

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A. No. 1132 of 2017

& C.M.P. No. 5625 of 2017

The Managing Director,
TNSTC (Villupuram) Ltd.,
Salaimeadu, Villupuram.

...Appellant/Respondent

-Vs-

1.Seetha Lakshmi
2. Kanimozhi
3.Minor Thenmozhi
4.Suseela

... Respondents/Claimants

Prayer : Civil Miscellaneous Appeal as against the judgment and decree dated 04.01.2016 made in M.C.O.P.No.288 of 2013 on the file of Motor Accidents Claims Tribunal (The Special Distirct Court), Villupuram.

For Appellant :: Mr.K.J.Sivakumar

For Respondents :: Mr.Varadhakamaraj

J U D G M E N T

This appeal has been preferred by the Transport Corporation against the award of Rs.10,77,800/- for the death of one Chenthamizh Selvan aged about 44 years, an non-mazdoor staff in PWD earning about Rs.7,000/-per month in an accident occurred on 31.10.2012, when he was knocked down by the bus belonging to the Appellate Transport Corporation. Therefore, the claim petition. The Tribunal found that the accident occurred because of the rash and negligent driving of the Transport Corporation bus and awarded a sum of Rs.10,77,800/-. Against the said award, the present appeal has been preferred.

2. Mr.K.J.Sivakumar, learned counsel appearing for the Transport Corporation would argue that the accident was not proved by the claimants and there is no direct evidence. Further, he would submit that the amount awarded is on the

higher side. On the other hand, Mr.Varadhakamaraj, learned counsel appearing for the respondents/claimants would support the award passed by the Tribunal.

3. The appellant has denied the accident and that due to the said accident, the victim namely, Mr.Chenthamizh Selvan died. Though such a stand has been taken, P.W.2, who had also travelled along with the deceased in the same Transport Corporation bus, has deposed that the Transport Corporation bus alone hit the deceased and he witnessed the said accident. Therefore, there is an eye witness namely, P.W.2, who has categorically stated that the accident had occurred because of the Transport Corporation Bus. Further, the police based on the ticket recovered from the deceased came to the conclusion that the deceased was travelling in the bus. Further, it is stated in Ex.P.4, Post Mortem Certificate that the death is due to the injuries sustained in the accident. The Tribunal has also taken into consideration the filing of FIR, Ex.P1 against the driver of the bus. In view of the categorical statement made by P.W.2, that the accident occurred because of the rash and negligent driving of the driver of the Transport Corporation and the victim died because of the injuries sustained by him in the accident involving the Transport Corporation bus, the Tribunal came to the conclusion that the respondents/claimants have proved the accident and that the victim died due to the injuries sustained by him in an accident. Therefore, the said factual finding of the Tribunal is based on evidence and the same cannot be set aside.

4. A glance reading of the award would reveal that the deceased was working as Mazdoor earning about Rs.7,000/- per month. However, the Tribunal took Rs.6,000/- as monthly income by determining Rs.200/- as daily wages as the accident occurred in the year 2012. Whereas, the Honourable Supreme Court in Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), case determined the monthly income of a Vegetable Vendor at Rs.6,500/- in the accident that occurred on 2008 and therefore, Rs.7,000/- claimed by the claimants is not on the higher side. Therefore, Rs.7,000/- is fixed as monthly income.

5. 30% was rightly added by the Tribunal towards future prospects as per the judgement of the Hon'ble Apex Court in Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and another reported in 2009 (2) TANMAC 1 as the deceased was aged about 44 years and the same is confirmed. If 30% is added towards future prospects, the total monthly income would be Rs.7,000/- + 30%(Rs.7,000/-) = Rs.9,100/-.

6. The size of the family is 4 and therefore, as per Sarala Varma's case 1/4th has to be deducted towards "personal expenses". After deducting 1/4th, the loss of income would be Rs.9,100/- (-)1/4 (Rs.9,100/-) = Rs.6,825/-. As per Ex.P6, Post Mortem Certificate, the age of the deceased was determined as '44' and the appropriate multiplier to be applied as per Sarala Varma's case is '14' and loss of income would be Rs.6,825/- x 12 x 14 =Rs.11,46,600/-. Rs.25,000/- awarded towards "funeral expenses" is confirmed. No amount was awarded towards Transport charges and therefore, a sum of Rs.10,000/- is awarded. Rs.40,000/- awarded towards "loss of consortium" to the first respondent is too low and the same is enhanced to Rs.1,00,000/- as per the judgement in Rajesh & Others vs. Rajbir Singh and Others [2013 (3) CTC 883]. Rs.30,000/- awarded towards loss of love and affection to the respondents 2 to 4 is enhanced and a sum of Rs.1,00,000/- is awarded to second and third respondents, being the children of the deceased and a sum of Rs.25,000/- is awarded to the 4th respondent/mother of the deceased. No amount was awarded towards "loss of estate" and therefore, a sum of Rs.25,000/- is awarded.

7. In fine, while dismissing the appeal preferred by the Transport Corporation the award of Rs.10,77,800/- is enhanced to Rs.14,31,600/- rounded off to Rs.14,30,000/-. The first respondent is entitled to Rs.7,00,000/- and second and third respondents are entitled to each Rs.3,00,000/- and the fourth respondent is entitled to Rs.1,30,000/-.

8. The appellant is directed to deposit the entire amount as per the modified award passed by this Court, after deducting the amount already deposited if any, along with interest and costs, before the Tribunal within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to transfer the share of all major claimants through RTGS, after getting their bank account details within a period of one week thereafter. The minor's share is directed to be deposited in interest bearing fixed deposit in any one of the nationalised banks till she attains majority and first respondent is permitted to withdraw interest accruing on such deposit once in three months.

9. The claimants are directed to pay additional court fee for the enhanced award amount within a period of two weeks from the date of receipt of a copy of this order. Consequently CMP is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Judge
The Motor Accidents Claims Tribunal
Villupuram

+1 cc to Mr.K.Varaha Kamaraj Advocate sr 19760

C.M.A.No. 1132 of 2017

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