IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2016 of 2015
& M.P.No.1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Chennimalai Road, Erode ... Appellant / R-2 before the Tribunal

..Vs..

1. Ammasai
2. Ravi
3. M.Chitra
4. P.Ayappan
5. Pazhanisami (Driver) ... Respondents / claimants 1 to 4 and R-1 before the Tribunal

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 23.06.2014, made in MCOP No.249 of 2013 on the file of the Subordinate Judge, Sathyamangalam.

For Appellant : Ms. R.T.Sundari

For Respondents : Mr. Ma.Pa.Thangavel, for R-2 to R4
No appearance-R1 & R5

J U D G M E N T

As against the claim made for a sum of Rs.10 lakhs, the Tribunal has passed an award for a sum of Rs.4,90,000/-. Branding the award as disproportionate, the Transport corporation has filed this Appeal.

2. The deceased, Palanisamy, aged 53 years, self-employed, earning Rs.2,00,000/- per year, in Banana business, died in an accident, on 30.04.2013.

2.1. P-1 as wife, P-2 and P-4, as sons and P-3 as daughter, have filed a claim petition for compensation. The breakup details of the award passed by the Claims Tribunal are as follows:-

Head	Amount
Loss of dependency	3,64,500.00
Loss of consortium to P-1	25,000.00
Loss of love and affection to P-2 to P-4	45,000.00
Transport Expenses	5,000.00
Cremation expenses	10,000.00
Loss to estate	40,500.00
Total	4,90,000.00

3. The main contention of the learned counsel appearing for the appellant / Transport Corporation is that the deduction towards the personal expenses of the deceased has been made as $1/4^{th}$, but it should have been made as $1/3^{rd}$, especially when the third and fourth claimants are married.

3.1. This contention may appear to be flowery on the face of it, but on a deeper analysis of the facts, it would be evident that the Tribunal is justified in ordering deduction to the extent of $1/4^{th}$, because of the following two reasons:

3.1.1. The first claimant is a cancer patient who is stated to be on continuous treatment and even after the accident she has taken treatment as inpatient from 08.11.2013 to 21.11.2013.

3.1.2. It is common knowledge that treatment to cancer is more cruel than the cancer itself and the expenditure would kill the person, if not the cancer itself. Therefore, when the deceased who is the shadow of life would be inclined to spend more for the ailing wife than for himself and therefore, the contention that the deceased would have spent $1/3^{rd}$ for himself cannot be accepted.

3.1.3. The deceased has the obligation of performing the marriage of the second claimant. The Court can take judicial notice of the fact that, when the income is meager, the age is more and there are liabilities to be discharged, the Court cannot expect the deceased to spend more on himself. It is relevant to point out that the second petitioner was waiting for the marriage.

4. Under such circumstances, the deduction of $1/4^{th}$ is reasonable and the amount of compensation awarded did not require any interference. Hence, this Civil Miscellaneous

Appeal is dismissed. No costs. No costs. Consequently, the CMP is also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

srk

To

1. Subordinate Judge, Sathyamangalam

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

+1cc to Mr.Ma.Pa. Thangavel, Advocate Sr. 1545 (05.07.2017)

C.M.A.No.2016 of 2015
M.P.No.1 of 2015

VGII(CO)
VR(21/06/2017)