IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-03-2016

CORAM:

THE HONOURABLE MR. JUSTICE R. SUDHAKAR

AND

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

C.M.A.NO.949 OF 2012

1. C. Krishnasamy

2. K. Rajalakshmi

3. K. Srinivasan

4. K. Banumathi … Appellants/Petitioners

Vs.

1. K. Selvaraj

2. Managing Director
Tamilnadu State Transport Corporation
Sungam Branch, No.2,
Trichy Road,Coimbatore - 641 018 … Respondents/Respondents

Civil Miscellaneous Appeal under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 18-11-2011 made in M.C.O.P.No.858 of 2010 on the file of Motor Accidents Claims Tribunal cum Additional District and Sessions Judge, Fast Track Court No.1, Coimbatore.

For appellants :: Mr. N. Ishtiaq Ahmed

For respondents :: Mr. Ponnan Raja R2
R1 No Appearance

JUDGMENT

(Judgment of the Court was delivered by S. VAIDYANATHAN ,J.)

The parents of the deceased, who died due to the accident occurred on 21-03-2010 at about 05:05p.m., while he was returning back from Gandhipuram in his Hero Honda Passion Plus bearing Registration No.TN-38 AY 3835, was hit by a Government bus (route 15B/7B) bearing Registration No.TN-33 N 1477 coming from backside and succumbed to injuries at about 6:15p.m., inspite of treatment given at Ramakrishna Hospital, has come forward with the present appeal claiming enhancement in compensation awarded by the Motor Accidents Claims Tribunal cum Additional District and Sessions Judge, Fast Track Court No.1, Coimbatore in M.C.O.P.No.858 of 2010 dated 18-11-2011.

2. The deceased was 26 years' old and was a Economics Degree holder pursuing his M.B.A. and working as an Accountant, Insurance Consultant, Marketing Executive for Standard Chartered Finance Limited, I.C.I.C.I. Life Insurance Company, H.D.F.C. Financial Company and other companies and was earning a sum of Rs.25000/- (Rupees Twenty five thousand only) towards monthly income.

3. In support of the claim before the Tribunal, the father of the deceased was examined as P.W.1. One Mr. Dharmaraj, said to be the pillion rider of the motor cycle driven by the deceased was examined as P.W.2. Exs-P1 to P13 were marked, the details of which are given below. On behalf of the second respondent Transport Corporation, the Conductor of the bus was examined as R.W.1. No document was marked on behalf of the second respondent Transport Corporation.

1. Ex-P1,FIR, dated 21-03-2010
2. Ex-P2,Photo copy of the Post-mortem Report, dated 06-04-2010
3. Ex-P3, Death Certificate(Original) dated 15-04-2010
4. Ex-P4, Legal heirship Certificate(Photo copy) dated 19-05-2010
5. Ex-P5, Medical Bills (Original) dated 21-03-2010
6. Ex-P6, Inpatient Report (Photo copy) dated 21-03-2010
7. Ex-P7, Education and Merits Certificates (Original) from 1999 to 2006
8. Ex-P8, Pan Card (copy)
9. Ex-P9, College ID Card (Original) from 2001 to 2004
10. Ex-P10, Employment ID Card (Original), dated 11-09-2007
11. Ex-P11, Employment Visiting Card(Original)
12. Ex-P12, Driving licence
13. Ex-P13, Form No.16 (xerox)

4. P.W.2 was the eye-witness and from his evidence, the Tribunal concluded that it was the driver of the bus, who by his rash and negligent driving had caused the accident. The first respondent, the father of the deceased gave evidence as P.W.1 and according to him, he was an Ex-Service man and his son was a player, hale and healthy and an Economics Degree holder and was earning an income of Rs.25,000/- per month. The Tribunal has held that on the basis of Ex-P7(Study Certificate), Ex-P8 (Income Certificate), Ex-P9 (Pan Card), Ex-P10 (College I.D. Card), Ex-P11 (Employment I.D. Card), Ex-P12 (Driving License) and Ex-P13 (Form-16), the deceased cannot be stated to be earning a monthly income of Rs.25,000/-(Rupees Twenty Five

thousand only). The Tribunal has fixed the monthly income of the deceased as Rs.5500/- (Rupees Five thousand five hundred only) by taking note of Ex-P8, the Income certificate wherein his regular monthly income was stated as Rs.4500/- (Rupees Four thousand five hundred only).

5. After deducting 1/3rd towards personal expenses, the Tribunal calculated the pecuniary loss to the family of the deceased, by adopting the multiplier as 13, by taking into consideration the age of the mother of the deceased and arrived at a compensation of Rs.5,72,000/-(Rupees Five lakhs Seventy two thousand only), towards the head of loss of income.

5a. In toto, the Tribunal has awarded the compensation as Rs.6,04,000/- (Rupees Six lakhs and four thousand only) on the following heads :

Heads	**Amount awarded by the Tribunal (in Rupees)**
Loss of Income	5,72,000
Transportation	5000/-
Damages to cloths and articles	2000/-
Funeral expenses	5000/-
Loss of love and affection	20,000/-
Total	6,04,000/-

6. Heard the learned counsel for the appellants and the learned counsel for the respondents.

7. The learned counsel for the appellants submitted that the Tribunal had erred in fixing the monthly income as Rs.5500/- (Rupees five thousand five hundred only) as the deceased was a brilliant and active person working as a Marketing Executive and was earning a sum of Rs.25,000/- (Rupees Twenty five thousand only) per month. He would further submit that the Tribunal has erred in not taking into account Ex-P13, Form-16 wherein the monthly income is stated as Rs.10,576/-(Rupees Ten thousand five hundred and seventy six only) and has wrongly fixed the monthly income as Rs.5500/- (Rupees Five thousand and five hundred only).

(ii) The learned counsel would bring to the attention of this Court to ***Smt. Sarla Verma & Others Vs. Delhi Transport Corporation & Another*** (Manu/SC/0606/2009), wherein the Supreme Court has given detailed guidelines for determining multiplicand, multiplier and for calculating the annual contribution in order to achieve uniformity and consistency to award just compensation. The Tribunal erred in fixing the multiplier taking into consideration of the age of the mother, when it is held that the multiplier of the victim or the mother whichever is higher has to be fixed as the multiplier.

(iii) With regard to future prospects, the Supreme Court held that in view of the imponderables and uncertainties it is better to adopt as a rule of thumb, an addition of 50% of the actual salary to the actual salary/income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and this head has not at all been considered, as there is every possibility of the deceased to become a permanent employee.

(iv) The learned counsel for the appellants would further submit that Transportation and Funeral Expenses should be fixed as it is held in 2013 ACJ 1403 (*Reshma Kumari and others Vs. Madan Mohan and another)*.

(v) Further, the learned counsel for the appellants would request that the compensation granted by the Tribunal under the head of loss of love and affection is also very meagre and same has to be enhanced.

8. The learned counsel for the respondents submitted that the only dependant is the mother of the deceased, as the father of the deceased is an Ex-service man and the brother and sisters are not dependant on the deceased. The learned counsel would further contend that with regard to deduction for personal and living expenses, which is contrary to the decision in the case of *Sarla Verma - vs. Delhi Transport Corporation* reported in 2009(2) TNMAC 1 (SC) which is confirmed in *Reshma Kumari and others - vs. Madam Mohan and another* reported in 2013 ACJ 1253 vide para 37. In para 37, the Apex Court in 2013 ACT 1253 held as follows:

> "37.As regards deduction towards personal and living expenses, in *Sarla Verma*, 2009 ACJ 1298 (SC), this court considered *Susamma Thomas*, 1994 ACJ 1 (SC), *Trilok Chandra*, 1996 ACJ 831 (SC) and *Fakeerappa v. Karnataka Cement Pipe Factory* 2004 ACJ 699 (SC) and finally in paras 14 and 15 of the Report held as under:
>
> …(15) Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally 50 per cent is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his

own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50 per cent would be treated as the personal and living expenses of the bachelor and 50 per cent as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

The Tribunal has erred in deducting only one-third towards personal expenses while the same should be 50%, as the deceased is a bachelor and the only dependant is his mother.

9. The learned counsel for the respondents would further submit that when there is no appropriate evidence on the side of the appellants as regards the employer as also the income of the deceased, the income fixed as Rs.5500/- is itself higher and no further increase of income should be granted. As regards loss of love and affection and other heads of compensation, the award of Tribunal is perfectly correct and prays for dismissal of the appeal.

10. The learned counsel for the appellants has questioned the amount arrived at by the Tribunal on the head of the pecuniary loss of income to the family. The deceased was aged 26 years at the time of the accident and was earning a sum of Rs.10,576/- as per Ex-P13, Form-16, which is only a Xerox copy. The Tribunal has not taken note of the said Form16 as the same is only a Xerox copy and no salary slip or proper evidence, with regard to his employment details, has been produced. However, considering the fact that the deceased was doing Insurance business with ICICI Prudential Life Insurance, TATA AIG Life Insurance, working in Standard Chartered Finance Limited as a Sales Officer and also pursuing his higher studies, his future prospects would be much higher on his completion of MBA. Therefore, this Court is of the considered view to fix the salary of the deceased at Rs.8500/- (Rupees Eight Thousand five hundred only).

(ii) Further, as rightly submitted by the learned counsel for the respondents, 1/3rd is deducted towards dependency, which should be 50% as the deceased is a bachelor.

(iii) As contended by the learned counsel for the appellant, the age of the victim has to be taken into consideration and not the age of the mother as per *Sarla Verma Case as cited above.* Hence the multiplier is fixed as 17, as the victim's age was 26 at the time of his death.

(iv) Therefore, the pecuniary loss would be, ((8500x1/2)x17x12), a sum of Rs.8,67,000/-(Rupees Eight lakhs Sixty Seven thousand only).

(v) On the head of Transportation and Funeral Expenses, this Court awards a sum of Rs.25,000/- (Rupees Twenty five thousand only) each vide *Reshma Kumari*'s case(cited supra).

(vi) Further, on the head of loss of love and affection, this Court would find it fit and proper to grant a sum of Rs.50,000/-(Rupees Fifty thousand only) towards each of the parents.

11. The award of the Tribunal is modified as follows:

Heads	**Amount awarded by this Court (in Rupees)**
Loss of Income	8,67,500/-
Transportation	25,000/-
Damages to cloths and articles	2000/-
Funeral expenses	25,000/-
Loss of love and affection	1,00,000/-
Total	10,19,500/-

12. In the result, the Civil Miscellaneous Appeal is allowed.

(i) The award of the Tribunal is enhanced to Rs. 10,19,500/- (Rupees Ten lakhs nineteen thousand and five hundred only) from Rs.6,04,000/-(Rupees Six lakhs and four thousand only)

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The award amount shall be apportioned between the brother and sister as Rs.1,00,000/- each and Rs.3,75,000/- to the father and Rs.4,44,500/- to the mother along with the accrued interest.

(iv) Eight weeks' time is granted to deposit the entire award amount as ordered by this Court.

(v) On such deposit, the claimants are permitted to withdraw the award amount as ordered and apportioned by this Court as above.

(vi) There will be no order as to costs in this appeal.

(vii) Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CSIII)

True Copy

Sub-Assistant Registrar

To

1.The Additional District and Sessions Judge,
Fast Track Court No.I,
Motor Accidents Claims Tribunal
Coimbatore

Copy to:
The Section Officer
VR Section
High Court Madras

+1 cc to M/s.N.Isthiq Ahmed Advocate sr.15178

C.M.A.NO.949 OF 2012

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