

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.09.2017
CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2368 of 2017

1.Vidhya
2.R.Prakash
3.R.Kaviarasu (Minor)
Minor.Rep.by his Mother I Appellant Appellants
Vs.

Tamil Nadu State Transport Corporation
Villupuram Division
Rep.by its Managing Director
Villupuram 605-602. Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree passed in M.C.O.P.No.3984 of 2010, dated 28.04.2014, on the file of Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellants : Mr.S.Ravikumar

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

The deceased, N.Rajangam, Proprietor of A.M.Fruit Stall, earning a sum of Rs.15,000/- per month, died in an accident on 16.10.2010. The legal representatives of the deceased, filed the claim petition for compensation in M.C.O.P.No.3984 of 2010 before the Motor Accident Claims Tribunal, Chennai.

2. The Tribunal, considering the oral and documentary evidence, passed an award for a sum of Rs.9,44,056, rounded off to Rs.9,44,000/- under the following heads:-

Loss of Income	-	Rs.7,84,056/-
Loss of Consortium	-	Rs. 75,000/-
Loss of Love & Affection - (Rs.20000 X 3)	-	Rs. 60,000/-
Funeral Expenses	-	Rs. 25,000/-

Total		Rs.9,44,056/-

Challenging the award as inadequate, the claimants have filed this appeal.

3. The learned counsel for the appellants submit that when the salary certificate Ex.P-7 has been filed showing the monthly income at Rs.15,000/-, the Tribunal committed mistake in fixing the monthly income at Rs.7,000/-. Learned counsel further submitted that future prospective increase in income has not been considered. The award towards loss of consortium and loss of love and affection are extremely low and they have to be proportionately increased.

4. Per contra, learned counsel appearing for the respondent contended that the Tribunal, on proper appreciation of the evidence available on record, has given just and reasonable amounts as compensation and the same does not require any enhancement.

5. This Court gave its anxious consideration to the contentions advanced by the learned counsel for the parties and also perused the materials available on record as also the award passed by the Tribunal.

6. A perusal of the order passed by the Tribunal reveals that the Tribunal placed reliance upon the evidence of PW3, who deposed that the deceased was working as Salesman in A.M.Fruit stall at Koyambedu Market and he was earning Rs.400/- per day. However, the salary slip marked as exhibit, shows the salary of the deceased as Rs.15,000/= per month. Finding that there is a contradiction between the oral and documentary evidence, the Tribunal considering the age of the deceased as well as the nature of job, fixed the monthly income at Rs.7,000/-.

7. The fixation of monthly income is one of the main issue to be considered. The Tribunal has not accepted the salary slip of the deceased for fixing the income, nor has placed entire reliance on the evidence of P.W.3. The Tribunal, considering the qualification and avocation of the deceased has fixed the monthly income at Rs.7,000/=. The job of the deceased is unskilled labour. In that context fixation of Rs.7,000/- by the Tribunal cannot be said to be erroneous. In this context, useful reference can be had to the decision of the Supreme Court in Syed Sadiq, etc., Vs. Divisional Manager, United India Insurance Co., Ltd., (2014 (1) TNMAC 459 (SC)), wherein, the Supreme Court, in the case of unskilled labour, has fixed the monthly income at Rs.6,500/= per month.

8. Therefore, this Court, while accepting the fixation of income at Rs.7,000/= per month, however finds that no addition has been given with regard to future prospective increase in income. Accordingly, adding 30% towards future prospective

increase in income and deducting 1/3rd towards the personal expenses of the deceased and adopting multiplier of 14, the loss of income to the family is quantified at Rs.10,19,256/= (Rs.6067 X 12 X 14).

9. Insofar as the compensation awarded under the head loss of consortium is concerned, the Tribunal has awarded a sum of Rs.75,000/-. This Court is of the considered opinion that the said compensation is just and reasonable, considering the age of the deceased and, therefore, requires no enhancement.

10. Insofar as the compensation awarded towards loss of love and affection at Rs.20,000/= to each claimants 2, 3 and 4, this Court is of the view that a sum of Rs.25,000/- to claimants 2, 3 and 4 would be just and reasonable compensation. The award of Rs.25,000/- under the head funeral expenses is just and reasonable and the same is confirmed.

11. In the result, the civil miscellaneous appeal is allowed, enhancing the compensation from Rs.9,44,000 to Rs.11,94,256/= with interest at 7.5% p.a. from the date of petition till date of deposit. No costs.

12. The respondent / Transport Corporation is directed to deposit the award amount as ordered by this Court above, along with interest at 7.5% p.a. from the date of petition till the date of deposit, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgement. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the respective bank accounts of the major claimants, through RTGS, as per the ratio of apportionment made by the Tribunal, within a period of two weeks thereafter. Insofar as the share of the minor claimant is concerned, the same shall be kept in a fixed deposit in any one of the Nationalised banks till the claimant attains majority. The 1st claimant, mother of the minor 3rd claimant is permitted to withdraw the interest accrued thereon directly from the bank and utilise the same for the welfare of the minor. The claimants/appellants shall pay the requisite court fee, if any, on the enhanced compensation amount before obtaining the copy of the judgment.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kv/gln

To

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

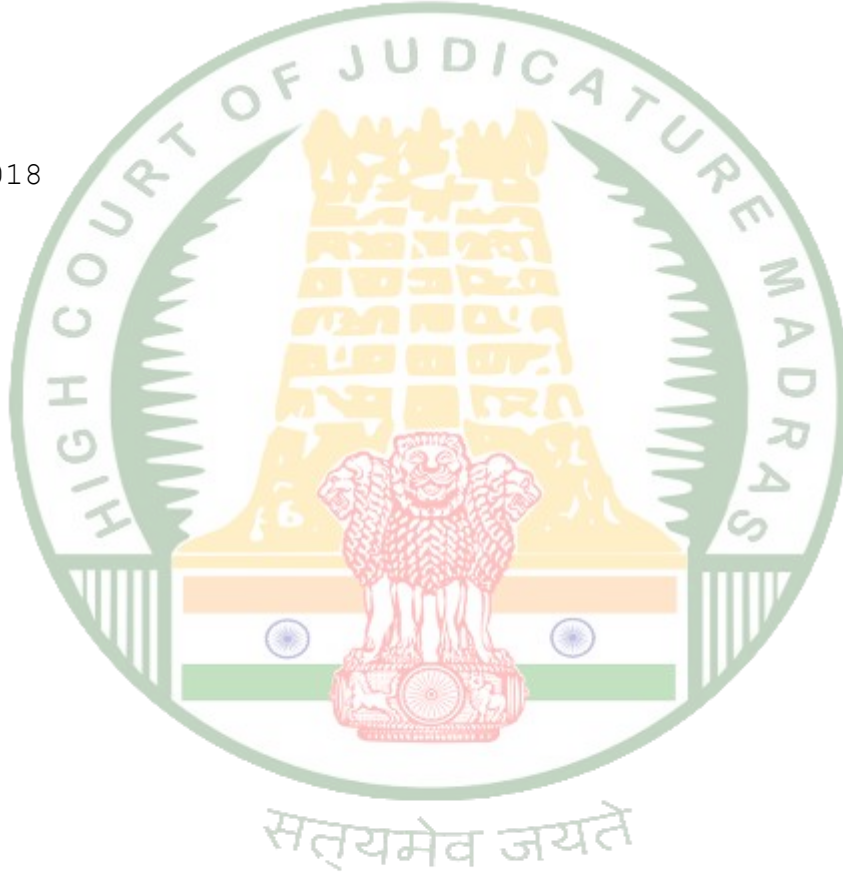
2. The Section Officer, V.R. Section, High Court, Madras.

+1 cc to Mr.Ravikumar Advocate sr 66780

+1 cc to Mr.Sasikumar Advocate sr 67109

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