IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE B.GOKULDAS

C.M.A.No.1012 of 2017

1. R.Rajan
2. R.Saroja ... Appellants/Petitioners

vs.

1. G.Rajkumar
2. The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Mettupalayam Road,
Coimbatore ... Respondents

[The 1st Respondent is set ex-party before the tribunal and hence may be dispurse with in this Appeal]

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order in MCOP No.461 of 2011 dated 27.11.2015 on the file of Motor Accidents Claims Tribunal, [Sub Court], Sathyamangalam, Erode District.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mr.R.T.Sundari (for R2)
Ist Respondent,SET EXPARTE

J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

In the accident, which occurred on 02.09.2011, a Software Engineer, aged about 24 years, in Intel Technology India (P) Ltd., Bangalore, died. A case in Cr.No.254 of 2011 under Sections 279, 337 and @ 304 IPC has been registered on the file of Pollachi Taluk Police Station, against the driver of the State Transport Corporation bus, bearing Regn.No.TN43 N 609. Claiming compensation of Rs.2 Crores, parents aged about 53 and 47 years, respectively, filed MCOP No.461 of 2011, on the file of Motor Accidents Claims Tribunal, [Sub Court], Sathyamangalam.

2. Transport Corporation defended the claim opposing the manner of accident and consequently, liability to pay compensation claimed under various heads.

3. On evaluation of pleadings and evidence, the tribunal held that the driver of the abovesaid bus was negligent in causing the accident. Based on the oral and documentary evidence viz., Ex.P12, series of pay slips, Ex.P13, Increment Certificate, Ex.P19, Income Tax certificate, Ex.P20, Bonus bills and Ex.P21, Salary Register, the tribunal accepted the avocation and based on the salary certificate for the month of August 2011, determined the monthly income as Rs.52,389/-. Deceased, was aged 24 years. Tribunal by applying '17' multiplier and after deducting 1/3 towards the personal and living expenses of the deceased, computed the loss of contribution to the family as Rs.35,62,452/- [Rs.52,389/- x 12 x 17 x 2/3].

4. That apart, the tribunal awarded Rs.50,000/- under the head loss of love and affection to the parents / appellants and Rs.25,000/- for funeral expenses. Altogether, tribunal has awarded Rs.36,37,452/- as compensation with interest, at the rate of 7.5% per annum from the date of claim till realisation and costs.

5. Not satisfied with the quantum of compensation, parents have preferred the instant appeal contending interalia that the tribunal has erred in fixing a lesser monthly income of Rs.52,389/-, contrary to the entries made in Ex.P12, series of pay slips, Ex.P13, Increment Certificate, Ex.P19, Income Tax certificate, Ex.P20, Bonus bills and Ex.P21, Salary Register.

6. Contention has also been made that when the deceased was just aged 24 years, engaged as a Software Engineer in Intel Technology India (P) Ltd., Bangalore, a reputed company, as per the decision of the Hon'ble Supreme Court in New India Assurance Vs. Gopali & Others, reported in 2012(12) SCC 198 and Vimal Kanwar & Ors Vs. Kishore Don & Ors, reported in 2013 (7) SC 476, the tribunal ought to have added 100% of the income earned by him, under the head future prospects and accordingly, computed the loss of contribution to the family.

7. Added further, Mr.Ma.P.Thangavel, learned counsel for the appellants contended that the overall compensation of Rs.50,000/- awarded under the head loss of love and affection to the parents, is less and that based on the decision of the Hon'ble Division Bench of the Court reported in Oriental Insurance Vs. Saraswathi, reported in 2016 (2) TNMAC 145 [DB], tribunal should have awarded Rs.3 Lakhs each, under the head loss of love and affection. Compensation of Rs.1 lakh is sought for under head loss of estate. Compensation of Rs.50,000/- under the head transportation and damages to articles, is sought for. For the abovesaid reasons, appellants have sought for

enhancement.

8. Ms.R.T.Sundari, learned counsel for the State Transport Corporation, submitted that award under various heads stated supra is just and reasonable and does not require any enhancement.

9. Heard the learned counsel for the parties and perused the materials available on record.

10. To prove the educational qualifications and avocation viz., Software Engineer in Intel Technology India (P) Ltd., Bangalore, adequate oral and documentary evidence has been adduced. On the contention that the tribunal has erred in fixing the monthly income as Rs.52,389/-, for the purpose of computing the loss of contribution to the family, attention of this Court was invited to Ex.P12 Pay Slips for the months of March to August 2011. Perusal of income certificates, issued by the employer shows that every month payment towards, basic pay, residual pay, special allowance, is constant. There is also a contribution from both the deceased employee and employer. Perusal of the income certificate shows that the employer has given an award under the caption 'Gift Voucher Award'. This is also added towards computation of gross salary. But the component of 'Gift Voucher Award' does not figure in all the income certificates, issued for each month. So also, there is another addition "UBS Sell to CVR Rfund-RSU". This amount is also not a regular payment. Therefore, this Court concludes that the components, such as basic pay, residual pay and special allowances, which are common in all the certificates can be taken for determining the monthly income of the deceased. There is a regular employer's contribution of Rs.3,299/- for every month. Equally there is also a contribution from the deceased at Rs.4,124/-.

11. In S.Rhama and two others Vs. Tamilnadu State Transport Corporation (Kumbakonam) Ltd., reported in 2010 (1) TNMAC 6 (DB), while computing the monthly income of the deceased therein at paragraph No.23 of the judgment, a Hon'ble Division Bench of this Court has added the employer's contribution towards the provident fund under the head income. while doing so, the Hon'ble Division Bench has considered a decision of the Hon'ble supreme Court in Smt. Sarla Verma & Ors Vs. Delhi Transport Corporation & Anr, reported in 2009(2) TNMAC 1 (C), wherein, the Hon'ble Supreme Court has also taken into consideration the employer's contribution towards provident fund.

12. As rightly contented by the learned counsel for the appellants/parents, had the deceased been alive, he would have contributed some amount under the head employee's Voluntary Provident Fund, in the case on hand, a sum of Rs.4,123/-, till he attains the age of superannuation. Simultaneously, the employer also would have contributed their share. Had the

deceased been alive, at the time of retirement, he would have received the contribution from his employer. On account of the sudden demise, it is lost. Therefore, following the decision of this Court in S.Rhama's case, Rs.3,299/- employer's contribution is also taken into account, for determining the monthly income.

13. In the light of the decisions stated supra, we now propose to determine the income by taking into consideration the following four components.

(i) Basic Pay	: Rs.27,490.87p
(ii) Residual pay	: Rs.29,234.00p
(iii) Special Allowances Pay	: Rs. 4,452.00p
(iv) Employer's contribution to PF	: Rs. 3,299.00p

Monthly income of the deceased works out to Rs.64,475.87p, which can be rounded off to Rs.64,480/-.

14. As rightly contended by the learned counsel for the appellants, the tribunal has failed to add certain sum under the head future prospects. As per Ex.P10, deceased had a Degree in Bachelor of Engineering in Computer Science and Engineering under the Faculty of Information and Communication Engineering, through PSG College of Technology, Coimbatore and placed in First Class with Distinction, in the Examination held in April 2009.

15. Accident has occurred on 02.09.2011. Perusal of Ex.P13, Certificate issued by Intel Technology India (P) Ltd., Bangalore, shows the periodical increments given to the deceased, between June 2009 to 3rd September 2011. He had also earned Gift Voucher Awards.

16. Though, Mr.Ma.P.Thangavel, learned counsel for the appellants/claimants, sought for addition of 100% income under the head future prospects, placing reliance on the decisions of the Hon'ble Apex Court, in New India Assurance Vs. Gopali & Others, reported in 2012(12) SCC 198 and Vimal Kanwar & Ors Vs. Kishore Don & Ors, reported in 2013 (7) SC 476, this Court is not inclined to accept the said contentions that there would be 100% hike in salary. A First Class B.E. Degree Holder with distinction and earned periodical increments, would certainly have future prospects, in his career, and therefore, we add 50% of the income, under the head future prospects. 50% of the monthly income of Rs.64,480/- works out to Rs.32,240/-. Monthly income of the deceased with addition of 50% future prospects, is Rs.96,720/- and the annual loss of income would be Rs.11,60,640/-.

17. Tribunal has not properly taken note of the income tax deduction mentioned in Ex.P19, IT Returns. Therefore, we propose to deduct income tax as per the standard procedure. When the deceased has contributed Provident Fund, exemption upto to Rs.1,00,000/- under 80 'C' of the Income tax can be made

applicable. At the relevant time, upto to Rs.1,80,000/- no income tax was levied. Therefore, Income tax computed as per the procedure, works out to Rs.1,75,295/-, which is as follows:

Annual income	: Rs.11,60,640/-
Less: Exemption u/s 80C of the Income Tax Act	: Rs. 1,00,000/-
Taxable Income	: Rs.10,60,640/-.

Income tax Upto Rs.1,80,000/- : Nil	
from Rs.1,80,001 to Rs.5,00,000/- (10%)	: Rs. 32,000/-
from Rs.5,00,001/- to Rs.8,00,000/-(20%)	: Rs. 60,000/-
above Rs.8,00,001/- (30%)	: Rs. 78,189/-
Edn Cess & Surcharge (3%)	: Rs. 5,106/-
Total Income Tax	: Rs.1,75,295/-

After deducting Income tax for the relevant period, net income to be taken for the purpose of computing the loss of contribution to the family works out to Rs.9,85,345/-.

18. Though, the appellants/parents have marked Ex.P13, driving licence, to prove that the deceased was born on 19.04.1987 and that therefore, the tribunal ought to have applied '18' multiplier, as rightly contended, having fixed his age as 24, on the basis of the abovesaid document, the tribunal has erred in applying '17' multiplier for the purpose of computing the loss of contribution to the family. As per the decision of the Hon'ble Supreme Court in Sarla Verma, proper multiplier to be applied is '18'. Parents are the only claimants. Deceased was a bachelor. Tribunal has erred in deducting 1/3 towards the personal and living expenses of the deceased. Tribunal ought to have deducted 50%. Thus, loss of contribution to the family is Rs.88,68,105/- [Rs.9,85,345/- x 18 x 50%].

19. Considering the age of the deceased, ie. 24 years, compensation of Rs.50,000/- under the head loss of love and affection to the parents is less. We deem it fit to enhance the same to Rs.1,00,000/- at the rate of Rs.50,000/- each. Compensation of Rs.25,000/- under the head funeral expenses is just and reasonable and hence, sustained.

20. As rightly contended by the learned counsel for the appellants, no amount has been awarded for conventional damages and transportation. Considering the distance between the occurrence place, expenses incurred in shifting the injured to hospitals and thereafter, the corpse to the place of funeral, we deem it fit to award Rs.15,000/- for transportation. For conventional damages, Rs.2,000/- is awarded.

21. Loss of estate is a factor to be considered while taking note of the age of the deceased, in relation to the dependants, who have lost the guidance and support. Hence, Rs.15,000/- is awarded under the head loss of estate.

22. In the light of the above discussion and decisions, we are of the view that the appellants are entitled to compensation of Rs.90,25,105/- with interest at the rate of 7.5% per annum, from the date of claim till realisation and costs, as hereunder.

Loss of contribution to the family	:	Rs. 88,68,105/-
Loss of love and affection (Rs.50,000/- each to parents)	:	Rs. 1,00,000/-
Transportation	:	Rs. 15,000/-
Loss of estate	:	Rs. 15,000/-
Funeral Expenses	:	Rs. 25,000/-
Conventional damages	:	Rs. 2,000/-
Total	:	Rs. 90,25,105/-
Amount awarded by the tribunal	:	Rs.36,37,452/-
Amount now enhanced	:	Rs.53,87,653/-

23. After reworking, the appellants/claimants are entitled to compensation of Rs.90,25,105/- as against Rs.36,37,452/-, awarded by the tribunal, with interest at the rate of 7.5% per annum from the date of claim till deposit. Appellants are directed to pay the court fee, for the enhanced amount, within a period of 15 days from the date of receipt of a copy of this order.

24. Respondent No.2/Transport Corporation, is directed to deposit the entire award amount, now determined with interest at the rate of 7.5% per annum, from the date of claim and costs, awarded by the tribunal, to the credit of MCOP No.461 of 2011 on the file of Motor Accidents Claims Tribunal, [Sub Court], Sathyamangalam, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw the same, by making necessary applications before the tribunal. Civil Miscellaneous Appeal is allowed. No Costs.

25. Post for compliance on 05.06.2017.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Motor Accident Claims Tribunal,
[Sub Court], Sathyamangalam.

+1cc to Mr.MA.PA.Thangavel,Advocate,SR17164
+1cc to Mrs.R.T.Sundari,Advocate,CASR17814

Copy to:

1.The Sub Assistant Registrar,AE section,
High court, Madras.

2.The Section officer(posting), Judicial Section,
High court, Madras.

C.M.A.No.1012 of 2017

NRJK(co)
CB(07-04-2017)