IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.06.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.1827 of 2010

1. B.Vasantha
2. B.Chandrakala
3. B.Jeyaprakash
4. B.Sivaprakash
5. Mangai

Cause title accepted vide Court order dated 4.1.2010 made in MP.1 of 2009 ..Appellants/Petitioners

Vs.

The Managing Director
The Tamil Nadu State Transport Corporation
Kancheepuram. ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 for enhancement of the compensation awarded in the Judgement and Decree dated 29.11.2008 made in M.C.O.P.No. 184 of 2002 on the file of the Motor Accident Claims Tribunal / Additional Sub-Court, Chengalpattu.

For Appellants: Mr.N.Manokaran

For Respondent: Mr.S.V.Vasantha Kumar

JUDGMENT

Being not satisfied with the award passed by the Tribunal, the claimants have filed this appeal seeking enhancement of compensation.

2. The appellants, being the wife, children and mother, had moved the Claims Tribunal claiming a sum of Rs.5,00,000/- for the death one D.Balakrishnan who is the husband of first appellant, father of appellants 2 to 4 and son of the 5^{th} appellant, in a road traffic accident said to have been taken on 25.02.1998 at 2 pm at Sirumallur Main Road, near Sriram Farm,

Madurantakam Taluk, involving a passenger bus belonging to the respondent / Transport Corporation.

3. The respondent Corporation had contested the claim. However, on appreciation of the evidences both oral and documentary, the Claims Tribunal had proceeded to pass an award of Rs.1,77,000/- directing the respondent Corporation to pay this amount with interest at the rate of 7.5%. Having been not satisfied with the award of the Tribunal, the appellants/claimants stand before this Court, with this appeal for enhancement.

4. Heard Mr.N.Manokaran, learned counsel appearing for the appellants and Mr.S.V.Vasanthakumar, learned counsel for the respondent / Transport Corporation.

5. It is revealed from the records that at the time of accident, the deceased, being the karta of the family, was aged about 43 years. Mr.N.Manokaran has submitted that the deceased was an agricultural labourer and as such, he was earning a sum of Rs.4,500/- per mensem. It is pertinent to note here that the accident was taken place on 25.02.1998. As demonstrated by Mr.N.Manokaran, in the year 1998, a sum of Rs.4,000/- to Rs.5,000/- per mensem was determined as the monthly income by the Hon'ble Apex Court (see Sanobanu Nazirbhai Mirza and others Vs. Ahmedabad Municipal Transport Service [2013 (2) TNMAC 565 (SC)]. Accordingly in this case also, as submitted by Mr.N.Manokaran, the monthly income of the deceased was determined by the Tribunal at Rs.4,500/-.

6. Mr.N.Manokaran has submitted that since the deceased was aged about 43 years at the time of accident, the Tribunal had rightly selected the multiplier of 15% as per the second schedule to Section 163 (A) of MV Act 1998 but without taking into consideration of the actual monthly income of the deceased, the Tribunal had taken the notional income at Rs.15,000/- per annum and that the selection of notional income was in total negotiation of settled principles of law in respect of a man, being the karta of the family, who had died in harness at the age of 43 years. Therefore, he has submitted that a sum of Rs.4,500/- could be determined as his monthly income. Besides this, he has also submitted that the first appellant is the wife of the deceased, the appellants 2 to 4 are his children and 5th appellant is his aged mother. Therefore, instead of giving 1/3rd deduction, 1/4th deduction could be given as observed by the Hon'ble Apex Court in Santosh Devi Vs. National Insurance Company Ltd., and Others reported in (2012) 6 SCC 421.

7. This Court finds that the appellants are the legal heirs of the deceased, as submitted by Mr.N.Manokaran, instead of giving 3/4th deduction, 1/4th deduction could be given towards

his personal and living expenses. Accordingly, the annual income of the family is 4,500 x 12 = 54,000. After giving the deduction of 1/4th towards the personal living expenses of the deceased, the ¾th of remainder would be Rs.40,500/-. Since he was aged about 43 years, the multiplier of 15% as per the second schedule to Section 163(A) of MV Act 1998, is appropriate and accordingly, the pecuniary loss of the family comes to Rs.4,45,500/-. The Tribunal has awarded Rs.2,000/- towards the funeral expenses. But according to Mr.N.Manokaran, it is disproportionate and this amount could be increased to the extent of Rs.5,000/- as the death was occurred is the year 1998. Apart from this, the first appellant, being the wife of the deceased, is entitled to get a sum of Rs.25,000/- towards consortium. The appellants 2 to 3 as well as 5, being the children and mother of the deceased, are also entitled to get a sum of Rs.40,000/- (each Rs.10,000/-) towards loss of love and affection. The total amount comes Rs.5,15,500/-.

8. The respondent/Transport Corporation is directed to deposit this amount along with interest at 7.5% per annum within in a period of six weeks from the date of receipt of a copy of this order less the amount already deposited if any. The moment, the amount is being deposited, the claimants are entitled to withdraw the entire amount from the Tribunal without actually filing any formal application seeking permission. The appeal is allowed accordingly. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Vsg

To
1. Additional Subordinate Judge,
   Motor Accident Claims Tribunal, Chengalpattu.
2. The Section Officer, Vr Records, High Court, Madras.

+1cc to M/s. N. Manokaran, Advocate, S.R.No.30462
+1cc to Mr.M/s. S.V. Vasuthakumar, Advocate, S.R.No.30551
+1cc to the Government Pleader, S.R.No.

RSK(CO)
EU(03/08/2016)