IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2017

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THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2573 of 2017
and
C.M.P.No.14013 of 2017

Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division-I, 37 Mettupalayam Road,
Coimbatore. ...2nd Respondent/ Appellant

Vs.

1.Abitha
2.Mohammed Jabber
3.Shabena
4.Javith
5.Minor.Bajilu ...Petitioners/Respondents
(Minor petitioner represented by
mother / guardian/next friend abitha)
6. Sasikumar ....1st Respondents/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.231 of 2012, dated 17.12.2014, on the file of Motor Accident Claims Tribunal, the 1st Additional District Judge, Tirupur.

For Appellant : Mr.K.J.Sivakumar
For Respondents : Mr. Ma.Pa.Thangavel

J U D G M E N T

This appeal has been filed by the Transport Corporation, challenging the quantum of compensation awarded to the claimants, as excessive and disproportionate to the income of the deceased.

2. The deceased Akber Ali, died in an accident that took place on 13.08.2012, involving the vehicle belonging to the appellant's bus. The 1st claimant as wife, claimants 2,4, and 5 as sons and 3rd claimant as daughter have filed the claim petition, claiming a sum of Rs.20,00,000 has compensation.

3. As against the claim made, the Tribunal has passed an award for a sum of Rs.12,16,400/- and challenging the same, the Transport Corporation has filed this appeal.

4. At the time of accident the deceased was aged 50 years, doing coolie work and earning a sum of Rs.10,000/- per month. The Tribunal has quantified the compensation taking into account the following factors.

5. The monthly income of the deceased has been taken at Rs.7,500/- adding 15% towards future prospective increase in income i.e., Rs.1,125/-, the total income has been quantified at Rs.8,625/-. Taking into account that there are five dependants in the family, 1/5th has been deducted towards the personal expenses and adopting the multiplier of '13', the Tribunal has quantified the loss of dependency at Rs.10,76,400/-.

6. Awarding a sum of Rs.10,000/- to each of the claimants towards loss of love and affection, loss of consortium and support at Rs.50,000/-, transport expenses at Rs.10,000/-, medical expenses at Rs.20,000/-, cremation expenses at Rs.10,000/-, total quantification at Rs.12,16,400/-.

7. The learned counsel for the appellant / Transport Corporation would submit that when the deceased was aged 50, as per the Syed Sadiq, etc., Vs. Divisional Manager, United India Insurance Co., Ltd., reported in 2014 (1) TNMAC 459 (SC), the Tribunal should have taken income only at Rs.6,500/- and not at Rs. 7,500/-.

8. The learned counsel for the Respondents / claimants would contend that the income, as taken in the case of Syed Sadiq, supra, was of the year 2009 and in the year 2012, the income must be fixed at a higher rate and therefore, the income taken is reasonable and cannot be said to be excessive; considering the cost of living, and the number of surviving dependants, the monthly income taken at Rs.7,500/- cannot be said to be unreasonable.

9. The learned counsel for the appellant would submit that even though the number of claimants are more and as the majority of the claimants are not depending upon the income of the deceased, the personal expenses should have been deducted at a higher rate and not at 1/5th.

10. On the other hand the learned counsel for the claimants would submit that, when the non-conventional damages awarded towards loss of consortium, loss of love and affection and support is at lower side, the deduction towards personal expenses cannot be said to be on a higher side and if both of them fitted against the each other, the amount awarded would be found to be reasonable.

11. This contention is acceptable and the award on the head of loss of consortium, loss of love and affection and support is at lower side, and to offset the same the deduction towards personal expenses need not be reduced.

12. Considering the overall facts and circumstances, the award passed by the claims Tribunal is found to be just, reasonable fair and proper. The appeal has no merits.

13. In the result, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Civil Miscellaneous petition is closed. No costs.

14. The Appellant / Transport Corporation is directed to deposit the entire award amount, along with interest and costs, as awarded by the claims Tribunal, less the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgement. On such deposit being made the major claimants are entailed to withdraw their share of compensation with proportionate interest therefor and the share of the minor claimants shall be kept in a fixed deposit, reinvestment scheme, in any one of the Nationalised banks till he attains majority. The interest accrued thereon shall be withdrawn by the guardian of the minor claimant directly from the bank and shall be utilized for the welfare of the minor.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
1st Additional District Judge, Tirupur.

+1cc to Mr.K.J.Sivakumar, Advocate Sr. 60734
+1cc to Mr.Ma.P.Thangavel, Sr. 59781

C.M.A.No.2573 of 2017
and
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PVS(CO)
VR(24/10/2017)