IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.06.2017

CORAM:

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

Civil Miscellaneous Appeal No.2834 of 2016

State Express Transport
Corporation Ltd., (S.E.T.C.)
Chennai. ... Appellant/Respondent

v.

1. Pushparani
2. Jeevabharath
3. Koushika ... Respondents/Petitioners

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 05.01.2016, made in M.C.O.P.No.2107 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

For appellant : Mr.K.J.Sivakumar

For respondents : Mr.S.Suresh Kumar

J U D G M E N T

(Judgment of the Court was made by S.MANIKUMAR, J.)

Challenge in this appeal is to the judgment and decree, made in M.C.O.P.No.2107 of 2013, dated 05.01.2016, on the file of the learned Special District Judge, Salem. A sum of Rs.22,38,500/- has been awarded as compensation, with interest, at the rate of 7.5% p.a., from the date of claim, till realisation, as hereunder:-

Loss of contribution to the family	...	Rs.20,93,500/-
Funeral expenses	...	Rs. 25,000/-
Loss of consortium	...	Rs. 40,000/-
Loss of love and affection	...	Rs. 80,000/-
		Rs.22,38,500/-

2. Though contentions have been made, in the memorandum of grounds of appeal, questioning the finding fixing negligence on the driver of the appellant-Transport Corporation, Mr.K.J.Sivakumar, learned counsel for the appellant-Transport Corporation, restricted his challenge, only in respect of quantum of compensation. Submission is placed on record.

3. Mr.S.Suresh Kumar, learned counsel appearing for respondents 1 to 3 made his submissions, sustaining the award.

4. In the accident, which occurred on 06.11.2013, Pandiyan, husband of the first respondent, aged about 52 years, a Clerical Assistant, in the Office of A.E.O., Attur, died. Legal representatives, viz., wife, son and daughter, filed M.C.O.P.No.2107 of 2013, on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem, claiming compensation of Rs.30 lakhs, under various heads. To support, employment and earning, respondents/claimants have filed Ex.P6 - Salary Certificate. During trial, two documents, viz., Ex.X1 - Salary Certificate for the month of October' 2013 and Ex.X2 - Service Book, have been marked. Though wife of the deceased/first respondent has contended that, at the time of accident, the deceased, as Clerical Assistant, earned Rs.20,000/- per month, upon perusal of Ex.P6 - Salary Certificate, the Tribunal has fixed monthly income of the deceased as Rs.26,434/-.

5. Considering the number of dependants, the Tribunal has deducted 1/3rd towards the personal and living expenses of the deceased. After deducting 10% towards income-tax, the Tribunal has determined the annual income as Rs.1,90,318/-. After applying '11' multiplier, computed the loss of contribution to the family, as Rs.20,93,500/-.

6. As per Ex.X1 - Salary Certificate, the deceased earned a sum of Rs.26,434/- for the month of October' 2013. After deducting 1/3rd towards personal and living expenses of the deceased, the annual income works out to Rs.2,11,464/-. For the Financial Year 2013-14, upto Rs.2 Lakhs, there is no income-tax. Therefore, if at all, any income tax has to be deducted, it can be levied only for Rs.11,464/-. Amount is less and therefore, we of the view that there is no necessity, to deduct any sum, towards income-tax.

7. Going through the award, we are of the view that the Claims Tribunal has conspicuously failed to award any compensation under the head, future prospects, in terms of the decision made in Rajesh v. Rajbir Singh reported in 2013 (9) SCC 54, wherein, the Hon'ble Supreme Court held that,

"In the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will be only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

Considering the age of the deceased and the decision of the Hon'ble Supreme Court in Rajesh's case (cited supra), this Court is inclined to add 15% towards future prospects and determined the monthly income at Rs.30,399/- (Rs.26,434/- + Rs.3,965/-).

8. In Ex.P4 - SSLC Marksheet, date of birth of the deceased, has been mentioned as 03.07.1959. Date of accident is 06.11.2013. Therefore, the Claims Tribunal has fixed the age of the deceased as 54 years. Had he been alive, he would have served in the Office of A.E.O., Attur, atleast for four years. Even assuming that after his retirement, the deceased would have been engaged in some other work, for another seven years, but the salary would not be same. Hence, this Court is inclined to arrive at the loss of contribution to the family, in the following manner,

Rs.30,399/- x 12 x 4 x 1/3rd	Rs. 9,72,771/-
Rs.15,199/- x 12 x 7 x 1/3rd	Rs. 8,51,172/-
Total	Rs.18,23,943/-

9. Though wife, aged about 39 years and children aged about 24 and 19 years respectively, have lost the love and affection of the bread winner of the family, the Tribunal has awarded Rs.80,000/- only, under the head loss of love and affection and Rs.40,000/- for loss of consortium. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owned by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." Consortium is not a pecuniary loss. It is certainly a conventional damage awarded to a widow, who has lost her husband. In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Apex Court, while observing that at least a sum of Rs.1 Lakh has to be awarded to the widow, for loss of consortium, held as follows:

"In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

In the light of the above, this Court is inclined to grant a sum of Rs.1 lakh to the wife, for loss of consortium.

10. Legal representatives of the deceased, in particular, children have lost the love and affection of the deceased. In Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55, the Hon'ble Apex Court has awarded Rs.1,00,000/-, towards loss of love and affection. At the time of accident, daughter and son were aged 25 and 21 years respectively. Loss of love and affection, for the rest of their lifetime, cannot be measured, in terms of money. But the same has to be just. Therefore, considering their age, a sum of Rs.1,00,000/- (Rs.50,000/- each), can be awarded, under the head, loss of love and affection to the children.

11. Quantum of Compensation of Rs.25,000/- awarded under the head, funeral expenses, is just and reasonable. However, there is no award towards transportation and under the said head, a sum of Rs.25,000/- is awarded. In view of the above decisions and reworking, respondents/claimants are entitled to Rs.20,73,943/-, with interest at the rate of 7.5% per annum, from the date of claim, till the date of realisation, as apportioned hereunder:

Loss of contribution to the family	...	Rs.18,23,943/-
Transportation	...	Rs. 25,000/-
Funeral expenses	...	Rs. 25,000/-
Loss of consortium	...	Rs. 1,00,000/-
Loss of love and affection	...	Rs. 1,00,000/-
		Rs.20,73,943/-

12. Civil Miscellaneous Appeal is partly allowed. Quantum of compensation is reduced by Rs.1,64,557/-. Out of total compensation, now determined by this Court, a sum of Rs.10,73,943/- is apportioned to the wife and Rs.5,00,000/- each, is apportioned to the son and daughter, respondents 2 and 3 respectively. It is represented that 50% of the award amount has already been deposited. The appellant-Transport Corporation is directed to deposit the balance amount, less the amount already deposited, with proportionate interest and accrued costs, to the credit of M.C.O.P.No.2107 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem, within a period of four 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 amount, lying in the deposit. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

skm

To

The Motor Accident Claims Tribunal,
Special District Judge, Salem.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.39862

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.39862

C.M.A.No.2834 of 2016

SKS(CO)

CS/07/07/17