IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.01.2017

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THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.1745 of 2015
and M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation,
No.12, Ramakrishna Road,
Salem - 636 007. ... Appellant/Respondent

/Vs/

1. M.Parthasarathy
2. P.Megala Devi
3. Minor P.Pallavi
(R3 represented by her
father M.Parthasarathy) ...Respondents/Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.11.2012 made in M.C.O.P.No.734 of 2006 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : M/s.D.Venkatachalam
For Respondents: No appearance

JUDGMENT

The deceased, Parthiban, aged 18 years, a student of II year B.Com. and doing account works for private shops and thereby, earning a sum of Rs.7,500/- per month, met with an accident that took place on 01.01.2006 and succumbed to the injuries sustained in the accident. Therefore, the legal representatives of the deceased, viz., the father, mother and minor sister of the deceased filed a claim petition claiming compensation in a sum of Rs.10,00,000/=.

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2. The Tribunal, on a consideration of oral and documentary evidence, awarded compensation in a sum of Rs.7,85,000/- to the father and mother of the deceased and dismissed the claim petition insofar as the 3rd claimant, i.e., minor sister is concerned. The break-up details of the compensation are as follows:-

Loss of dependency	-	Rs.6,76,000/-
Loss love and affection	-	Rs.1,00,000/-
Funeral Expenses	-	Rs. 10,000/-
Total	-	Rs.7,85,000/-

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3. Challenging the award as excessive, the Insurance Company has filed this appeal.

4. Though very many grounds have been raised in the appeal, however, at the time of argument, the learned counsel for the appellant has restricted his argument to the quantum of compensation and, therefore, this Court is not venturing into the other grounds raised by the appellant.

5. Learned counsel appearing for the appellant submitted that when the deceased was a student studying II year B.Com., the deceased could not have been doing the accounts work and if so, the owners of the shops should have been examined to prove the income of the deceased and that has not been done. That being so, the Tribunal ought not to have fixed the monthly income of the deceased at Rs.7,500/- in the absence of any evidence and documentary proof. Hence, the award requires interference.

6. A perusal of the award passed by the Tribunal reveals that the father of the deceased examined himself as P.W.1. In his evidence, he deposed that his son was a student studying II year B.Com and also dong account works for private shops and auditor's firms and earning a sum of Rs.7,500/- p.m. and marked College Identity Card as Ex.P6 and CSC Computer Education Card as Ex.P7. Based on those documentary evidence, the Tribunal held that it was possible for the deceased to earn Rs.7,500/- p.m. by doing accounts works. Accordingly, the Tribunal has fixed the monthly income of the deceased at Rs.7,500/- p.m.

7. The Tribunal, further, considering the fact that the deceased was a bachelor at the time of accident, the age of the mother of the deceased was taken by the Tribunal to adopt the multiplier method and to quantify the compensation. There being no documents to prove the age of the mother, the Tribunal has fixed the age of the mother as 43 years as mentioned in the claim petition. As per the ratio laid down by the Hon'ble Apex Court in Sarla Verma's case (2009 5 LW 561), the Tribunal has adopted the multiplier of 15 and quantified the compensation at Rs.6,76,000/-. The Tribunal has also awarded Rs.10,000/- towards funeral expenses and Rs.50,000/- each to the father and mother of the deceased towards loss of love and affection.

8. A perusal of the above materials and the award passed by the Tribunal, it is evident that the Tribunal, considering the oral and documentary evidence, has quantified the compensation.

9. It is to be pointed out that as per the ratio laid down in Sarla Verma's case (supra), for persons aged below 40 years, 50% addition has to be made in income towards future prospective increase. However, the Tribunal has not

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considered the said aspect while fixing the monthly income of the deceased. Further, it is to be pointed out that it is the age of the deceased, which has to be taken for the purpose of fixing the multiplier. However, the Tribunal has erroneously taken the age of the mother for the purpose of fixing the multiplier, which is not sustainable. Had future prospective increase in income considered and the proper multiplier based on the age of the deceased been fixed, the compensation would definitely have been on the higher side. Further, the Tribunal, in the absence of any documentary evidence, has conservatively fixed the income of the deceased at Rs.7,500/-, which cannot be said to be on the higher side. Even for an agriculturist, the Supreme Court in Syed Sadiq's case (2014 (2) SCC 735) has fixed the monthly income at Rs.6,000/-. Therefore, the fixation of monthly income at Rs.7,500/- is justifiable and warrants no interference. On the above reasoning, this Court is of the opinion that the compensation quantified towards loss of dependency cannot be said to be excessive.

10. Insofar as the compensation awarded under the other heads, viz., loss of love and affection and funeral expenses are concerned, the compensation awarded is just and reasonable and on the basis of the ratio laid down by the Supreme Court in a catena of decisions. Therefore, no interference is warranted with the compensation fixed on those heads.

11. For the reasons aforesaid, there being no merits the appeal liable to be dismissed. Accordingly, the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12. The appellant/Insurance Company is directed to deposit the entire amount of compensation as awarded by the Tribunal, less the amount, if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. The claimants 1 and 2 are entitled to compensation as per the ratio of the apportionment made by the Tribunal. On such deposit being made, the Tribunal is directed to transfer the respective share amounts of the claimants 1 and 2 directly to their bank account through RTGS within a period of two weeks thereafter.

Sd/--
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The II Judge,
   The Motor Accident Claims Tribunal,
   Court of Small Causes, Chennai

2. The Section Officer, VR Section,
   High Court, Madras.(2 copies)

+1cc to Mr.D.Venkatachalam, Advocate Sr.No.1968

KK(CO)
sm:22.3.2018

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