

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.11.2016

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A. No.2559 of 2016

1.Sowbagiam
2.Chinnasamy
3.Rajammal
4.Sivagami
5.Jegadeesan
6.Chitra
7.Santhi

... Appellants/Petitioners

Vs.

The Managing Director,
Tamilnadu State Express
Transport Corporation Ltd.,
Pallavan Salai, Chennai - 600 002... Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 31.07.2003 made in M.C.O.P.No.9 of 2002 on the file of the Motor Vehicles Accident Claims Tribunal, Sub Judge, Tiruvannamalai.

For Appellants : Mr.B.Jawahar

For Respondent : Mr.C.Manishankar
Additional Advocate General
Asst.by Mr.K.T.Sivakumar

J U D G M E N T

Aggrieved over the quantum of compensation awarded by the Tribunal for the death of the third appellant's husband, namely, Ranganathan, who died in the accident on 21.09.2001, the present Appeal has been filed by the claimants.

2. Due to the death of Ranganathan, in the accident that occurred on 21.09.2001, leads to the filing of the Motor Accident Claims Original Petition. The Tribunal, on contest, held that the Ranganathan was riding his Bullock Cart on the left side of the

road, the bus driven by its driver in a rash and negligently hit the Bullock Cart, resulting in the death of Ranganathan on the spot. Based on the evidence, the Tribunal found that the accident occurred only due to the rash and negligent driving of the driver of the bus belonging to the respondent Transport Corporation and fixed the liability on the Transport Corporation. There is no appeal against the said finding given by the Tribunal by the Transport Corporation. In any event, even based on eye-witness and other evidence, the Tribunal rightly came to the conclusion that the accident occurred because of the rash and negligent driving of the driver of the bus. Hence, the said finding is confirmed.

3. The only question arises for consideration in the Appeal is with regard to the quantum of compensation. The deceased was aged about 50 years, who was an agricultural coolie, claimed to have earned about Rs.3,600/- per month. However, in the absence of any material evidence, the Tribunal determined his monthly income as Rs.1,500/- and adopted multiplier 11, after deducting $1/3^{\text{rd}}$ towards Personal Expenses, determined the Loss of Income at Rs.1,20,000/-. Towards Love and Affection a sum of Rs.10,000/- was awarded to each of the appellants. In toto, a sum of Rs.1,40,000/- has been awarded. It is very difficult for an agricultural coolie for filing any document to prove his income. However, as per the judgment of the Hon'ble Supreme Court in New India Assurance Company Limited vs. Kamala and others [2007-1-TNMAC-1-SC], in the absence of material evidence, Rs.3,000/- is required to be taken as monthly income. Accordingly, the monthly income fixed by the Tribunal at Rs.1,500/- is enhanced to Rs.3,000/- per month.

4. As per the judgment of the Hon'ble Supreme Court in Sarla Verma vs. Delhi Transport Corporation reported in [(2009) 6 SCC 121], since the deceased was aged about 50 years at the time of accident, $1/3^{\text{rd}}$ must be added towards Future Prospects. However, no Future Prospects was awarded by the Tribunal. Therefore, $1/3^{\text{rd}}$ is added towards Future Prospects and the monthly income along with Future Prospects would be Rs.3000 + $1/3^{\text{rd}}$ = Rs.3,900/-. Following the very same judgment of the Hon'ble Supreme Court in Sarla Verma's case, $1/5^{\text{th}}$ is required to be deducted towards Personal Expenses of the deceased, as the members of the family is more than 5. After deduction of $1/5^{\text{th}}$ towards personal expenses, the loss of monthly income would be Rs.3000 + 30% - $1/4^{\text{th}}$ = Rs.3,120/-.

5. The appropriate multiplier as per the judgment of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation reported in [(2009) 6 SCC 121] would be 13 for the age of 50 years whereas the Tribunal only adopted 11 and therefore, this Court adopts multiplier 13 and determined the Loss of Income as follows: Rs.3120 x 13 x 12 = Rs.4,86,720/-.

6. It is very pertinent to note that no amount has been awarded towards Loss of Consortium by the Tribunal. As per the judgment of the Hon'ble Supreme Court in Rajesh & Others vs. Rajbir Singh & Others reported in 2013(2)TNMAC 55(SC), atleast Rs.1,00,000/- is required to be awarded towards Loss of Consortium and therefore, this Court awards Rs.1,00,000/- towards Loss of Consortium. Similarly, no amount was awarded towards Transport and Funeral expenses. Accordingly, a sum of Rs.15,000/- towards Funeral Expenses and Rs.10,000/- towards Transportation is awarded. Only a sum of Rs.10,000/- each was awarded towards loss of Love and Affection. There are four children and aged mother and therefore, awarding Rs.20,000/- each, a sum of Rs.1,00,000/- is awarded. Rs.15,000/- is awarded towards Loss of Estate and the compensation is granted to the tune of Rs.7,26,720/- in the following manner:

Loss of Income	:	Rs.4,86,720.00
Loss of Consortium	:	Rs.1,00,000.00
Loss of Love and Affection	:	Rs.1,00,000.00
Funeral Expenses	:	Rs. 15,000.00
Transportation	:	Rs, 10,000.00
Loss of Estate	:	Rs. 15,000.00
		Rs.7,26,720.00

7. Therefore, the award of Rs.1,40,000/- is enhanced to Rs.7,26,720/- rounded off to Rs.7,25,000/-. The Tribunal rightly awarded 9% p.a. and the same remains unaltered.

8. The respondent Transport Corporation is directed to deposit the enhanced compensation amount along with interest and costs within a period of eight weeks from the date of receipt of a copy of this order after adjusting the amount already deposited, if any. On such deposit, the tribunal shall disburse the compensation amounts to the respective appellants, on the basis of apportionment given below, after adjusting the amount already withdrawn, if any, within a period of two weeks thereafter.

(i) 1 st appellant (Sowbaggiam)	...	Rs. 25,000/-
(ii) 2 nd appellant (Chinnasamy)	...	Rs. 25,000/-
(iii) 3 rd appellant (Rajammal)	...	Rs.1,40,000/-
(iv) 4 th appellant (Sivagami)	...	Rs.1,25,000/-
(v) 5 th appellant (Jegadeesan)	...	Rs.1,60,000/-
(vi) 6 th appellant (Chitra)	...	Rs.1,25,000/-
(vii) 7 th appellant (Santhi)	...	Rs.1,25,000/-

Total	...	Rs.7,25,000/-
		=====

9. The Civil Miscellaneous Appeal is allowed as stated above. No costs.

For compliance, call the matter after ten weeks.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sri
To

1.The Subordinate Judge
The Motor Vehicles Accident Claims Tribunal,
Tiruvannamalai.

2.The Section Officer
VR Section
High Court Madras

C.M.A. No.2559 of 2016

ev(co)
aa04/01/2017



WEB COPY