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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.12.2017

Pronounced on : 14.03.2018

Coram

The HONOURABLE Dr.JUSTICE S.VIMALA

AND

The HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.M.A.No.3495 of 2017

and

C.M.P. (MD) .No.22213 of 2017

The Managing Director
Tamil Nadu State Transport Corporation Limited,
No.12, Ramakrishna Road,
Salem.

.. Appellant/Respondent

Vs.

1.Jamuna

2.Suresh

3.Prakash

4.Silambarasan

.. Respondents/Petitioners

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 27.01.2017 made in M.C.O.P.No.285 of 2015 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Dharmapuri.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.S.C.Vishwanth

JUDGMENT

(The judgment of the Court was made by P.RAJAMANICKAM.J.,)

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 27.01.2017 made in M.C.O.P.No.285 of 2015 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Dharmapuri.

2.The first respondent herein as wife and respondents



2 to 4 as sons of the deceased Periyathambi, have filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.87,00,000/-, restricted to Rs.50,00,000/-, in respect of death of Periyathambi.

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3. On 27.11.2014 at about 10.00 p.m, the deceased Periyathambi, after finishing Foreman work at Pappireddipatti TNEB Office, was returning back to home in a two wheeler bearing Regn.No.TN.29-AR-5470 in Harur-Salem main road in front of IMS School and at that time, the appellant's driver drove the bus bearing Regn.No.TN.30-N-0445 in a rash and negligent manner and hit against the deceased Periyathambi. The deceased Periyathambi fell on the road and got fatal injury all over the body and died on the spot. The deceased was of 50 years of age and survived by his wife and three sons, the present respondents. At the time of the accident, the deceased was working as a Foreman in the TNEB and was earning a sum of Rs.45,498/- per month. The appellant herein has contested the said claim.

4. The tribunal, after considering the materials, placed before it, found that the accident was occurred due to the negligence of the appellant's driver and awarded compensation as detailed below:

Monthly income of the deceased

as per pay slip

Rs.45,498/-

Annual income

45,498 x 12

Rs.5,45,976/-

Less 2 lakhs for standard deduction of income tax

Rs.2,00,000/-

Rs.3,45,976/-

Less 10% of income tax

Rs. 34,597/-

Next 3% of income tax from 34,597=1,037/-

(34,597 + 1,037=35,616) (10% + 3%)

(5,45,976-35,616=5,10,360)

+30% for future prospects in 5,10,360= 1,53,108/-

(5,45,976-34,597=5,10,360+30% 1,53,108 = 6,63,468/-)

The annual income comes to

Rs.6,63,468/-

$\frac{1}{4}$ th for (4 family members) deceased personal expenses

Rs.1,65,867/-



Rs.1,65,867- $\frac{3}{4}$ = 4,97601 x 13 = 64,68,813/-

13 multiplier to be applied for the age of the deceased as 50 plus

Towards love and affection Rs.40,000/-

Towards funeral expenses Rs.10,000/-

Towards consortium for 1st petitioner Rs.20,000/-

Hence, the petitioners are entitled for total compensation of

Rs.65,38,813/- . (Rupees Sixty five lakhs thirty eight thousand eight

hundred and thirteen only).

5.The learned counsel for the appellant has contended that as per the Service Register (Ex.P.16), the date of birth of the deceased was 13.06.1964 and the accident occurred on 23.11.2014 and as such, the age of the deceased as on the date of the accident was 50 years 5 months and 13 days. He further submitted that since the deceased has already completed 50 years and on the date of accident, was running 51 years, the Tribunal ought to have fixed the age of the deceased as 51 years, instead of 50 years. He further submitted that if the age of the deceased is fixed as 51 years, the proper multiplier to be applied would be 11, but the tribunal has wrongly selected the multiplier of 13. He further submitted that as per the judgments of the Honourable Supreme Court in Sarla Verma (smt) and Others Vs. Delhi Transport Corporation and another, reported in (2009) 6 Supreme Court Cases 121 and Rajesh and Others Vs. Rajbir Singh & Others, reported in 2013 (2) TN MAC 55 (SC), future prospects cannot be granted for those, who crossed 50 years, whereas, in this case, the tribunal has added 30% income of the deceased towards future prospects.

6.Normally, the completed years alone will be taken into account. Merely because on the date of death, the deceased has completed 50 years 5 months and 13 days, it would not be proper to fix his age as 51 years. As per the decision in Sarla Verma (smt) and Others Vs. Delhi Transport Corporation and another (supra), the multiplier for the age group between 46 to 50 years would be 13. Therefore, we are of the view that the tribunal has applied proper multiplier.

7.In Sarla Verma (smt) and Others Vs. Delhi Transport



Corporation and another (supra), the Hon'ble Supreme Court has held that 30% of the salary has to be added towards future prospects, if the age of the deceased was 40 to 50 years. It was further held that there should be no addition, where the age of the deceased is more than 50 years.

8. In Rajesh and Others Vs. Rajbir Singh & Others, (supra), the Hon'ble Supreme Court has held that it will be just and equitable to provide an addition of 15% of salary in the case, where the victim is between the age group of 50 to 60 years towards future prospects.

9. In this case, since the age of the deceased was fixed as 50 years, as per Sarla Verma's case, 30% of the salary has to be added towards future prospects and therefore, the tribunal has rightly added 30% of salary towards future prospects.

10. The appellant has not raised any objection with regard to the compensation awarded by the tribunal on other heads. Therefore, we are of the view that this Civil Miscellaneous Appeal sans merits and the same is liable to be dismissed.

11. In the result, this Civil Miscellaneous Appeal is dismissed and the award, dated 27.01.2017 passed in M.C.O.P.No.285 of 2015, by the Motor Accident Claims Tribunal, Principal District Judge, Dharmapuri is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

vs
TO

1. Motor Accident Claims Tribunal,
Principal District Judge, Dharmapuri.

3. The Record Keeper, V.R. Section,
Madras High Court, Madurai.

+1cc to Mr.D.Venkatachalam, Advocate SR.No.18949
+1cc to Mr.S.C.Viswanath, Advocate SR.No.19788

C.M.A.No.3495 of 2017

KAN(CO)
GN(16/03/2018)