

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A.No.2775 of 2015

1. V.Kavitha
2. Minor Kiruthika
3. A.Periyasamy
4. P.Saraswathi

(2nd Minor appellant is represented by
her natural guardian and next friend
mother Kavitha, 1st appellant)

... Appellants/Respondents

- Vs -

The Managing Director,
M/s.Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd., Kumbakonam, Karaikudi Region.

... Respondent/Appellant

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the Award and decree dated
11.08.2015, passed by the Motor Accident Claims Tribunal
(Principal District Judge), Perambalur, made in M.C.O.P.No.262
of 2013.

For Appellants : Mr.V.Raghupathi
For Respondent : Mr.D.Venkatachalam

JUDGMENT

(Judgment of the Court was delivered by R.Sudhakar,J.)

Heard the learned counsel appearing for the
appellants/claimants and the learned counsel appearing for the
respondent/State Transport Corporation.

2. The claimants has filed this appeal challenging the
award dated 11.08.2015 passed by the Motor Accident Claims
Tribunal (Principal District Judge), Perambalur, made in
M.C.O.P.No.262 of 2013.

3. It is a case of fatal accident. On 03.03.2013 at about 08.30 p.m., when the deceased Vijayakumar, aged about 33 years, was riding his two wheeler bearing Regn.No.TN-47-U-9796 on Pudukkottai-Trichy Main Road from South to North, on the extreme left side of the road opposite to the Sun Residency, the respondent's bus bearing Registration No.TN-63-H.1239, driven by its driver in a rash and negligent manner, dashed the two wheeler driven by the deceased due to which the deceased was thrown away and sustained grievous injuries. He was admitted in Government Head Quarters Hospital, Trichy, where he died due to accident injuries. A case was registered against the driver of the bus.

4. The deceased, on the date of accident, was working as Junior Executive (Manufacturing Services Department) in Cithar Vessels Limited, Dindigul Road, Trichy. The appellants, viz., the wife, daughter and parents, have filed the claim petition claiming a sum of Rs.70,00,000/- as compensation.

5. In support of the claim, the first claimant, viz., the wife of the deceased was examined as P.W.1. One Gurusamy, eye witness to the occurrence and Sathish Kumar, who was working as Supervisor in the Company where the deceased was working, were examined as P.W.2 and P.W.3 respectively and Exs.P-1 to P-19 were marked, the details of which are as follows:-

Ex.P-1	-	Xerox Copy of First Information Report
Ex.P-2	-	Xerox Copy of Post-mortem certificate
Ex.P-3	-	Xerox copy of the Death Certificate
Ex.P-4	-	L.Rs. Certificate
Ex.P-5	-	Original Pan Card
Ex.P-6	-	Provisional Certificate - Diploma in Mechanical Engineering issued by State Board of Technical Education and Training, Department of Technical Education, Madras-600 025.
Ex.P-7	-	Original B.E. Certificate - 1st Class in Mechanical Engineering issued by Vinayaka Missions University, Salem.
Ex.P-8	-	Diploma Mark Sheets (5 Nos.) with Certificate (Original)
Ex.P-9	-	B.E. Provisional Certificate (Original)
Ex.P-10	-	B.E. Mark Sheets (6 Nos.) (Original)
Ex.P-11	-	Xerox copy of Driving License on one Vijayakumar.

Ex.P-12	-	Authorisation Letter
Ex.P-13	-	Appointment details of deceased Vijayakumar
Ex.P-14	-	Attendance Register
Ex.P-15	-	Salary Slips
Ex.P-16	-	R.W.1's employment details
Ex.P-17	-	Xerox copy of M.V.I Report
Ex.P-18	-	Xerox copy of Rough Sketch
Ex.P-19	-	Xerox copy of Charge Sheet.

6. On the side of the respondent, one Govindaraj was examined as R.W.1 and one Thiru.Pandi was examined as R.W.2 and Ex.R-1 xerox copy of Motor Vehicle Inspector report was marked.

7. The Tribunal, based on the oral evidence of the P.Ws.1 to 3 and also taking note of the corroborating evidence of P.W.2, eye witness to the occurrence, which has been adduced to prove that the bus was driven in a rash and negligent manner and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the respondent to refute the eye witness testimony as to the rash and negligent driving of the bus, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the bus and, therefore, the liability was fixed on the respondent herein and consequently the respondent-Transport Corporation was directed to compensate the claimants. On this issue, learned counsel for the respondent/Transport Corporation has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal.

8. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Compensation for loss of dependency	-	Rs.11,23,200/-
Towards funeral expenses	-	Rs.10,000/-
Towards loss of estate	-	Rs.40,000/-

Towards Loss of Consortium (to 1st claimant)	- Rs.50,000/-
Towards Loss of love & affection (2nd claimant)	- Rs.20,000/-
Towards travelling expenses	- Rs.5,000/-
Total compensation payable to the claimants	- Rs.12,48,200/-

9. Aggrieved by the said award, the Transport Corporation is before this Court by filing this appeal.

10. The only point raised by the learned counsel appearing for the respondent-Transport Corporation is that the income fixed is on the higher side, as admittedly, the deceased was working in the Company stated above and was not earning the amount as stated in the claim petition. They have not produced any proof showing the income of the deceased.

11. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record. Admittedly, the respondent-Transport Corporation has not filed any appeal challenging the amount of compensation awarded by the Tribunal. Though it is trite law that the income should be arrived at keeping in mind the avocation of the deceased, it is seen that the age of the deceased has been taken into account while deciding the multiplier to be adopted. However, taking into consideration the entire gamut of facts and also keeping in mind the fact that the deceased was working as Junior Executive in the said Company, and, therefore, notional income has to be fixed keeping in mind the cost of living index prevailing as on the date of the accident, this Court is of the considered view that the income of the deceased should be fixed at Rs.15,000/- per month. The future prospects of the deceased has also to be considered. Hence, a sum of Rs.22,500/- (Rs.15,000 + Rs.7,500/-) is fixed as monthly income of the deceased.

12. Accordingly, the loss of pecuniary benefits to the family of the deceased is fixed as Rs.32,40,000/- ($\text{Rs.22,500/-} \times \frac{3}{4} \times 12 \times 16 = \text{Rs.32,40,000/-}$). The sum of Rs.50,000/- granted towards loss of consortium to the wife is very low and the same is enhanced to Rs.1,00,000/-. The sum of Rs.20,000/- granted towards loss of love and affection to the minor child is also very low and the same is enhanced to Rs.75,000/-. Further, no amount was granted towards loss of love and affection to the parents of the deceased. A sum of Rs.25,000/- each is granted towards loss of love and affection to the parents of the

deceased. However, the sum of Rs.40,000/- granted towards loss of estate is deleted.

13. Accordingly, the award of the Tribunal is modified as hereunder :-

Loss of Income (Monthly Income fixed at Rs.15,000/= and Future prospects fixed at 50% of monthly income - Multiplier adopted is 16), i.e. 22,500 x 3/4 x 12 x16	-	Rs.32,40,000/-
Towards loss of consortium to the wife	-	Rs.1,00,000/-
Loss of Love & Affection to the children (a) Minor (b) parents (Rs.25,000/- each)	-	Rs. 75,000/- Rs.50,000/-
Funeral expenses and transport	-	Rs.15,000/-
Total compensation awarded by this Court	-	Rs. 34,80,000/-

14. Accordingly, this Civil Miscellaneous Appeal is allowed as follows:

(i) The award of the Tribunal is enhanced from Rs.12,48,200/-Rs.34,80,000/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii)Learned counsel appearing for the respondent/Transport Corporation seeks time to deposit the balance amount.

(iv) The respondent/Transport Corporation is granted eight weeks time to deposit the amount ordered by this Court.

(v) On such deposit being made, the wife of the deceased is entitled to withdraw 25% of the amount lying in deposit; parents of the deceased are entitled to withdraw 25% of the amount lying in deposit and the minor is entitled to the balance 50% of the amount lying in deposit.

(vi) the share of the minor shall be deposited in the name of the minor in any one of the Nationalised bank initially for a period of three years under reinvestment scheme, which shall be renewed periodically till the minor attains majority.

(vii) the mother of the minor claimant is permitted to withdraw the interest accrued on the minor's deposit once in three months directly from the bank.

(viii) Except the above modification, the award of the Tribunal in all other aspects stands confirmed.

(ix) There will be no order as to costs in this appeal.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Principal District Judge
(Motor Accident Claims Tribunal),
Perambalur.
2. The Record Keeper,
V.R. Section, High Court, Madras.

+1 cc to Mr.V.Raghupathi Advocate sr.11982
+1 cc to Mr.D.Venkatachalam Advocate sr.11866

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