IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

CMA.No.400 of 2007

Tamil Nadu State Transport Corporation Limited
Villupuram,
by its Managing Director ...Appellant/Respondent

Vs

1.Panneerselvam (Died)
2.Kanimozhi
3.Bharathi
4.Sarojini
5.Pappathi(R4 & 5 brought on record as LRS of the deceased 1st respondent vide order of this Court dated 11.8.2016 and made in CMP 6855 to 6857/16 in CMA 400/07)

... Respondents /Claimants

Prayer:- This Civil Miscellaneous Appeal is filed against the judgement and decree, dated 15.06.2006, made in MACTOP.No.109 OF 2005, passed by the Motor Accidentsl Claim Tribunal (Principal Sub Judge), Mayiladuthurai.

For Appellant : Mr.S.V.Vasanthakumar
For Respondents : Mr.A.Ilayaperumal

ORDER

The Tamil Nadu State Transport Corporation Limited, aggrieved by the award passed by the learned Principal Sub Judge (MACT), Mayiladuthurai, by the judgement and decree, dated 15.06.2006, in MACTOP.No.109 OF 2005, awarding a sum of Rs.4,05,000/- as total compensation with interest at 7.5% p.a. to the claimants/respondents, for the loss of life of the deceased aged about 25 years old, earning a sum of Rs.5000/- at the time of the accident, which took place on 3.4.2003, has filed this appeal, questioning both the aspects of negligence and the quantum of compensation.

2. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

3. It is the contention of the learned counsel for the Appellant Transport Corporation that it was the claim of the claimants/ Respondents before the Tribunal that the deceased was aged 25 years at the time of the accident and that only on account of the rash and negligent driving of the driver of the bus bearing Reg.No.TN-32-N-1134, belonging to the Appellant Transport Corporation, the accident had occurred, in which the deceased, who was the only bread winner of the family of the claimants, had died and that on the basis of such contention of the claimants, when the claimants made a claim of Rs.5,00,000/-, the Tribunal, without any document whatsoever to prove the monthly income of the deceased, who was a bachelor at the time of the accident, had fixed the same at Rs.2500/- and consequently, without even any proof of age of the deceased, only on the basis of Ex.P2 the post-mortem certificate, fixed the age of the deceased at 25 years and adopted the multiplier of 17. He would further submit that when the deceased was a bachelor, instead of taking 50% of his monthly income, only 1/3rd deduction was made towards his personal expenses and therefore, the impugned order is liable to be interfered with.

4. At the outset, this court is not unable to accept the contentions of the learned counsel for the Appellant as there is no merit in any of the said contentions. The reason for such unacceptance by this court is that when the deceased, who was driving the Ambassador Taxi Car, bearing Reg.No.TM-01-K-5490, the offending bus belonging to the Appellant Transport Corporation, driven by its driver in a rash and negligent manner dashed against the said Car, as a result of which, the deceased died at the young age of 25 years, earning a monthly income of Rs.5000/-. Ex.P1 First Information Report, dated 3.4.2003 implicating the driver of the offending bus has also been considered by the Tribunal. Therefore, on the basis of both the oral evidence adduced by PW.1 and the documentary evidence, viz. Ex.P1 First Information Report, the Tribunal has come to the right conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the offending bus. Therefore, the finding of the Tribunal, in so far as the negligence aspect is concerned, is confirmed. Further, while arriving at such a conclusion in respect of the negligence aspect, the Tribunal has also fixed the liability on the Appellant Transport Corporation.

5. While fixing the loss of dependency, the claimants all along pleaded before the Tribunal that the deceased was a driver at the time of the accident and earning a sum of Rs.5000/- p.m. However, in the absence of evidence to show the monthly income of the deceased, the Tribunal fixed the monthly notional income of the deceased at Rs.2500/- and after taking the said monthly notional income and adopting the multiplier of 17, the Tribunal has deducted 1/3rd of the notional income. This court is able to see that the Tribunal has not applied its mind, while fixing the monthly income of the deceased, since, time and again, in many number of cases, it has been settled by this court and the Honourable Supreme Court that even in the absence of any proof either oral or documentary, the monthly income of the deceased could be fixed at Rs.6500/-.

6. In the decision of the Honourable Supreme Court reported in 2009 6 SCC 121 (Sarla Verma Vs. DTC), it has been laid down that where the deceased is a bachelor, 50% would be treated as the personal and living expenses and 50% as the contribution to the family and therefore, the Tribunal was, therefore, not justified in deducting 2/3rd of the income towards personal expenses of the deceased.

7. In the case on hand, before the Tribunal, when it was pleaded by the claimants that the deceased, who was the only bread winner of the family of the claimants, died as a driver at the time of the accident, the Tribunal, erroneously fixing the monthly income of the deceased at Rs.2500/-, has awarded only a sum of Rs.4,05,000/- as total compensation, after deducting 1/3rd towards personal expenses. The Tribunal, in all fairness, should have accepted the monthly income of the deceased at Rs.5000/- as pleaded by the claimants, in view of the law laid down in the decision cited supra.

8. Therefore, this court, applying the ratio laid down in the decision of the Honourable Supreme Court cited supra, a sum of Rs.5000/- can be taken as notional monthly income of the deceased. Having regard to the fact that the deceased was aged 25 years old at the time of the accident, 50% of such income ought to have been added towards the future prospects for computing the annual income of the deceased for arriving at the loss of dependency. Accordingly, the annual income would come to Rs.90,000/- (Rs.5000/- + Rs.2500/- = Rs.7500/- x 12 = Rs.90,000/-).

9. The Tribunal has deducted 2/3rd of the income towards the personal expenses of the deceased. As discussed herein above, in view of the law laid down by the Supreme Court in the case of Sarla Verma (supra), only 50% of the income could have been deducted towards the personal expenses of the deceased. The Tribunal adopted the multiplier of 17, which is proper. Therefore, the annual dependency would come to Rs.45,000/- (Rs.90,000 - 50% = Rs.45,000/-). By applying the multiplier of 17, the total loss of dependency, therefore, would come to Rs.7,65,000/- (Rs.45,000 x 17 = Rs.7,65,000/-). The claimants would, therefore, be entitled to a sum of Rs.7,65,000/- under the head of loss of dependency.

10. Now, coming to the other conventional heads, the Tribunal has awarded a sum of Rs.20,000/- each to the claimants towards the loss of love and affection, Rs.3000/- towards funeral expenses and Rs.2000/- towards transportation expenses, which are on the lower side, considering the fact that deceased died at the young age of 25 years. Hence, a lump sum amount of Rs.1,00,000/- is awarded towards the loss of love and affection to the claimants and a sum of Rs.25,000/- towards funeral expenses and transportation expenses is awarded. In all, the claimants are entitled to a sum of Rs.8,90,000/- as total compensation with interest at 7.5% p.a.

11. While arriving at such an enhanced compensation, it is submitted by the learned counsel for the Appellant that this is an appeal preferred by the Transport Corporation and therefore, no award can be enhanced, but this court is not inclined to accept the same, since it has been repeatedly held by this court as well as the Honourable Supreme Court that in a case of a death of a bachelor, who was the only bread-winner of the family of the deceased, even if a lower compensation was claimed, a just and compensation has to be fixed by the court. Therefore, this court is inclined to enhance the compensation over and above the awarded by the Tribunal as arrived at above.

12. In the result, this civil miscellaneous appeal is dismissed. The impugned award is enhanced from Rs.4,05,000/- to Rs.8,90,000/- as mentioned above. In all, the claimants are entitled to a total compensation of Rs.8,90,000/- (Rupees eight lakhs ninety thousand only) with interest at 7.5% p.a. The Appellant Transport Corporation is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after giving credit to the amount if any deposited by them, within a period of four weeks from the date of receipt of a copy of this order. On such

deposit being made, the claimants are entitled to with draw their respective shares amount with accrued proportionate interest as apportioned by the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To:

The Principal Sub Judge (MACT),
Mayiladuthurai.

+1cc to Mr.S.V.Vasanthakumar, Advocate Sr.55038
+1cc to Mr.A.Ilayaperumal, Advocate sR.55007

CMA.No.400 of 2007

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srg 02/11/2016