IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.11.2017
CORAM:
THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A. No.3080 of 2017

The Managing Director,
Tamil Nadu Express State Transport Corporation,
Villupuram Divsion - III,
Kancheepuram. ... Appellant/Respondent

Versus

1. M.Thiruniraiselvi
2. K.Munusamy
3. Minor M.Kodiyarasi
4. Minor M.Gajalashmi
5. Minor M.Venkatesan ... Respondent/Petitioners

(Minor petitioner 3 to 5 represented by their natrual Guardian/next friend mother M.Thiruniraiselvi)

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment dated 08.12.2016 made in MCOP No.1034 of 2015 on the file of the Motor Accident Claims Tribunal, The District Court - II, Kanchipuram.

For Appellant : Mr.K.J.Sivakumar
For respondents: Mr.C.Prabhahar

JUDGMENT

The deceased, M.Rukmani, aged 19 years, earning a sum of Rs.12,000/-, who was a Student doing B.Sc Nursing, met with an accident on 16.12.2015 and died on the spot. The parents, sisters and brother of the deceased have filed the claim petition claiming a sum of Rs.42,00,000/- as compensation.

2. The Tribunal on a consideration of materials, both oral and documentary, awarded compensation in a sum of Rs.12,79,000/-, the break up of which are as under :-

Loss of Income / salary (7000 + 3500 = 10500 x 1/2 =Rs.5250/- x 12 x 18)	:	Rs.11,34,000/-
Loss of love and affection to petitioners each	:	1,25,000/-
Funeral and Transport	:	20,000/-
Total		12,79,000/-

Challenging the compensation granted as excessive, the transport corporation has filed the present appeal.

3. The main contention raised by the learned counsel for the appellant is that in the absence of any valid documents showing the income and age of the deceased, the Tribunal is not correct in fixing the income at Rs.7,000/- per month and that the multiplier adopted is also not correct, there being no proof of age.

4. This Court gave its anxious consideration to the contention advanced by the learned counsel for the appellant and perused the materials available on record as also the order passed by the Tribunal.

5. The Tribunal has relied upon Ex.P2, Postmortem Certificate, wherein the age of the deceased is mentioned as 19. In the Transfer Certificate, the date of birth was mentioned as 10.06.1996. The date of accident was 16.12.2015. Therefore, on the date of accident, the age of the deceased was 19 years and 6 months. In such circumstances, the Tribunal has fixed the age of the deceased as 19 years and 6 months. The age of the deceased having been fixed based on documentary evidence, the contention of the appellant that the fixation of age is not based on documentary evidence is unsustainable and the same is rejected. Further, based on the age of the deceased, the multiplier to be adopted is 18, which the Tribunal has rightly done.

6. According to PW1, the deceased was a nursing student and working as part time staff nurse in a private hospital at Walajabad, earning a sum of Rs.12,000/- per month, but no documents have been filed. Though the deceased was studying III year Nursing, the records reveal that the family of the deceased is fairly large with sisters and brother, all minors and, definitely, it cannot be ruled out that the deceased was shouldering the responsibility of sharing the family burden. Though the claimants have stated that the deceased was earning a sum of Rs.12,000/=, however, in the absence of any documents to substantiate the said stand, the Tribunal has fixed the monthly income of the deceased at Rs.7,000/- after deducting 50% towards her personal expenses. The deceased has been a bachelor, and irrespective of family size, 50% deduction has been made towards personal expenses.

7. Though it is claimed that the fixation of income is on the higher side, however, this Court is of the considered opinion that the said contention is unsustainable in view of the ratio laid down by the Apex Court in Syed Sadiq's case (2014 (2) SCC 735), wherein the Apex Court, even in the case of a

vegetable vendor has fixed the monthly income at Rs.6,000/=. It is not in dispute that the deceased was a student of nursing. Therefore, considering the said fact, the Tribunal has fixed the monthly income at Rs.7,000/- and after considering the future prospective increase in income of the deceased at 50%, however, deducted 50% towards the personal expenses of the deceased and adopting multiplier of 18, has quantified the compensation at Rs.11,34,000/=. Even if present earning is not believed the deceased, after completing nursing would have earned Rs.7,000/- p.m. Though it is contended by the appellant that the compensation is excessive, however, it is to be pointed out that the proper deduction to be made is only 1/4th considering the composition of the family of the deceased, which is large. However, the Tribunal has deducted 50% towards the personal expenses of the deceased. Had the deduction been made at 1/4th, the compensation would have been on the higher side. Therefore, the compensation awarded cannot be said to be excessive or unreasonable and, accordingly, the same is confirmed.

8. Insofar as the compensation awarded under the heads of loss of love and affection and Funeral and Transport Expenses is concerned, the said compensation is very meager and cannot be said to be excessive. Accordingly, no interference is warranted with the compensation awarded on those heads.

9. For the reasons aforesaid, the appeal being devoid of merits is liable to be dismissed and, accordingly, the same is dismissed, confirming the award passed by the Tribunal. No costs.

10. The appellant / Transport Corporation is directed to deposit the entire award amount, along with interest and costs as ordered 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 major claimants through RTGS within a period of two weeks thereafter as per the ratio of apportionment fixed by the Tribunal. Insofar as the share of the minor claimants are concerned, the same shall be kept in an interest bearing fixed deposit till the claimants attains majority and the 1st claimant is permitted to withdraw the interest accrued thereon once in three months directly from the bank.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vsi2/GLN

To

1. The II District Judge,
   Motor Accidents Tribunal, Kancheepuram

+1cc to Mr.K.J..Sivakumar, Advocate Sr.No.78779
+1cc to Mr.C.Prabakaran, Advocate Sr.No.78901

AD(CO)
sm:27.4.2018

C.M.A. No.3080 of 2017