IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 1253 of 2016
and
C.M.P. Nos. 9486 and 13861 of 2016

The Managing Director
Tamil Nadu State Transport Corporation
Trichy .. Appellant

Versus

1. J. Gnanasundari
2. J. Ramakrishnan
3. R. Marudhambal .. Respondents

Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Judgment and Decree dated 19.06.2015 made in M.C.O.P. No. 92 of 2012 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Neyveli

For Appellant : Mr. D. Venkatachalam

For Respondents : Mr. S. Udayakumar

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

This appeal is filed by the Transport Corporation questioning the quantum of compensation awarded by the learned Subordinate Judge/Motor Accident Claims Tribunal, Neyveli in and by the award dated 19.06.2015 passed in M.C.O.P. No. 92 of 2012. Since the present appeal is filed by the Transport Corporation only questioning the quantum of compensation awarded by the Tribunal, we are not dealing with the other aspects of the award of the Tribunal.

2. The respondents herein are the wife, son and mother of the deceased Jayaraman. According to the respondents, on 10.03.2012 at 20.15 hours, when the deceased Jayaraman was riding his moped towards Vridhachalam from Kariveppilankurichi Police Station, the driver of the bus bearing Registration No. TN 45 N 3114 belonging to the appellant Transport Corporation drove it in a rash and negligent manner and hit the two wheeler driven by the deceased from behind. In the impact, the deceased was thrown out of the vehicle and died on the spot. According to the respondents, the deceased was aged 52 years at the time of his death, working as a Special Sub Inspector of Police and earning a sum of Rs.27,000/- per month. Therefore, for the loss of sole bread winner in the family, the respondents have filed the claim petition claiming a sum of Rs.50,00,000/- as compensation.

3. The transport corporation resisted the claim petition by contending that at the time of accident, the deceased was plying the vehicle on the extreme left side of the road, however, he suddenly drove the vehicle to the centre of the road, which led to the accident. Therefore, it was contended that the deceased has contributed to the accident and the Transport corporation alone cannot be fastened with any liability. It was further contended that the deceased was a government servant and on his death, the first claimant is receiving family pension and therefore, there was no loss of any earning as alleged.

4. Before the Tribunal, in order to prove the income of the deceased, the first claimant examined herself as PW1 besides two other witnesses were examined as Pws 2 and 3 and Exs. P1 to P12 were marked. On the side of the respondent corporation, one Kannan was examined as RW1 but no document was marked. The Tribunal, on analysing the oral and documentary evidence, concluded that the accident had occurred due to the rash and negligent driving of the driver of the bus belonging to the corporation. As regards the quantum of compensation, the Tribunal, finding that the deceased, as a Sub-Inspector of Police, was drawing a sum of Rs.26,654/- per month as could be evident from Ex.P8, income slip, applied multiplier '11' as the deceased died at the age of 53. After giving 1/3 deduction the Tribunal awarded a sum of (Rs.27000 X 12 X 11 = Rs.35,64,000/- / 1/3 = Rs.11,88,000/-) Rs.23,76,000/- towards pecuniary loss to the family of the deceased. The Tribunal also proceeded to award Rs.1,00,000/- towards loss of consortium to first claimant, Rs.1,00,000/- towards loss of Estate, Rs.50,000/- each towards love and affection to the second and third claimants and Rs.25,000/- towards funeral expenses. Thus, a total sum of Rs.27,01,000/- was awarded by the Tribunal towards compensation for the death of the deceased. Contending that such

compensation amount awarded by the Tribunal is excessive, the Transport Corporation has filed the present appeal.

5. The learned counsel for the appellant/corporation would vehemently contend that the Tribunal erred in taking the monthly income of the deceased as Rs.27,000/- when Ex.P8, salary slip itself indicate the income of the deceased as Rs.26,654/- per month. The Tribunal ought to have adopted split multiplier especially when the deceased had left over service of five years and after his retirement at the age of 58, the Tribunal ought to have awarded 50% of his earnings as compensation. It is further contended that the Tribunal ought to have deducted income tax towards the earnings of the deceased, however, without doing so, the Tribunal awarded an exorbitant amount as compensation to the claimants. It is also contended that the direction issued by the Tribunal to pay the compensation amount with interest at the rate of 9% per annum is not warranted and instead the Tribunal ought to have awarded interest at the rate of 7.5% per annum and therefore the learned counsel for the appellant prayed for appropriate reduction.

6. On the contrary, the learned counsel for the Claimants would contend that the Tribunal has awarded a just and fair amount as compensation. It is not the case of the appellant that the income of the deceased was not proved by any documentary evidence, while so, the monthly income or multiplier adopted by the Tribunal and the compensation awarded thereof cannot be said to be excessive. Therefore, the learned counsel for the respondents prayed for dismissal of the appeal.

7. We have heard the counsel for both sides and perused the materials placed on record. Admittedly, the deceased was employed as a Special Sub-Inspector of Police and in order to prove his income, Ex.P8, salary slip was produced. Of course, in Ex.P8, the salary of the deceased was indicated as Rs.26,654/- and for easy calculation, the Tribunal has taken a sum of Rs.27,000/- per month. In fact, we find that the Tribunal has not awarded any amount towards future prospectus of the deceased when the deceased has admittedly five years of left over service. Therefore, we find that the multiplier adopted by the Tribunal or the compensation awarded thereof towards loss of pecuniary income are fair and reasonable. Similarly, towards non-pecuniary loss, the Tribunal has awarded a reasonable compensation under the heads of loss of consortium, love and affection and funeral expenses. Therefore, we refrain from interfering with the award passed by the Tribunal and consequently, the appeal deserves only to be dismissed. At the same time, as rightly pointed out by the learned counsel for the appellant, we feel that the Tribunal, while awarding compensation, ought not to have directed the appellant to pay

interest at the rate of 9% per annum and we are of the view that directing the appellant to pay the compensation amount with interest at the rate of 7.5% per annum will meet the ends of justice.

8. In the result, we confirm the Judgment and Decree dated 19.06.2015 made in M.C.O.P. No. 92 of 2012 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Neyveli. Consequently, the appeal is partly allowed directing the appellant/Transport Corporation to pay the compensation amount awarded by the Tribunal with interest at the rate of 7.5% per annum instead of 9% per annum. No costs. Consequently, connected miscellaneous petitions are closed. The appellant/Corporation is directed to deposit the compensation amount awarded by the Tribunal to the credit of MCOP No. 92 of 2012 on the file of Motor Accident Claims Tribunal/Subordinate Judge, Neyveli, after adjusting the amount, if any deposited, within a period of eight weeks from the date of receipt of a copy of this judgment.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rsh

To

The Subordinate Judge-cum
Motor Accident Claims Tribunal,
Neyveli

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.58218
+1cc to Mr.S.Udayakumar , Advocate, S.R.No.58142

CMA No. 1253 of 2016

CNR(CO)
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