IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1560 OF 2016
AND CMP NO.11750 OF 2016

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Villupuram. ... Appellant/Respondent

Versus

1.Lakshmi
2.Selvarani
3.Jothimani
4.Thamilarasan
5.Sundarambal ... Respondents/Petitioners

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the Motor Accidents Claims Tribunal, (Subordinate Judge) Neyveli in M.C.O.P.No.2 of 2015 dated 27.08.2015.

For Appellant : Mr.P.Paramasivadoss
For Respondents: Mr.M.Selvam

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the award of compensation granted in M.C.O.P.No.2 of 2015, dated 27.08.2015, by the Motor Accidents Claims Tribunal (Subordinate Judge) Neyveli, the Tamil Nadu State Transport Corporation Limited, has preferred this appeal.

2. On 14.11.2014 at about 08.45 p.m., while the deceased was standing on the extreme left of the road, on the southern side, a Bus, bearing Registration No.TN32-N-3863, belonging to the appellant Transport Corporation, driven in a rash and negligent manner and without following the traffic

rules, hit the deceased and caused the accident. The deceased was admitted, as in-patient, from 16.11.2014 to 20.11.2014 and succumbed to injuries on 20.11.2014. The deceased was aged 40 years and was stated to be working as an Operator at abroad and was earning Rs.45,000/- per month. On the death of the breadwinner, the claimants have laid a compensation for a sum of Rs.50,00,000/- before the Tribunal.

3. The appellant Transport Corporation has denied the negligence on the part of the driver of the bus and has stated that it was due to the reckless act of the deceased. The claim under various heads were also rebutted by the Transport Corporation.

4. In order to prove the negligence and quantum, on behalf of the claimants, three witnesses were examined as P.W.1 to P.W.3 and 12 documents were marked as Exs.P1 to P12. On the side of the appellant Transport Corporation, the driver of the bus was examined as R.W.1 and no documents were marked.

5. Based on the materials available before it, the Tribunal has dealt with the issues of the negligence in driving and the quantum of compensation. In so far as the negligence part is concerned, the Tribunal, based on the evidence of P.W.1 and Ex.P1 - First Information Report, P.W.2 - copy of Motor Vehicle Inspector's report, has held that the driver of the bus was rash and negligent, in causing the accident. In so far as the quantum is concerned, before the Tribunal, the claimants have examined P.W.3 - employer, who is the owner of a lorry. He would state that he is the proprietor of Palani Lorry Service and the deceased was working under him and he was paid a sum of Rs.800/- per day. In support of the same, P.W.3 has produced Ex.P10 - copy of R.C. Book, Ex.P11 - insurance certificate and Ex.P12 - visiting card. It is the statement of P.W.3 on behalf of the claimants that the deceased was working as a Lorry driver from 2014 for one year.

6. The Tribunal, after considering contradictory plea that originally the deceased was stated to have been working as an Operator abroad and Exs.P7 - copy of pass port was marked in support of the same, but the evidence of P.W.1 and P.W.3 would proceed on the basis that he was employed as a Driver under P.W.3, has held that the same has no credence. There was no pleading or evidence in the claim petition that the deceased was working as a Driver and therefore, the Tribunal has categorically found that the evidence of P.W.3 and Exs.P10 and P12 have no evidentiary value at all. The pleading of the claimants that the deceased was periodically depositing money in the bank account of P.W.1 - wife, vide Ex.P9 pass book, does not

also disclose any periodical deposits for the period between 02.02.2014 and 15.09.2014. Since the income and employment of the deceased was not clearly proved, the Tribunal has refused to accept the daily income at Rs.800/- as claimed.

7. However, the Tribunal, by considering the possession of driving license of the deceased, in Ex.P5, has fixed the notional income of the deceased at Rs.500/- per day. On the basis of the same, the monthly income was fixed at Rs.15,000/-. Since the deceased was aged 40 years at the time of accident, the Tribunal has applied multiplier 15. The Tribunal also following the judgment of SANTOSH DEVI's case, had added 50% towards future prospects. Thus, holding the monthly income at Rs.22,500/- (Rs.15,000 X 50 / 100 = 7500 + 15,000) has calculated the loss of income at Rs.40,50,000/- (Rs.22,500 X 12 X 15). After deducting 1/4th towards personal and living expenses, the Tribunal has awarded a sum of Rs.30,37,500/- towards pecuniary loss to the family.

8. The Hon'ble Supreme Court in RAJESH VS. RAJBIR SINGH [2013 (9) SCC 54]; JULY KURUVILLA AND OTHERS VS. KUNJUJAMMA MOHAN AND OTHERS [2013 (9) SCC 166]; KALPANARAJ AND OTHERS VS. TAMIL NADU STATE TRANSPORT CORPORATION [2014 (5) SCALE 479]; KALA DEVI AND OTHERS VS. BHAGWAN DAS CHAUHAN AND OTHERS [2015 (2) SCC 771] and ASHA VERMAN AND OTHERS VS. MAHARAJ AND OTHERS [2015 (1) TANMAC 465 (SC)] has held that wife is entitled to Rs.1,00,000/- towards loss of estate; Rs.1,00,000/- towards loss of consortium; Rs.1,00,000/- each to the children and Rs.50,000/- to parents towards loss of love and affection; and Rs.25,000/- towards funeral expenses.

9. The Hon'ble Supreme Court in PUTTAMMA VS. K.L.NARAYANA REDDY [2013 (8) SUPREME 795] has held that the proper interest would be 9% per annum. Accordingly, the Tribunal has awarded a total compensation of Rs.34,62,500/-, with interest at 9% per annum.

10. The learned counsel for the appellant would contend that originally the claimants have pleaded that the deceased was working an an Operator abroad and was earning a sum of Rs.45,000/-. In support of the same, they have marked passport of the deceased and the Bank pass book of the first respondent / wife. Since they could not prove the income, they have taken contrary stand that the deceased was working as a Driver under P.W.3 and was earning a sum of Rs.24,000/- per month. However, the Tribunal has refused to believe the oral evidence of P.W.3, Ex.P7, Ex.P9, Exs.P10 to Ex.P12 for arriving at the monthly income of the deceased.

11. The Tribunal has categorically held that the oral evidence and the exhibits marked in support of the income of the deceased is not at all carrying any evidentiary value and cannot be relied on. Therefore, the Tribunal has fixed Rs.500/- per day only on the basis of the valid driving license vide Ex.P5. But the Tribunal has also found that it is a license issued to drive a non-transport vehicle. Once the oral evidence of P.W.3 was rejected, the Tribunal ought not to have fixed the income of the deceased, without any valid proof for his employment and therefore, the income arrived by the Tribunal has to be reduced.

12. Further, it was argued that the Hon'ble Supreme Court in SANTOSH DEVI's case has held that the addition to the income, 50% towards future prospects shall be added, for those below 40 years and for the age group 40-50, it shall be 30%. In the present case, the Tribunal has awarded future prospects at 50% after holding that the deceased was 40 years old. The Tribunal has erred in awarding 50% instead of 30%, as held by the Hon'ble Supreme Court, for the age group of 40-50 years. The multiplier applied was also contended to be incorrect.

13. We have considered the submissions made on either side and perused the materials available on record.

14. Admittedly, the accident took place on 14.11.2014 and the Tribunal, on the basis of Ex.P1 - First Information Report, Ex.P2 - Motor Vehicle Inspector's Report and evidence of P.W.1, has held that the Driver of the bus was rash and negligent in causing the accident and accordingly, the appellant Transport Corporation is liable to pay the compensation. The finding of the Tribunal in this aspect, does not require any interference.

15. So far as the quantum of compensation is concerned, the Tribunal has rightly discussed that there is no proof for the income, as claimed by the claimants / respondents. The first page of the passport vide Ex.P7 does not prove that the deceased was working as an Operator and the claimants have made a turn around and claimed that the deceased was working as a Driver under P.W.3 without any pleadings or documents was also rightly rejected by the Tribunal, as having no evidentiary value. Further, the Tribunal has fixed Rs.500/- per day, on the basis of driving license of the deceased marked as Ex.P5. Admittedly, the driving license was to drive a non-transport vehicle. Normally, lorry owners will not engage a person, who was not holding valid license to drive a non-transport vehicle, that too a heavy vehicle. The salary to those drivers could be around Rs.500/- and Rs.800/-. Therefore, the finding of the Tribunal that only because the deceased was holding a license, and that he would earn Rs.500/- per day, does not based on any strong

evidence. On the other hand, considering the consumer price index and in a normal circumstances, to run a family consisting of 6 members, the head of the family shall have to earn a reasonable amount. For running a family, a sum of Rs.50/- per head at the minimum rate is required for feeding the inmates. For that, a person shall earn at least Rs.400/- per day. Taking the prince index prevailing during 2014, we consider Rs.400/- as a daily wage, earned by the deceased, would be appropriate. Accordingly, the monthly income arrived at Rs.12,000/- (Rs.400/- X 30).

16. As rightly contended by the learned counsel for the appellant, as per the judgment of the Hon'ble Supreme Court in SANTOSH DEVI's case, future prospects for the age group of 40-50 years shall be 30%. The tribunal has erroneously applied 50% and therefore, it is modified as 30%. After awarding 30% towards future prospects, monthly income would be arrived at Rs.15,600/- [Rs.12,000/- + Rs.3,600/- = Rs.15,600/-].

17. The deceased was aged 40 years. As per the judgment of the Hon'ble Supreme Court in SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] multiplier applied for the age group between 36 and 40 years is 15. The Tribunal has rightly applied multiplier 15 and on the basis of the same, the loss of income is arrived at Rs.28,08,000/- [Rs.15,600/- X 12 X 15 = Rs.28,08,000/-].

18. As per the judgment of RESHMA KUMARI's case, the Hon'ble Supreme Court has reduced 1/4th towards living and personal expenses for the dependents numbering from 4 to 6. In the case on hand, there are 5 dependents and therefore, the Tribunal has rightly deducted 1/4th towards living and personal expenses. After deducting 1/4th towards living and personal expenses, a sum of Rs.21,06,000/- [Rs.28,08,000/- X 3/4 = Rs.21,06,000/-] is arrived, as loss of dependency.

19. The Tribunal has rightly awarded a sum of Rs.1,00,000/- towards loss of consortium to the wife; Rs.50,000/- each to the children and Rs.50,000/- to the mother towards loss of love and affection, as per the judgment of the Hon'ble Supreme Court in RAJESH VS. RAJBIR SINGH [2013 (9) SCC 54] and therefore, it cannot be interfered with.

20. So far as the award of the Tribunal under the head loss of estate at Rs.1,00,000/-, is concerned, this Court is of the view that the same is excessive. Therefore, the same is reduced to Rs.15,000/- towards loss of estate. The Tribunal has rightly awarded a sum of Rs.25,000/- towards funeral expenses. Further, we award a sum of Rs.15,000/- towards transport charges

and Rs.2,000/- towards conventional damages in addition to what is awarded by the Tribunal below. Thus, the compensation awarded by the Tribunal at Rs.34,62,500/- is modified and fixed at Rs.24,63,000/-. Accordingly, there will be a reduction to the tune of Rs.9,99,500/-.

21. The Tribunal has directed the appellant Transport Corporation to pay interest at the rate of 9% per annum. Taking note of the prevailing rate, we scale down it to 7.5% per annum.

22. Accordingly, the appellant Transport Corporation is directed to deposit a sum of Rs.24,63,000/-, along with proportionate interest at the rate of 7.5% per annum, from the date of claim, till deposit, after deducting statutory deposit, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents / claimants are permitted to withdraw the same, by filing appropriate applications before the Tribunal.

23. We further direct the appellant Transport Corporation to file the proof of compliance of deposit of money after six weeks.

24. In fine, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

25. Post the matter on 12.06.2017 under the caption "for reporting compliance".

Sd/-
Assistant Registrar

//True Copy//

TK Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal
(Subordinate Judge)
Neyveli.

2.The Section Officer,
Judicial Posting,
High Court, Madras.

+1cc to Mr.P.Paramasiva Doss, Advocate, S.R.No.25882
+1cc to Mr.M.Selvam, Advocate, S.R.No.25959

C.M.A.NO.1560 OF 2016

NM(CO)
RS(26/05/2017)