

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.09.2017

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THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2701 of 2017

and

C.M.P.No.15116 of 2017

The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan Salai, Chennai - 2.

..Appellant/Respondent

/Vs/

P.G.Saroja

..Respondent/Petitioner

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.11.2016 made in M.C.O.P.No.5064 of 2013 on the file of the Motor Accident Claims Tribunal, The Chief Small Causes Court, Chennai.

For Appellant : Mr.K.J.Sivakumar

For Respondent : Mr.S.Ravikumar

JUDGMENT

The deceased, Nagarajan, aged 37 years, a self-employed Still Photographer, earning a sum of Rs.15,000/- per month, died in an accident on 18.07.2013. The claimant, viz., mother of the deceased, filed the claim petition for compensation claiming a sum of Rs.10,00,000/-.

2. The Tribunal, on consideration of materials placed before it, has passed an award for a sum of Rs.9,95,000/- as compensation, under the following heads :-

Sl.No	Heads	Calculation
1.	Salary	Rs.7,000/- per month
2.	50% of (i) above to be added as future prospects	Rs.7,000/- + Rs.3,500/- = Rs.10,500/-
3.	50% of (ii) deducted as personal expenses of the deceased	Rs.10,500/- (-) Rs.5,250/- = Rs.5,250/- per month
4.	Compensation after multiplier of 15 is applied	Rs.5,250/- x 12 x 15 = Rs.9,45,000/-
5.	Loss of love and affection to petitioner.	Rs. 25,000/-
6.	Funeral expenses	Rs. 25,000/-
	Total Compensation Awarded	Rs.9,95,000/-

Challenging the compensation awarded as excessive and disproportionate, the transport corporation has filed the present appeal.

3. It is contended by the learned counsel for the appellant that the trial court, ought not to have fixed the monthly income at Rs.7,000/- as no documentary evidence has been produced to show the income earned by the deceased. It is further submitted that no proof having been filed to show the age of the deceased, the compensation awarded is excessive.

4. To appreciate the contention raised, it is necessary to peruse the order passed by the Tribunal to find out the basis on which the Tribunal has fixed the income and age of the deceased.

5. A perusal of the award passed by the claims tribunal reveals though the claimant has contended that the age of the deceased was 27, no proof to substantiate the same was filed. However, the Tribunal, placing reliance upon Ex.P-3, death certificate, wherein the age of the deceased is shown as 37 years, fixed the age at 37 years. The said approach of the Tribunal is a just and proper approach, which cannot be found fault with. Therefore, this Court affirms the fixation of age by the Tribunal at 37 years.

6. Insofar as the monthly income is concerned, in the absence of documentary evidence to substantiate the income, fixation of notional income has to be done. In respect of accident of the year 2009 the Supreme Court in the case of Syed Sadiq - Vs - Divisional Manager, United India Insurance Co., Ltd., (2014 (1) TNMAC 459 (SC)), has taken notionally fixed the monthly income at Rs.6,500/- in respect of agriculturist.

7. In the case on hand, the deceased was eking his livelihood as a photographer. Therefore, taking cue from the decision of the Supreme Court in Syed Sadiq's case (supra), the Tribunal has fixed the monthly income notionally at Rs.7,000/-, keeping in mind that the accident had happened in the year 2013. Therefore, the fixation of notional income by the Tribunal is also based on sound reasoning and, therefore, it is not liable to be interfered with.

8. Accordingly, taking the age of the deceased at 37 years and fixing the income at Rs.7,000/- and adding 50% towards the future prospective increase in income of the deceased and subtracting 50% towards the personal expenses, the Tribunal has quantified the compensation at Rs.9,45,000/-. The said quantification is reasonable and cannot be termed to be excessive and, accordingly, the same is confirmed.

9. Insofar as compensation under the other heads are concerned, only a meager amount of Rs.25,000/- has been awarded towards loss of love and affection and Rs.25,000/- towards funeral expenses. The quantum of compensation has been finalised at Rs.9,95,000/-. No compensation towards transport expenses and loss of estate has been awarded. Therefore, the compensation quantified by the Tribunal does not require any interference.

10. For the reasons aforesaid, there being no merits, this appeal is liable to be dismissed and, accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed, if any.

11. The appellant/Transport corporation is directed to deposit the entire award amount along with interest at 7.5% per annum from the date of petition till the date of deposit, as determined by the Tribunal, 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 judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant/first respondent through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sms/GLN

To

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

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

+1cc to Mr.S.Ravikumar, Advocate, S.R.No.63896

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.64039

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CS/02/04/18



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