

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2454 of 2016 and
C.M.P. No.17247 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram.

.. Appellant

Versus

1.Mannammal
2.Ashothai
3.Chinnaponnu
4.Theyvaanai
5.Valliyammai
6.Natesan

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 07.09.2015 made in M.C.O.P.No.300/2014 on the file of the Motor Accidents Claims Tribunal, (III Additional District and Sessions Judge), Cuddalore at Virdhachalam.

For Appellant : Mr.P.Paramasiva Doss

For Respondents : Mr.F.Terry Chella Raja
for R1 to R5

J U D G M E N T

Aggrieved over the impugned award passed by the learned Tribunal, awarding a sum of Rs.5,91,000/- as against the claim of Rs.25,00,000/-, the Transportation Corporation, Villupuram has brought this appeal questioning the quantum of compensation.

2. According to the claimants, on 20.07.2014 at about 13.30 hours, when the deceased was standing on the left side of the road at Mohamadiyar Bail Rice Mill on Kallakkurichy to Veppur Main Road, a bus bearing Registration No.TN-32-N-3380 belonging to the appellant's Transport Corporation, which was driven by its driver, came from West to East direction in a rash and negligent manner and hit against the deceased. Due to the same, he sustained fatal injuries and died. According to the claimants, the accident had happened due to the rash and negligent driving of the driver of the bus.

3. Learned counsel appearing for the appellant would place the following contentions:

a. When the deceased, who was aged about 60 years at the time of accident, was doing rice, vegetable and milk business, the learned Tribunal has committed serious error in fixing notional monthly income at Rs.6,000/- in the absence of any documentary evidence to prove the same.

b. As it is a fit case for applying the split multiplier, learned Tribunal without taking note of the same, has committed yet another error in applying the multiplier '9',.

c. Instead of making deduction of $\frac{1}{3}$ rd towards personal expenses of the deceased had he alive, has wrongly deducted $\frac{1}{4}$ th of the income.

Therefore, he prayed for setting aside the impugned award.

4.Per contra, learned counsel for the claimants would submit that so far as the first contention that the learned Tribunal has fixed Rs.6,000/- as notional monthly income of the deceased is concerned, it is a well settled legal position that in a case where the deceased is able to prove before the Tribunal that he was doing vegetable, rice and milk business, notional monthly income of the deceased could be taken into account at Rs.6,500/-, as per the ratio laid down by the Hon'ble Apex Court in the case of **Syed Sadiq etc. vs. Divisional Manager, United India Insurance Co. Ltd. Reported in 2014 (1) TN MAC 459 (SC)** wherein it has been held that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month. According to the claimants, the same has not been properly followed by the learned Tribunal and therefore instead of fixing Rs.6,000/-, it ought to have fixed Rs.6,500/- as notional monthly income of the deceased.

4.1.Replying to the second contention, the learned counsel for the claimants further contented that when the ratio laid down by the Hon'ble Apex Court in the case of **Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC)** fixing '9' would be the proper multiplier for the deceased falling in age group 50 - 60, the argument advanced by the learned counsel for the appellant is untenable.

4.2.While replying to the last contention, he would submit that when there were 6 claimants in the deceased family, as per the ratio laid

down by the Hon'ble Apex Court in the above said case of Sarla Verma, the learned Tribunal has rightly made 1/4th deduction towards personal expenses. Therefore, the same needs no interference.

5. When there was a claim made by the claimant before the learned Tribunal stating that the deceased was doing vegetable, rice and milk business and was earning Rs.15,000/- per month, the learned Tribunal for the reasons best known to it, has fixed only a sum of Rs.6,000/- as notional monthly income. After fixing Rs.6,000/- as notional monthly income, it has rightly adopted the multiplier '9', considering the age of the deceased was 60 years at the time of accident. When there were 6 claimants in the family, as per the ratio laid down by the Hon'ble Apex Court in the case of Sarla Verma, the learned Tribunal has rightly made 1/4th deduction towards personal expenses.

5.1. When the learned Tribunal has fixed only Rs.6,000/- as notional monthly income of the deceased instead of fixing Rs.6,500/- as per the ratio laid down by the Hon'ble Apex Court in the case of **Syed Sadiq**, the contentions made by the learned counsel for the appellant are far from acceptance.

5.2. It is mentioned herein that the learned Tribunal has not made any addition as per the case of Sarla Verma i.e. 15% of the actual salary

towards future prospects has not been awarded. This Court is able to see that the accident took place in the year 2014 and only a meagre sum of Rs.20,000/- has been awarded towards loss of consortium to the wife of the deceased. Therefore, the challenge made to the quantum is wholly unwarranted and this Court is not inclined to interfere with the same. Accordingly, the appeal fails and the same is dismissed. No costs. Consequently, connected C.M.P. is also dismissed.

6.Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of five weeks from the date of receipt of a copy of this order, failing which the interest payable would become 12% for the delayed period. On such deposit, it is for the claimants to move a petition before the learned Tribunal for withdrawing of the said amount.

04.11.2016

Index : Yes / No
vga

To
1.The Motor Accidents Claims Tribunal,
(III Additional District and Sessions Judge),
Cuddalore at Virdhachalam.

2.The Section Officer,
V.R.Section, High Court, Madras.

T.RAJA, J.

vga

C.M.A. No.2454 of 2016

04.11.2016