IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

CORAM

THE HONOURABLE Dr. JUSTICE. S.VIMALA

C.M.A.No.205 of 2017
and Cross Objection No.23 of 2017
and C.M.P.Nos.1407 and 6614 of 2017

C.M.A.No.205 of 2017

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Division-II,
37, Mettupalayam Road,
Coimbatore. ... Appellant / 2nd respondent

versus

1. Kannammal
2. Subbathal
3. Vellingiri
4. Minor Karthick ... Respondents 1 to 4/Claimants
(Minor is represented by
his mother first respondent)
5. P.Kumaravelu ... 5th respondent/1st respondent
(R5 is given up)

Prayer: Appeal filed under Section 173 of Motor Vehicle Act 1988, against the Judgment and Decree dated 06.05.2009 made in M.C.O.P.No.94 of 2007 on the file of the Motor Accident Claims Tribunal and Fast Track Court No.II, Gopichettypalaym.

For Appellant : M/s.R.T.Sundari
For R1 to R4 : Mr.Ma.P.Thangavel

Cross Objection No.23 of 2017

1. Kannammal
2. Subbathal
3. Vellingiri
4. Minor Karthick
(Minor is represented by
his mother first cross objector) ... Cross Objectors/Claimants

versus

1. The Managing Director,
Tamil Nadu State Transport
Corporation Division – II,
37, Mettupalayam Road,
Coimbatore. ... 1st respondent/1st respondent

2. Kumaravelu ... 2nd respondent/2nd respondent
(R2 is given up)

Prayer : Cross Objection filed under Order 41 Rule 22 of C.P.C. against the Judgment and Decree dated 06.05.2009 made in M.C.O.P.No.94 of 2007 on the file of the Motor Accident Claims Tribunal and Fast Track Court No.II, Gopichettypalaym.

For Cross Objectors: Mr.Ma.P.Thangavel
For R1 : M/s.R.T.Sundari

COMMON JUDGMENT

The deceased Govindaraj, aged 30 years, a Tailor by profession, earning a sum of Rs.7,000/- p.m., met with an accident on 23.12.2004 and died on 24.12.2004. The wife and parents of the deceased, viz., claimants 1 to 3 filed a claim petition, claiming compensation of Rs.10,00,000/-.

2. The first claimant, wife of the deceased, was pregnant at the time of accident and later, she gave birth to a child and the minor child, namely, Karthick, has also been impleaded as the 4th claimant in M.C.O.P.No.250 of 2005 before the Sub Court, Gobichettipalayam.

3. The Tribunal, on consideration of materials, both oral and documentary, placed before it, awarded a sum of Rs.5,04,600/- as compensation. The break-up details of the compensation are as under:-

Loss of dependency	-	Rs.4,89,600/-
Loss of love and affection	-	Rs. 10,000/-
Cremation Expenses	-	Rs. 5,000/-
Total	-	Rs.5,04,600/-

4. While the Transport Corporation, challenging the quantum of compensation as excessive, has filed the appeal in C.M.A.No.205 of 2017, the claimants, challenging the quantum of compensation as inadequate, have filed cross objection in Cros. Obj. No.23 of 2017.

5. It is represented by the Transport Corporation that during the pendency of the appeal, execution petition was filed and in the execution petition, the entire amount as ordered by the claims Tribunal has already been deposited.

6. The learned counsel appearing for the claimants submit that future prospective increase in income has not been considered, especially, when there was a evidence to show that the business of the deceased has been consistent and he was getting phenomenal increase in the income. Learned counsel for the claimants further point out that the first claimant, wife, could not even celebrate the first marriage anniversary, as she lost her husband even before completion of a year of marriage. The said plight of the spouse should be borne in mind while awarding consortium, which should be commensurate to the loss suffered by her. In fine, it is submitted that at least an

amount of Rs.1,00,000/- should be awarded under the head loss of consortium.

7. It is further submitted by the learned counsel for the claimants that the child did not even have the joy of seeing the person responsible for it to come to this world. Therefore, under the head loss of love and affection, compensation needs to be awarded.

8. An analysis of the order passed by the Tribunal reveals that while fixing the daily income of the deceased at Rs.180/-, the monthly income has been calculated at Rs.5400/- (Rs.180 x 30 days); deducting 1/3rd towards personal expenses, i.e., Rs.1,800/- and a further sum of Rs.1,200/-, in all Rs.3,000/-, the monthly loss of income to the family has been fixed at Rs.2,400/= and adopting the multiplier of 17, the loss of dependency has been quantified at Rs.4,89,600/- (Rs.24,00 X 12 x 17). The Tribunal has further awarded a sum of Rs,.10,000/- towards love and affection and a sum of Rs.5,000/- has been awarded towards funeral expenses. In all, a sum of Rs.5,04,600/- has been awarded as compensation.

9. The above compensation awarded, even at a cursory glance, is grossly inadequate and cannot be said to be excessive or unreasonable. The Tribunal has not awarded proper compensation under the heads loss of consortium, loss of love and affection and, therefore, the same needs to be enhanced.

10. The spouse has lost her husband at a very young age and has been made to lead her life in this world without any comfort and security. She has lost her husband, who had solemnly promised to stand by her at all times due to fate, which intervened in the form of the gruesome accident. Even more pathetic is the fact that even before the child was born, the child lost its father and with him, the entire love and affection which he would have poured on the child and guided him with care, affection and security had been lost. Definitely the said loss, both for the spouse and child could not be compensated in terms of money. However, to run their life, it is but incumbent upon the insurer to compensate them, which they would have got had the deceased been alive. Therefore, this Court is of the considered view that a sum of Rs.1,00,000/- each under the head loss of consortium and loss of love of love affection to the respective claimant would meet the ends of justice. Accordingly, this Court awards a sum of Rs.1,00,000/- each under the head loss of consortium and loss of love of love affection to the respective claimant.

11. Insofar as loss of financial dependency is concerned, the income fixed at Rs.5,400/- by the Tribunal at the rate of Rs.180/- per day is just and reasonable. However, future prospective increase in income has not been taken into account. This Court feels that 50% of the present day earnings should be taken into consideration as future prospective increase in income. Accordingly, this Court fixes the monthly income of the deceased at Rs.8,100/- (Rs.5400 + Rs.2700/-). Deducting 1/4th

towards personal expenses of the deceased, the loss of monthly dependency is assessed at Rs.6,075/-. Fixing the age of the deceased at 32, the proper multiplier to be adopted is 16. Accordingly adopting the multiplier of 16, the loss of dependency to the family is quantified at Rs.11,66,400/- (Rs.6075 X 12 X 16).

12. Accordingly, this Court quantifies the total compensation payable to the claimants at Rs.13,71,400/-, the break-up of which is as under :-

Loss of dependency	-	Rs.11,66,400/-
Loss of consortium	-	Rs. 1,00,000/-
Loss of love and affection	-	Rs. 1,00,000/-
Cremation Expenses	-	Rs. 5,000/-
Total	-	Rs.13,71,400/-

13. For the reasons aforesaid, the civil miscellaneous appeal is dismissed, while the cross objection is allowed. However, there shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

14. It is represented that pending the appeal, claimants 2 and 3, viz., the parents of the deceased, died. Therefore, the entire amount of compensation, as quantified by this Court shall be paid to claimants 1 and 4. Each of the claimants are entitled to one half of the award amount.

15. It is represented by the learned counsel for the appellant/Transport Corporation that the entire amount ordered by the Tribunal has already been deposited. The appellant Transport Corporation is directed to deposit the enhanced amount, as ordered by this Court above, 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 is directed to transfer the share of the first claimant directly to the bank account through RTGS within a period of two weeks thereafter. Insofar as the share of the minor claimant is concerned, the same shall be deposited in interest bearing fixed deposit in any one of the Nationalised Banks till he attains majority and the first claimant, viz., the mother, is entitled to withdraw the interest accruing on such deposit once in three months. The cross-objector shall pay the court fees due, if any, before obtaining copy of the Judgment.

Encl:Xerox Copy of Deficit court fee paid
for a sum of Rs.3,665/- vide USR 84903 enclosed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To
1. The Motor Accident Claims Tribunal
and Fast Track Court No.II,
Gopichettypalaym.

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

+1cc to Mr.A.P.Thangavel, Advocate SR.No.48870

MR(CO)
sm:9.2.2018

C.M.A.No.205 of 2017
and Cross Objection No.23 of 2017