M.C.O.P.No.876 of 1997 dated 2nd April, 2002.

For Appellants : Ms.Ramya V.Rao
for M/s.N.Bhaskhaaran

For Respondent : Mr.K.S.Suresh

JUDGMENT

It is the case of death of a bread winner of the claimants, who was admittedly employed as an Officer of Air Port Authority of India in Meenampakkam, in the post of Fire Operator, receiving the monthly salary of Rs.4,909/-.

2. The learned Tribunal, accepting the salary certificate marked as Ex.P3, showing the salary of the deceased as Rs.4,909/- per month, on the date of unfortunate death of the bread winner of the claimants' family, made 1/3rd deduction from the said salary, towards personal expenses of the deceased, which has been objected by the claimants on the ground that when

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the deceased family has 2 to 3 dependents, 1/3 deduction can be made. If the dependents 4 to 6, as per Rule laid down in Sarla Verma & Ors. v. Delhi Transport Corporation & another reported in 2009 (2) TAN MAC1 (SC), 1/4 of the salary to be deducted.

3. Firstly, while it is the settled legal precedent of the Apex Court, the learned Tribunal has mistaken in deducting 1/3 instead of 1/4 towards personal expenses. Therefore, 1/4th deduction should be made by interfering with the impugned award. Secondly it was submitted by the learned appearing for the appellant that as per the ratio laid down in the Apex Court, mentioned supra, addition of 30% of actual salary should have been made towards future prospects, since the deceased was aged about 48 years at the time of accident which took place in Meenambakkam Bus Stop. Hence, 30% of the actual salary of Rs.4,909/- should have been added towards future prospects of the deceased.

4. The Apex Court in Sarla Verma case has mandated that 50% of actual salary of the deceased, should be added towards future prospects, if the deceased is aged about below 40 years and if the deceased is aged about 40 to 50 years, 30% should be added towards future prospects. Therefore, the second contention of the learned counsel for the appellants also deserves acceptance. Accordingly, while accepting Rs.4,909/- as actual salary of the deceased at the time of accident as per the salary certificate marked as Ex.P3 issued by the Air Port Authority of India, Meenambakkam, this Court adds 30% of the actual salary towards future prospects. Thus the notional income comes to Rs.4,909/- + 1472/- = Rs.6381/- rounded to Rs.6381/- . After deducting 1/4 towards personal expenses, the monthly income of the deceased would come to Rs.6381 minus Rs.1595 = Rs.4786/-

5. The learned Tribunal had rightly adopted multiplier-13 and this court has no infirmity therefor. Thus the loss of income to the dependency comes to Rs.4786 X 12 X 13 = 7,46,616. However, with regard to fixation of compensation towards loss of consortium, it is an admitted case of both sides that the deceased was serving as a Fire Operator in the Office of the Air Port Authority of India at Meenambakkam and the deceased at the age of 48 years, has left the family members as orphans without any sources of income. It is proved, that the learned Tribunal has fixed only a meager amount of Rs.10,000/- towards loss of consortium. This Court does not find any justification therefor. The reason is, the Rulings in the case of Rajesh and others vs. Rajbir Singh & others reported in 2013 (2) TN MAC 55 (SC), the Hon'ble Apex Court, has after analysing various judgments, fixed Rs.1,00,000/- towards loss of consortium in favour of the wife of the deceased.

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6. In the present case at the time of death of the husband, the first claimant-wife was aged about 45 years. Therefore, this Court finds no impediments to fix Rs.1,00,000/- towards loss of consortium to the wife. The judgment of the Apex Court also makes it clear that towards loss of love and affection to the children, a sum of Rs.1,00,000/- each should be fixed. In the present case, only a sum of Rs.5,000/- was wrongly fixed. Therefore, this Court following the ratio laid down by the Apex Court in the case of Rajesh and others vs. Rajbir Singh, is inclined to award compensation towards loss of love and affection Rs.1,00,000/- each to the children. Towards funereal expenses Rs.2,000/- awarded by the Tribunal is meagre and hence, this Court is inclined to award Rs.25,000/-. The Tribunal awarded Rs.5,000/- for mental agony is confirmed. The Tribunal awarded interest at 9% per annum from the date of the petition till deposit of the amount and the same is confirmed.

7. Thus the award amount granted by the Tribunal is enhanced from Rs.2,61,000/- to 10,76,616/- as follows:

Towards loss of dependency	Rs.7,46,616/-
Towards mental agony	Rs. 5,000/-
Towards loss of consortium	Rs.1,00,000/-
Towards loss of love and affection each to the children Rs.1,00,000 X 2	Rs.2,00,000/-
Towards transportation and funeral expenses	Rs. 25,000/-
Total	Rs.10,76,616/-

8. However, the learned counsel appearing for the appellants/claimants has fairly agreed that he is not disputing the finding with regard to contributing negligence arrived at by the Tribunal. Hence this Court, fixes contributory negligence at 50% on the deceased, as he was partly responsible for inviting accident. After deducting 50% of the award amount, the compensation payable comes to Rs.5,38,308/-.

7. Therefore, the aforementioned amount, shall be deposited within four weeks from the date of the receipt of a copy of this order along with interest accrued therein.

9. The apportionment of the award amount to the claimants is as per the ratio fixed by the Tribunal.

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10. It is brought to the notice of this Court that at the time of filing of the appeal there was a delay of 221 days. Therefore, the said delay period, shall be excluded for the purpose of calculating the interest. 11. With the above modification, the appeal is allowed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vk

To
The III Judge,
Motor Accidents Claims Tribunal,
Chennai (Small Causes Court,
Chennai.

Copy to:
The Section Officer,
VR Section,High Court, Madras.

+1cc to Mr.N.Bhaskaran,Advocate sr.56963

C.M.A.No.2152 of 2016

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