IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.10.2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.Nos.298 and 3079 of 2014
and MP No.1 of 2014 and CMP No.14946 of 2016
in CMA No.3079 of 2014

C.M.A.No.298 of 2014

1. M.Suguna
2. M.Rajeswari
3. M.Gayathri
4. M.Prashanth ... Appellants/Petitioners

Vs.

The Managing Director,
Metropolitan Transport Corporation Limited,
Chennai. ... Respondent/Respondent

C.M.A.No.3079 of 2014

The Managing Director,
Metropolitan Transport Corporation Limited,
Chennai. ... Appellant/Respondent

Vs.

1. M.Suguna
2. M.Rajeswari
3. M.Gayathri
4. M.Prashanth ... Respondents/Petitioners

Common Prayer: Appeals under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (Special Sub Judge-I), Chennai in MCOP No.4569 of 2010 dated 06.08.2013.

CMA No.298 of 2014 :

For Appellants : Mr.S.Udayakumar
for Ms.K.Sujatha

For Respondent : Mr.S.Sivakumar

CMA No.3079 of 2014 :

For Appellant : Mr.S.Sivakumar

For Respondents : Mr.S.Udayakumar

COMMON JUDGMENT
(Order of the Court was made by S.MANIKUMAR, J.)

In the accident, which occurred on 18.06.2010, a 54 years old Sales Tax Collection Inspector attached to the office of the Assistant Commissioner (CT), Vallalar Assessment Circle, died. Wife aged about 45 years, daughters aged about 23 years and 19 years respectively and son aged about 18 years, joined together and filed MCOP No.4569 of 2010 on the file of the learned MACT [Special Sub Judge-I], Chennai, claiming compensation of Rs.50,00,000/- under various heads.

2. Fixing negligence on the driver of the transport corporation bus, bearing Regn.No.TN01 N 8296, and accepting the testimony of the legal representatives, regarding the avocation, duly corroborated by Ex.P3, last pay certificate, Ex.P8, Service Register, the tribunal fixed the age of the deceased as 54 years and Rs.12,310/- as the monthly income, for the purpose of computing the loss of contribution to the family. Further, after deducting 1/4th and applying '11' multiplier, the tribunal computed the loss of contribution to the family as Rs.12,18,756/-. In addition to the above, the tribunal has awarded Rs.30,000/- for consortium, Rs.15,000/- under the head loss of love and affection and Rs.10,000/- for funeral expenses.Altogether, tribunal has awarded compensation of Rs.13,08,756/- with interest at the rate of 7.5% per annum, from the date of claim till realisation and apportioned the same to the legal representatives of the deceased.

3. Not satisfied with the quantum of compensation, legal representatives have filed CMA No.298 of 2014 for enhancement of compensation, by restricting the value of appeal to Rs.10,00,000/-

4. Being aggrieved by the very same judgment and decree in MCOP No. 4569 of 2010 dated 06.08.2013, the Managing Director, Metropolitan Transport Corporation, Chennai has also filed CMA No.3079 of 2014, challenging the finding fixing negligence on the driver of the Metropolitan Transport Corporation bus, bearing Regn.No.TN01 N 8296, and the quantum of compensation of Rs.13,08,756/- with interest, at the rate of 7.5% per annum from the date of claim till realisation.

5. As both the appeals arise out of the same accident, they are taken up together and disposed of by this common judgment.

6. Going through the impugned judgment, we do not find any perversity in the finding fixing negligence on the driver of the transport corporation bus.

7. Adverting to the oral and documentary evidence, the tribunal has recorded that, at the time of accident, the deceased was a Sales Tax Collection Inspector, attached to the

office of the Assistant Commissioner (CT), Vallalar Assessment Circle. Upon perusal of Ex.P3, Last Pay Certificate and Ex.P8. service register, the tribunal has noticed that at the time of accident, the deceased earned Rs.12,310/- and that the same has been fixed as the income.

8. For fixing the age of the deceased as 54, the tribunal has taken note of the entry in Ex.P5, post mortem certificate and Ex.P6, death certificate, which cannot be found to be fault with, in view of the decision of this Court in The Managing Director, Tamilnadu State Transport Corporation, Madurai v. Mary [2005 (5) CTC 515], wherein, this Court has held that in the absence of proof relating to age, such as birth extract or any other supporting document, entry in the Postmortem Report, can always be considered for fixing the age of the deceased.

9. Deceased is survived by wife and children numbering 3. Therefore, following the judgment of Sarla Verma and Others Vs. Delhi Transport Corporation, reported in 2009 ACJ 1298, the tribunal has deducted 1/4 towards personal and living expenses of the deceased for the purpose of computing the loss of contribution to the family i.e. Rs.9,233/- Thereafter, the tribunal applied '11' multiplier as per the abovesaid decision, and computed the pecuniary loss as Rs.12,18,756/-. There is no material irregularity in computing the loss of contribution to the family and therefore, the contention of the transport Corporation to the contra cannot be countenanced.

10. On the plea for enhancement of compensation, Mr.S.Udhayakumar, learned counsel for the legal representatives of the deceased/appellants in CMA No.298 of 2014, restricted his claim only under three heads viz., loss of consortium, loss of love and affection and funeral expenses. According to him, when the wife was aged about 45 years, the tribunal ought to have awarded a higher compensation of Rs.1,00,000/- under the head, loss of consortium instead of Rs.30,000/-. When three children aged about 23 years, 19 years and 18 years, respectively, have lost the love and affection of the father, a consolidated sum of Rs.50,000/- awarded under the head loss of love and affection, is less. He prayed that a sum of Rs.50,000/- be awarded to each one of them. Pointing out that the accident has occurred on 18.06.2010, and the funeral expenses of Rs.10,000/- awarded is less, he sought for enhancement.

11. Request made above is just and reasonable. Therefore, we deem it fit to enhance the compensation of Rs.30,000/- awarded under the head loss of consortium, to Rs.1,00,000/-. Sum of Rs.50,000/- each is awarded under the head loss of love and affection to the children. Therefore, compensation of Rs.50,000/- awarded by the tribunal is raised to Rs.1,50,000/-.

12. In Rajesh and others Vs. Rajbir Singh, reported in 2013 ACJ 1403, while considering the compensation awarded under the head, funeral expenses, the Apex Court taking judicial notice of the fact that the compensation awarded under the abovesaid head is less, at paragraph No.21, observed as follows:

> "We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

13. In the abovesaid case, the accident occurred on 05.10.2007. In the light of the observation of the Hon'ble Supreme Court and reverting to the case on hand, the quantum of compensation of Rs.10,000/-, awarded under the head, 'funeral expenses is less. The Apex Court in the reported judgment awarded Rs.25,000/- towards funeral expenses Therefore, it is enhanced to Rs.25,000/-. There is no award under the heads transportation and conventional damages. Hence, a sum of Rs.5,000/- each, is awarded, under the above heads.

14. Compensation of Rs.12,18,756/- awarded under the head loss of contribution to the family and the rate of interest viz., 7.5% per annum from the date of claim till realisation, are retained.

15. In the light of the reworking, the compensation due and payable to the legal representatives of the deceased/appellants in CMA No.298 of 2014, works out to Rs.15,03,756/- and is apportioned, as hereunder.

Loss of contribution to the family	:	R.12,18,756/-
Loss of consortium	:	Rs.1,00,000/-
Loss of love and affection	:	Rs.1,50,000/-
Funeral Expenses	:	Rs. 25,000/-
Transportation	:	Rs. 5,000/-
Conventional Damages	:	Rs. 5,000/-

Award is enhanced by Rs.1,95,000/-.

16. In the light of the above discussion and decisions, Civil Miscellaneous Appeal in CMA No.3079 of 2014 filed by the

Metropolitan Transport Corporation is dismissed. No Costs. Civil Miscellaneous Appeal No.298 of 2014, filed by the claimants, is allowed in part. No costs.

17. It is reported that a sum of Rs.8,00,000/- has already been deposited by the Transport Corporation. Consequent to the dismissal of the appeal filed by the Transport Corporation, Rs.8,00,000/- with proportionate interest and costs lying in the deposit of MCOP No.4569 of 2010 on the file of Motor Accidents Claims Tribunal (Special Sub Judge-I), Chennai, is permitted to be withdrawn by the legal representatives of the deceased by making necessary applications.

18. Further, the Managing Director, Metropolitan Transport Corporation, Chennai, the appellant in CMA No.3079 of 2014, is directed to deposit the balance award amount, now determined by this Court, with interest at the rate of 7.5% per annum, from the date of claim till deposit, less the amount already deposited, to the credit of MCOP No.4569 of 2010, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents/claimants, are permitted to withdraw their respective shares, as apportioned by the tribunal, by making necessary applications. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   Special Sub Judge-I, Chennai

2. The Section Officer,
   VR Section,
   High Court, Madras.

+1cc to Mr.S.Udayakumar, Advocate, S.R.No.57167
+1cc to Mr.S.Sivakumar, Advocate, S.R.No.57715

C.M.A.Nos.298 and 3079 of 2014

VGI(CO)
CA(21/12/2016)