IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.07.2017
CORAM:
THE HONOURABLE Dr. JUSTICE S.VIMALA
C.M.A.No.2092 of 2016

1. Baskaran
2. Vembu ... Appellants/Petitioners

versus

1. Ramakrishnan
2. State Express Transport Corporation,
Rep. by its Managing Director,
having its office at Pallavan Salai,
Chennai. ... Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act 1989, against the Judgment and Decree dated 18.04.2016 made in M.A.C.T.O.P.No.188 of 2014 on the file of the Motor Accident Claims Tribunal (District Judge), Karaikal.

For Appellants : Mr.A.C.Kumaragurubaran
For R1 : Notice awaited
For R2 : Mr.K.J.Sivakumar

JUDGMENT

The parents of the deceased Ganesh, who succumbed to the injuries sustained in an accident that had taken place on 09.08.2014, filed a claim petition in M.A.C.T.O.P.No.188 of 2014 before the Motor Accident Claims Tribunal (District Judge), Karaikal. claiming a sum of Rs.15,00,000/- as compensation.

2. As against the claim made, the Tribunal, on consideration of oral and documentary evidence, awarded a sum of Rs.3,84,000/-, the break up of which is as under :-

Loss of income	-	Rs.3,24,000/-
Funeral expenses	-	Rs. 10,000/-
Loss of love and affection	-	Rs. 50,000/-
Total	-	Rs.3,84,000/-

Challenging the quantum of compensation as inadequate, the parents of the deceased have filed this appeal.

3. The learned counsel appearing for the appellants submit that when evidence has been let in through the Employer of the deceased to substantiate the income earned by the deceased and by also marking the salary certificate Ex.P11, the monthly income should have been fixed at Rs.12,000/- p.m., i.e. Rs.400/- per day, but, the Tribunal had committed a mistake in fixing the monthly income at Rs.3,000/- p.m., and, therefore, the income has to be appropriately fixed and the compensation enhanced.

4. Per contra, learned counsel appearing for the second respondent Transport Corporation submits that the certificate issued under Ex.P11 cannot be taken as original salary bill, as it is possible for anyone to issue such a certificate. Therefore, the evidence that the deceased was earning a sum of Rs.400/- per day cannot be accepted. Therefore, the Tribunal is correct in fixing the monthly income of the deceased and no interference is called for with the award passed by the Tribunal.

5. A careful perusal of the compensation awarded by the Tribunal under various heads reveal that while the Tribunal took the age of the deceased at 18 years, however, notional fixed the monthly income at Rs.3,000/- p.m. and the annual income has been quantified at Rs.36,000/-; deducting 50% towards personal expenses and adopting the multiplier of 18, loss of income has been quantified at Rs.3,24,000/-. Further, a sum of Rs.10,000/- has been awarded towards funeral expenses and Rs.25,000/- each to the appellants towards love and affection. Thus, in all, the total compensation has been quantified at Rs.3,84,000/-.

6. This Court gave its anxious consideration to the contention advanced by the learned counsel for the parties and also perused the materials available on record as also the findings rendered by the Tribunal based on which compensation has been arrived at.

7. A perusal of the award reveals that the Employer of the deceased was examined and Ex.P-11, salary certificate has been marked. The salary certificate reveals that the deceased was earning a sum of Rs.12,000/- per month. However, the Tribunal, disbelieving the salary certificate, has fixed the monthly income of the deceased at Rs.3,000/-. Though the employer has been examined, who has deposed about the income of the deceased and through whom Ex.P-11 has been marked, however, the Tribunal, has not considered the evidence of the employer in its right perspective and has not given the necessary credence to the salary certificate, which has been marked. The Tribunal ought to have analysed the oral and documentary evidence in the proper manner and should have fixed a reasonable sum as income. However, the Tribunal has failed to do the same. Therefore, this Court is of the considered view that the compensation requires enhancement.

8. The deceased was aged 19 years on the date of accident. Even if the salary as reflected in Ex.P-11, which according to the respondents is not a contemporaneous document, shows that the deceased was earning a sum of Rs.400/- per day, the evidence of the employer shows that the deceased was employed under him and was earning a sum of Rs.400/- per day. On a conservative note, this Court deems it fit that the salary could be fixed at Rs.200/- per day, as even for an unskilled person, the Supreme Court in Syed

Sadiq's case (2014 (1) TNMAC 459) has fixed the monthly income at Rs.6,000/- per month. Further, adding 50% towards the future prospective increase in income of the deceased, the deducting 50% towards the personal expenses of the deceased, the monthly contribution of the deceased to the family would be Rs.4500/-. Adopting the multiplier of 18, the loss of earnings would be Rs.9,72,000/- (i.e. Rs.4500 x 12 x 18).

9. This Court further finds that the compensation awarded under the other heads are also on the lower side. This Court feels that a sum of Rs.1,00,000/- each to the parents towards loss of love and affection and Rs.25,000/- towards funeral expenses and Rs.5,000/- towards transport expenses, would be a just and reasonable compensation.

10. Accordingly, this Court enhances the compensation under various heads in all amounting to Rs.12,02,000/, the break-up of which is as under:

Loss of earnings	-	Rs. 9,72,000/-
Loss of love and affection	-	Rs. 2,00,000/-
Funeral Expenses	-	Rs. 25,000/-
Transport expenses	-	Rs. 5,000/-
Total	-	Rs.12,02,000/-

11. Accordingly, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.3,84,000/- to Rs.12,02,000/-, which is payable by the Transport Corporation along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The petitioners/appellants are entitled to compensation as per the ratio of the apportionment made by the Tribunal. No costs. The appellants shall pay the necessary court fee, if any, on the enhanced compensation.

12. The 2nd respondent/Transport Corporation is directed to deposit the entire amount of compensation as enhanced by this Court above, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. 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. On such deposit being made, the Tribunal shall transfer the same directly to the Bank Account of the claimant through RTGS, as per the ratio of apportionment ordered by the Tribunal, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The District Judge,
   The Motor Accident Claims Tribunal
   Karaikal.

2. The Section Officer,
   V.R.Section,
   Madras High Court, Chennai.

+1cc to Mr.A.C.Kumaragurubaran, Advocate Sr.No.49824
+1cc to Mr.K.J.Sivakumar, Advocate Sr.No.49863

C.M.A.No.2092 of 2016

VSN(CO)
sm:20.3.2018