IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.349 of 2017

and C.M.P.No.2546 of 2017

The Managing Director,
M/s.State Express Transport Corporation
(Tamilnadu) Limited,
Thiruvalluvar Illam, Pallavan Salai,
Chennai - 600 002. ... Appellant / 1st respondent

versus

1. Sathia Prabha
2. Nallamuthu
3. Mutthaayee,
4. Minor Iniya
(Minor is represented
by her mother Sathia Prabha)
... Respondents 1 to 4/Petitioners

5. Jegajothi ... 5th respondent/2nd respondent

6. The Divisional Manager,
M/s.The New India Assurance
Company Limited,
Divisional Office, Jerome Buildings,
Fort Station Road,
Tiruchirapalli - 620 002.
... 3rd respondent/6th respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.06.2012 made in M.C.O.P.No.475 of 2009 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.K.J.Sivakumar
For Respondents : No Appearance

JUDGMENT

One Sundararajan, aged about 35 years, working as a Driver under the first respondent (before the Tribunal) Transport Corporation, earning a sum of Rs.9,000/- per month, met with an accident on 29.08.2009 and sustained injuries and succumbed to those injuries. Hence, the legal representatives of the deceased, namely, wife, father, mother and daughter of the deceased filed a claim petition in M.C.O.P.No.475 of 2009 before the Motor Accident Claims Tribunal, Principal District Judge, Perambalur, claiming compensation of Rs.25,00,000/-.

1.1. As against the claim made, the Tribunal has awarded a sum of Rs.8,56,400/- as compensation, which is payable by the first respondent Transport Corporation along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

2. Challenging the quantum of compensation as excessive, the Transport Corporation has filed this appeal.

3. The learned counsel appearing for the appellant Transport Corporation would submit that when there is no valid document to prove the age and income of the deceased, the amount awarded by the Tribunal towards loss of dependency (loss of income) is excessive; the Tribunal ought to have deducted $1/3^{rd}$ towards personal expenses instead of $1/4^{th}$ deduction.

4. In order to appreciate the contentions raised by the learned counsel for the appellant, it is necessary to look into the compensation awarded under various heads, which are as follows:

Net loss of income to the Family	-	Rs.8,06,400/-
Consortium to the 1^{st} petitioner	-	Rs. 10,000/-
Loss of love and affection (2^{nd}, 3^{rd} and 4^{th} petitioners)	-	Rs. 30,000/-
Funeral expenses	-	Rs. 5,000/-
Transport charges	-	Rs. 5,000/-
Total	-	Rs. 8,56,400/-

5. On perusal of the award, it is evident that even though the age of the deceased was mentioned as 35 years in the postmortem certificate (Ex.P2) and death certificate (Ex.P3), the Tribunal has taken the age of the deceased at 33 years as per the Transfer Certificate (Ex.P1), which shows the date of birth of the deceased as 07.06.1976.

5.1. The Tribunal has fixed the income of the deceased at Rs.7,000/- based on the evidence of P.W.3-Superintendent of the Transport Corporation, under which, the deceased was employed as a trainee (driver), along with other documents (Exs.P6 to P10-Training course certificate and other certificate with regard to training). As per the Sarla Verma's case, the Tribunal has adopted the proper multiplier of '16' (for the age of 31 to 35) and by deducting $1/3^{rd}$ towards personal expenses (as there are four dependents), awarded the compensation of Rs.8,06,400/- (Rs.7,000/- x 12 x 16 x 2/3). Fixing of the monthly income at Rs.7,000/- p.m. is assailed as excessive. It cannot be excessive as the accident had taken place after the deceased successfully completing the training and while returning back. Had he been posted as a permanent driver, he could have earned more than Rs.7,000/- p.m. Therefore, fixing of the monthly income at Rs.7,000/- cannot be said to be excessive, especially after completion of training as driver.

6. It is relevant to pointed out that the Tribunal did not consider the future prospective increase in income, while quantifying the compensation on account of loss of dependency. Furthermore, the compensation awarded under the heads loss of love and affection and loss of consortium at Rs.30,000/- (for father, mother and minor) and Rs.10,000/- respectively, are very low. As per the decision of the Supreme Court in the case of Rajesh and others vs. Rajbir Singh and others, reported in 2013 (3) CTC 883, the Tribunal should have awarded a sum of Rs.1,00,000/- towards loss of consortium to the wife and Rs.1,00,000/- towards loss of love and affection to the minor children. Hence, the amount awarded by the Tribunal can be said to be less and not more.

7. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 29.06.2012 passed in M.C.O.P.No.475 of 2009 by the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

8. The Transport Corporation is directed to deposit the amount awarded by the Tribunal, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the major claimants are permitted to withdraw their share of the amount as per the apportionment made by the Tribunal. The share of the minor shall be deposited in fixed deposit scheme in any one of the Nationalized Bank for a period of three years till she attains majority. The mother of the minor shall withdraw the interest accrued thereon once in three months. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Principal District Judge,
Perambalur.

C.M.A.No.349 of 2017

GP(CO)
GN(23/10/2017)