IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.03.2017
CORAM:
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.135 OF 2015

1.C.Sivakumari
2.S.S.Anila (Minor)
3.S.S.Ajila (Minor)
4.S.S.Manikandan (Minor)
(Minors rep. by mother and next friend C.Sivakumari)
5.A.Ramaiyan Nadar ... Appellants/Petitioners

Versus

The Managing Director
Tamil Nadu State Transport Corporation (Tirunelveli) Ltd.,
Nagercoil. ... Respondent/Respondent

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.09.2014 made in MACTOP No.1508 of 2013 on the file of IV Judge, Motor Accident Claims Tribunal (Court of Small Causes) Chennai.

For Appellants : Ms.P.T.Salim Fathima
For Respondent : Mr.V.Vasanthakumar

J U D G M E N T

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

Not satisfied with the award, dated 24.09.2014, passed in MCOP No.1508 of 2013, by the Motor Accident Claims Tribunal (IV Court of Small Causes) Chennai, the claimants/appellant have preferred the above appeal for enhancement of compensation.

2. The deceased was a Senior Driver in the Tamil Nadu State Transport Corporation (Tirunelveli) Limited, Nagercoil. On 25.08.2011, at about 15.30 hours, while the deceased was travelling in a bus bearing Registration No.TN74-N-0996, he was crushed by the Bus in the accident taken place near Arunthinavilai. The claim petition was filed for compensation of Rs.63,00,000/-. The Tribunal below, after considering the

evidence, has determined that the accident has taken place due to the rash and negligence act of the driver of the bus. The age of the deceased was claimed as 40 years. The post mortem certificate - Ex.P4 has mentioned that the age of the deceased as 42 years. However, the driving licence of the deceased, which was marked as Ex.P2, reveals the date of birth as 21.05.1971. Therefore, the age of the deceased was taken as 40 years.

3. On the basis of the age, the Tribunal has applied multiplier 15. In so far as the income is concerned, the Tribunal has relied on Ex.P3 - salary slips filed by the claimants. The gross income of the deceased was shown as Rs.15,574/-. Without making any deductions, the Tribunal has taken the entire monthly salary as loss of income and applied the multiplier and other things. After deducting 10% towards standard income tax, the annual income of the deceased was fixed as Rs.1,68,200/-. Towards future prospects, considering the judgment of the Hon'ble Supreme Court in SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] the Tribunal has taken 30% towards future prospects as the deceased was aged between 40 and 50 years.

4. Applying the same, the annual income of the deceased was taken as Rs.2,18,000/-. After deducting 1/4th towards personal contribution, as the claimants are more than four in number, the net annual income was taken as Rs.1,63,935/- and applying multiplier 15, the Tribunal has arrived at a sum of Rs.24,59,025/- towards loss of dependency.

5. The Tribunal has awarded Rs.1,00,000/- towards loss of consortium to the first appellant / wife; Rs.3,50,000/- towards loss of love and affection and happiness to the three minor children and the father of the deceased; Rs.25,000/- towards funeral expenses. Finally, the Tribunal has awarded a sum of Rs.29,34,025/- rounded off to Rs.29,34,100/- together with interest at the rate of 7.5% per annum, from the date of filing of the petition, till the date of realisation with costs.

6. The appellants have filed the present appeal on the grounds that the Tribunal should have deducted 1/5th towards his personal expenses instead of 1/4th. So also, the Tribunal has failed to take the loss of expectation of life of the deceased as he suffered death at the age of 40 years. It is also the claim of the appellants that a sum of Rs.6,50,000/- should have been awarded towards loss of love and affection to the minor children and father. Therefore, on the consideration of the appeals, the claim should have been awarded at Rs.63,00,000/-.

7. We have considered the arguments advanced by the learned counsel on either side.

8. The age of the deceased as per Ex.P2 is considered as 40 years. This Court is inclined to accept the age of the deceased as 40 years. There are totally five claimants. The first appellant is the wife; appellants 2 to 4 are the minor children of the deceased; and appellant no.5 is the father of the deceased. Applying the judgment of Hon'ble Supreme Court in SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] cited supra, multiplier 15 shall be applied and the Tribunal has rightly applied the multiplier. So also, under the head future prospects, 30% is fixed, as the deceased belong to the age group between 40 and 50. There is nothing wrong in fixing 30% and the claimants demand to fix 50% is not acceptable.

9. In so far as the loss of income is concerned, monthly income of the deceased was fixed at Rs.15,030/-. Deductions towards Family Benefit Fund, Social Security Medical Scheme, and his contribution towards the Labour Association amounts to Rs.2,388/- per annum. After deducting the same, the annual income is arrived at Rs.1,78,466/- [Rs.15,030 X 12 = Rs.1,80,360 /- + Leave salary Rs.494 = Rs.1,80,854/- minus Rs.2,388/-]. Adding 30% towards future prospects of a sum of Rs.53,540/- makes it Rs.2,32,006 /- as annual income. It is very important to deduct income tax from the annual income. However, the deductions under Section 80(C) of the Income Tax towards Provident Fund, Postal Life Insurance and Life Insurance amounts to Rs.51,624/-. Adding to this, HRA at the rate of Rs.380/- per month and the total exemption amounts to Rs.56,184/- and in result, the income of the deceased does not fall within the purview of the taxable limit. Therefore, the total income, after deducting 1/4th, towards personal contribution, loss of contribution to the family is arrived at Rs.19,77,998/-.

10. The Tribunal has also correct in awarding a sum of Rs.1,00,000/- towards loss of consortium to the wife and Rs.1,00,000/- each to the three minor children and Rs.50,000/- to the father. Towards funeral expenses, a sum of Rs.25,000/- has been awarded. The compensation on these various heads does not fetch any higher amount and the total amount of compensation awarded by the Tribunal is Rs.29,34,025/-. Therefore, it is clear that the Tribunal has calculated the compensation in a just and proper manner and it could not be improved further.

11. Therefore, the claim of the appellants to enhance the compensation to a sum of Rs.63,00,000/- does not find any basis and the documents does not support of the case of the appellants. There is no avenue of increasing the compensation under any other heads and the Tribunal has rightly considered all these aspects and awarded higher compensation, rather than what we have calculated.

12. In the light of the above, we are of the considered opinion that there is no reason to interfere with the judgment and decree dated 24.09.2014, passed in M.C.O.P.No.1508 of 2013, by the Motor Accident Claims Tribunal (IV Court of Small Causes) Chennai and accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

13. Consequent to the dismissal of the appeal, the respondent Transport Corporation is directed to deposit the entire award amount, with interest at the rate of 7.5% per annum, from the date of claim till deposit and costs, awarded by the Tribunal, less the amount already deposited, if any, including the statutory deposit, to the credit of M.C.O.P.No.1508 of 2013, on the file of Motor Accident Claims Tribunal (IV Court of Small Causes) Chennai, within a period of six weeks from the date of receipt of a copy of this order.

14. On such deposit, except the minor appellants 2 to 4, the appellants / claimants are permitted to withdraw their share, as apportioned by the Tribunal, with proportionate accrued interest and costs, by making necessary applications. The share of the minors / appellants 2 to 4, shall be deposited in any one of the Nationalised Banks, in fixed deposit under the reinvestment scheme, initially for a period of three years. The interest accruing on the share of the minors / appellants 2 to 4, shall be paid to the mother of the minors, the first appellant herein, once in three months, till they attain majority.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

TK

To

1.The Motor Accidents Claims Tribunal
(IV Judge - Small Causes Court)
Chennai.

2.The Section Officer
VR Section High Court Madras

+1 cc to M/s.M.Swamikkannu Advocate sr 15986
+1 cc to M/s.S.V.Vasantha kumar Advocate sr 16067

C.M.A.NO.135 OF 2015

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aa15/06/2017