IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.02.2016

CORAM

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

C.M.A. NOS. 2605 & 2781 OF 2014
AND
M.P. NOS. 1 OF 2014 & M.P. NO. 1 OF 2015

The Managing Director
Tamil Nadu State Transport
Corporation (Salem) Limited
No.12, Ramakrishna Road
Salem 636 007. .. Appellant in both the appeals/Respondents.

- Vs -

1. G.Edwin Jayaraj
2. Karen Jayaraj
3. Minor Rhema Edwina.. Respondents in CMA 2605/2014/Petitioner.
   (R-3 rep. by friend & father R-1)

1. Yonus Mohammed
2. Yasmeen Younus
3. Nasmeen Banu
4. Nasia Banu .. Respondents in CMA 2781/2014/Petitioner.

Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decrees dated 24.01.2014 passed by the Motor Accident Claims Tribunal (Addl. District Judge), Krishnagiri, made in MCOP Nos.435 of 2009 and 1174 of 2008.

For Appellant : Mr.P.H.Arvind Pandian, AAG for Mr. D.Venkatachalam

For Respondents: Mr. Mukund R.Pandiyan in both the appeals

COMMON JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned Addl. Advocate General appearing for the appellant and the learned counsel appearing for the respondents/claimants in both the appeals.

2. The appellant/Transport Corporation has filed the appeals challenging the award dated 24.01.2014 passed by the Motor Accident Claims Tribunal (Addl. District Judge), Krishnagiri, made in MCOP Nos.435 of 2009 and 1174 of 2008.

3. The brief facts leading to the filing of the claim petitions are as hereunder :-

On 26.03.2008, at about 06.40 a.m., when the deceased in CMA No.2781/14, Nazeer Hussain, along with his friend Joel Swaroop Edwin, deceased in CMA No.2605/14, was proceeding to Chennai from Bangalore in his Honda City car bearing Regn. No.KA-04-MC-8132, the bus, belonging to the appellant/Transport Corporation, bearing Regn. No.TN-37-AM-1036, driven by its driver in a rash and negligent manner, dashed against the car due to which the occupants of the car, viz., the deceased in both the appeals, suffered grievous injuries and died on the spot. The Krishnagiri Town Police has registered a case against the driver of the bus in Crime No.465/2008 under Sections 279, 337 and 304 (A) IPC.

4. The deceased in CMA No.2605/14, on the date of accident, was working as Customer Support Expert with Dell International Services India Ltd., Bangalore, and earning a sum of Rs.23,219.07 per month, while the deceased in CMA No.2781/14 was a businessman running a chain of Reebok showrooms and earning a sum of Rs.30 Lakhs per year. The claimants in CMA No.2781/14, filed a claim petition claiming a sum of Rs.5,00,00,000/= with interest, while the claimants in CMA No.2605/14 filed a claim petition claiming a sum of Rs.1,00,00,000/= with interest.

5. Both the claim petitions were taken up together by the Tribunal. In support of the claim, the claimants in both the claim petitions examined themselves as P.W.s 1 to 7 and Exs.P-1 to P-43 were marked, the details of which are as follows:-

Ex.P-1	-	FIR Copy
Ex.P-2	-	Post Mortem Certificate
Ex.P-3	-	M.V.I. Report
Ex.P-4	-	Death Certificate of Nazeer Hussain
Ex.P-5	-	Karnataka Secondary Education Certificate
Ex.P-6	-	Passport of Deceased
Ex.P-7	-	Petitioners Passport (attested copy)
Ex.P-8	-	Certificate of State Level Fashion show and Dance competition
Ex.P-9	-	Computer course certificate

Ex.P-10	-	Ameen Institute of information science certificate
Ex.P-11	-	P.U.C. Mark sheet of the deceased
Ex.P-12	-	B.C.A. Mark sheet
Ex.P-13	-	Sports certificate
Ex.P-14	-	Olympics - 04 Cricket 1st Place certificate
Ex.P-15	-	Cricket Academy - 99 - certificate
Ex.P-16	-	Volley Ball - Sports Certificate
Ex.P-17	-	Basket Ball - Sports Certificate
Ex.P-18	-	I.T. Return 2003-2004
Ex.P-19	-	I.T. Return 2004-2005
Ex.P-20	-	I.T. Return 2005-2006
Ex.P-21	-	I.T. Return 2006-2007
Ex.P-22		I.T. Return 2007-2008
Ex.P-23		Deceased driving licence
Ex.P-24		Death Certificate of Joel Swaroop Edwin
Ex.P-25		Salary certificate of deceased
Ex.P-26		Film Active certificate
Ex.P-27		Passport of the deceased
Ex.P-28		Appointment letter of the deceased
Ex.P-29		P.U.C. Mark List

Ex.P-30		Job confirmation letter
Ex.P-31		Completion certificate
Ex.P-32		Recognised certificate
Ex.P-33		Venkatesan Associates Certificate
Ex.P-34		I.T. Dept. PAN Card
Ex.P-35		Ration Card
Ex.P-36		Post Mortem Certificate
Ex.P-37		Partnership Deed
Ex.P-38		Appointment Letter
Ex.P-39		Petitioners Passport
Ex.P-40		Pay Slip - April 2007 - Dec., 2007
Ex.P-41		Pay Slip - Jan., 2008 - March 2008
Ex.P-42		Certificate of Participation
Ex.P-43		I.D. Card

6. On the side of the appellant/Transport Corporation, the driver of the bus was examined as R.W.1. However, no document was marked.

7. The Tribunal based on the oral evidence of witnesses and taking into account the corroborating nature of their evidence and further there being no satisfactory evidence, either oral or documentary adduced on behalf of the transport corporation to refute the 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 appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads in respect of the two claim petitions :-

M.C.O.P. No. 435 of 2009 - CMA No.2605/ of 2014

Loss of Dependency (10000 x 12 x 14)	-	Rs.16,80,000 /=
Loss of love & affection (P-1 & P-3)		Rs. 30,000/=
Transportation		Rs. 10,000/=
Funeral Expenses		Rs. 10,000/=
Total Compensation	-	Rs.17,30,000/=

M.C.O.P. No. 435 of 2009 - CMA No.2781/ of 2014

Loss of Dependency (32,350 x 12 x 14)	-	Rs.54,34,000 /=
Loss of love & affection (P-1 & P-4)		Rs. 40,000/=
Transportation		Rs. 10,000/=
Funeral Expenses		Rs. 10,000/=
Total Compensation	-	Rs.54,94,800/=

8. In all the Tribunal awarded a compensation of Rs.17,30,000/= and Rs.54,94,800/= with interest at the rate of 7.5% in MCOP Nos.435 of 2009 and 1174 and 2008 respectively from the date of claim petition till date of payment/deposit. Aggrieved by the said award, the appellant/Transport Corporation is before this Court by filing these appeals.

9. Insofar as CMA No.2605/14 is concerned, the only point raised by the learned Addl. Advocate General appearing for the appellant/Transport Corporation is that no amount has been deducted towards income tax, while in respect of CMA No.2781/14, learned counsel appearing for the Transport Corporation submits that income fixed by the Tribunal is on the higher side.

10. Per contra, learned counsel appearing for the claimants in both the appeals submits that the Tribunal has committed a gross error by adopting a multiplier of 14, whereas the multiplier to be adopted is 18, where the age of the deceased is below 40 years, as has been held by the Hon'ble Supreme Court in Sarla Verma - Vs - Delhi Transport Corporation & Anr. (2009 (6) SCC 121). It is further submitted by the learned counsel for the claimants that no amount has been granted by the Tribunal

towards future prospects and that very meagre amounts have been given in respect of the other heads, viz., love and affection, funeral expenses, etc.

11. This Court has given its careful consideration to the above contentions advanced by the learned counsel on either sode and also perused the decision relied on by the learned counsel for the respondents/claimants. Admittedly, the deceased in both the appeals are bachelors and were gainfully employed/doing business. Even from a bare perusal of the order passed by the Tribunal, this Court is of the considered view that the amounts awarded under the heads of love and affection, transportation and funeral expenses is on the lower side. Further, the multiplier of 14 adopted by the Tribunal in both the claim petitions is not justified, as the Apex Court in Sarla Verma's case (supra) has held that in case where the age of the deceased is below 40 years, the multiplier to be adopted is 18. Similarly, though the business income of the deceased in CMA No.2781/14 is arrived at Rupees Thirty Lakhs per year for which necessary proof in the form of income tax returns for the preceding years have been filed, yet the Tribunal has fixed the income at Rs.64,000/= only. In such view of the matter, if the compensation towards dependency is reworked, it would more than off set the amount that would be deductible under the head of income tax deduction and furthermore, the Tribunal has not appreciated the documentary evidence in proper perspective to arrive at the earning of the deceased at Rs.64,000/= in the respective appeals. However, in the absence of any appeal being filed by the claimants claiming enhancement of compensation, this Court is not considering enhancement of compensation. For the reasons aforesaid, this Court finds no reason to interfere with the order passed by the Tribunal.

12. Accordingly, both the Civil Miscellaneous Appeals are dismissed confirming the order passed by the Tribunal. This Court vide order dated 25.09.2014, while granting stay, directed the appellant/Transport Corporation to deposit the entire claim amount together with accrued interest and cost to the credit of the respective claim petitions. The respondents/claimants are permitted to withdraw their respective share of the award with proportionate interest and costs as apportioned to each of the claimant by the Tribunal. Consequently, connected miscellaneous petition are closed. However, in the circumstances of the case, there shall be no order as to costs.

GLN

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The Addl. District Judge
(Motor Accident Claims Tribunal)
Krishnagiri.

+ 1 cc to M/s.V.Raghavachari, Advocate, SR 10826 in CMA 2781/14

+ 2 cc to Mr.D.Venkatachalam, Advocate, SR Nos.10821 in CMA.2781/14 SR No.10820 in CMA 2605 of 2014.

+ 1 cc to Mr.Mukund R.Pandiyan, Advocate SR 10851 in CMA.No.2605 of 2014.

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