IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.2369 of 2014
and MP.No.1 of 2014

The Managing Director,
TNSTC, Ramakrishna Road,
Salem Town,
Salem District,
Salem-7. .. Appellant/1st Respondent

Vs.

1.Periyammal
2.R.Vijayalakshmi
3.R.Vijayakumar
4.R.Vijayavel
5.R.Vijayarasi .. Respondents 1 to 5/Petitioners
6.C.Nandhan

7.The Branch Manager,
New India Assurance Company Limited
I Floor, TMN Complex,
No.136, M.B.T. Road,
Pakkiam, Ranipettai, Vellore District.
.. Respondents 6 & 7/Respondents 2 & 3

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.07.2013 made in MCOP. No.478 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Dharmapuri.

For Appellant : Mr.D.Venkatachalam
For Respondents : Mr.M.Selvam [RR1 to 5]

JUDGMENT

A certain Raja was working as a conductor under the appellant-Transport Corporation. On 21.10.2007 at about 3.30 a.m., while he was on duty in the bus bearing registration No.TN29N 1814, he was killed along with another passenger of the bus when the bus dashed against a lorry belonging to the second respondent and insured with the third respondent before the Tribunal. The victim was aged 57 years at that relevant time and was earning

Rs.12,420/- per month. Besides, he was also stated to be doing milk business and was earning Rs.10,000/- per month. Claiming a total compensation of Rs.25,00,000/-, his widow and four children moved the Tribunal. On assessing the evidence before it, the Tribunal held that the drivers of both the vehicles in question were equally negligent for the occurrence of the accident, determined the compensation payable at Rs.12,95,176/- with interest @ 7.5% per annum and directed that it be apportioned equally between the Transport Corporation that owns the bus and the insurance company with which the lorry involved in the accident was insured.

2. The learned counsel for the appellant submitted that one fundamental flaw in the approach of the Tribunal was that it added 30% of Raja's last drawn salary towards his future prospects, and in the process it ignored the fact that Raja was aged 57 years and was not self-employed to attract the principle laid down in Rajesh and Others Vs. Rajbir Singh and Others [(2013) 9 SCC 54] read with Sarala Varma case [(2009) 6 SCC 121].

3. Per contra, the learned counsel appearing for the claimants would argue that on the heads of non-pecuniary damages, the Tribunal has been unduly parsimonious and denied the claimants the just and fair compensation.

4. A perusal of the award shows that the Tribunal has calculated the sum awarded as indicated in the table below :

Heads of Compensation	Amount Awarded (Rs.)
Future loss of income	12,55,176.00
Funeral Expenses	2,000.00
Loss of consortium	10,000.00
Towards transportation	3,000.00
Loss of love and affection @ Rs.5,000/- each [Rs.5,000x4]	20,000.00
Total :	12,95,176.00

Acting on Ext.P10, salary certificate, the Tribunal reckoned his net salary received by the victim at Rs.11,920/- and as per Sarala Varma dictum, it added 30% towards his future prospects and arrived at the monthly salary of Rs.15,496/- and applying a multiplier 9, it arrived at a sum of Rs.16,73,568/- [Rs.15,496x12x9] and from it deducted 1/4 towards the personal expenses of the deceased and arrived at a sum Rs.12,55,176/- on the head of loss of future income.

5. This, as per the dictum aforesaid is plainly untenable. After allowing permissible deduction from the gross salary of the victim, the net salary arrived is Rs.11,920/-. From this 30% is deducted towards the personal expenses, and the balance available for monthly support of the family is Rs.8,940/-. Applying a multiplier of 9, the compensation payable towards loss of pendency would be Rs.9,65,520/-[Rs.8,940x12x9]. Towards loss of consortium, the Tribunal has granted only Rs.10,000/-, but this has to be increased to Rs.75,000/-. For love and affection, I enhance it to Rs.25,000/- each . Even on the head of funeral expenses, the award amount is required to be increased to Rs.10,000/-. The break-up details of the revised award amount of compensation reads as follows :

Heads of Compensation	Revised Amount (Rs.)
Future loss of income	9,65,520.00
Funeral Expenses	10,000.00
Loss of consortium	75,000.00
Towards transportation	3,000.00
Loss of love and affection @ Rs.25,000/- each [Rs.25,000x4]	1,00,000.00
Total :	11,53,520.00

6. In the result, the appeal is partially allowed and the appellant and the insurer of the lorry are directed to deposit the revised compensation amount of Rs.11,53,520 with interest at 7.5% per annum, each ones share of liability being 50% of the total, within a period of six weeks from the date of receipt of a copy of this order, and in case the entire amount as fixed by the Tribunal was already deposited by the appellant, it is permitted to withdraw the amount in excess of that which is now determined as compensation. Upon such deposit, the claimants are permitted to withdraw their respective shares forthwith in the same ratio as that was done by the Tribunal in its award. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To:
1.The Additional District Judge
Motor Accidents Claims Tribunal
Chennai.

2. The Section Officer
VR Section
High Court, Madras.

+1cc to Mr.D.VENKATACHALAM, Advocate, S.R.No. 55063

C.M.A.No.2369 of 2014

PVS(CO)
TR(11/01/2018)