IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.02.2017
CORAM
THE HON'BLE Dr.JUSTICE S.VIMALA
C.M.A.No.391 of 2017
and C.M.P.No.2795 of 2017

The Managing Director,
Metropolitan Transport Corporation
[Chennai Division] Ltd.,
Pallavan Salai, Chennai-2. ... Appellant/Respondent

Vs.

1.D.Subramani
2.Vijayalakshmi
G.Karna [Since died]
3.U.Manimegalai
4.S.Uma
5.Vaidhagi ... Respondents/Petitioner

Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 04.02.2013 made in M.C.O.P.No.4637 of 2007 on the file of the Motor Accident Claims Tribunal, [VI Court of Small Causes], Chennai.

For Appellant : Mr.S.Sivakumar

J U D G M E N T

The appellant has challenged the award dated 04.02.2013 passed in M.C.O.P.No.4637 of 2007 by the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai, on the ground that it is highly excessive and unreasonable.

2.In the accident that took place on 25.10.2007, the deceased, Govindasamy, aged 65 years, a pensioner, drawing a pension of Rs.6,467/= apart from earning Rs.3,000/= through real estate business, sustained grievous injuries and succumbed to the same. The legal heirs of the deceased filed a claim petition claiming a sum of Rs.6,00,000/- as compensation. The Tribunal, considering the oral and documentary evidence, awarded compensation in a sum of Rs.5,50,208/=, the break up of which are as hereunder :-

Pecuniary Loss	-	Rs.5,30,208/-
Funeral Expenses	-	Rs. 10,000/-
Loss of Love & Affection	-	Rs. 10,000/-
Total	-	Rs.5,50,208/-

The Tribunal, while awarding the above compensation, took note of the fact that claimants 2 to 6, being married daughters, were not dependent on the deceased and, therefore, no compensation was awarded to them.

3.Heard the learned counsel appearing for the appellant and perused the materials available on record.

4.The Tribunal, on the basis of the post mortem certificate, Ex.P-2, fixed the age of the deceased at 71, though in the claim petition it has been stated as 65 years. Since the deceased was a retired railway employee, earning a pension of Rs.6,467/- and further earning Rs.3,000/- by doing real estate business, quantified the total earning of the deceased at Rs.9,467/- and deducting 1/3rd towards his personal expenses, fixed the contribution to the family at Rs.6,312/-. Applying the ratio laid down in Sarla Verma's case reported in 2009[6] SCC 121, the Tribunal adopted a multiplier of 7 and, accordingly, arrived at the pecuniary loss at Rs.5,30,208/- (Rs.6312 X 12 X 7). The Tribunal, further, awarded a sum of Rs.10,000/- towards Funeral Expenses and a sum of Rs.10,000/- towards Loss of Love & Affection and, in all awarded a sum of Rs.5,50,208/- and rounded off the same to Rs.5,50,000/-.

5.It is the submission of the learned counsel for the appellant that the amount awarded under the head 'pecuniary loss' is on the excessive side. It is further submitted by the learned counsel for the appellant that the monthly income fixed at Rs.9,467/- is not borne out by records and it is excessive and the same needs to be interfered with. There is no evidence to show that the pension received by the deceased would be payable to the family after the death of the deceased. Hence, the Tribunal is right in calculating the pension.

6.Though such a contention is raised by the learned counsel for the appellant, the same deserves to be rejected. The claimants have produced Ex.P-3, copy of the bank pass book showing the pension credit every month. Therefore, the amount received as pension is beyond question. The deceased was said to be engaged in real estate business and earning a sum of Rs.3,000/- per month. The age of the deceased at the time of accident, as per the post-mortem certificate is 71. Retired persons normally engage themselves in some avocation so as to keep themselves in a fit condition so as to avoid health related issues. Real estate business is one such type of business, which is often ventured into by retired persons, as the same does not involve much expenditure and at the same time, yields return. The sum of Rs.3,000/- said to be earned by the deceased through the above said avocation cannot be said to be on the higher side. Real estate business involves brokerage of house to brokerage of vacant lands. Therefore, the earning of the deceased by way of real estate business, in the present day scenario, cannot be said to be excessive. Taking the above into consideration, the Tribunal has fixed the monthly earnings of the deceased through real estate dealings at Rs.3,000/=. Taking the total earnings at Rs.9,467/= and deducting 1/3rd towards personal expenses, the Tribunal has adopted the multiplier of 7 and quantified the pecuniary loss, which, by no stretch of imagination, could be said to be excessive or unreasonable. Further, the compensation awarded under the head loss of love and affection is on the lower side, but this Court is not inclined to interfere with the said award of compensation. Therefore, this Court is of the considered opinion that no interference is called for with the well considered findings of the Tribunal.

7.For the reasons stated above, this appeal being devoid of merits is liable to be dismissed and, accordingly, the same is dismissed confirming the award passed by the Tribunal. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

8.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, if any, already deposited, to the credit of MCOP No.4637/2007 on the file of the Motor Accident Claims Tribunal (VI Court of Small Causes), Chennai, 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 through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gya/GLN
To
1.The VI Court of Small Causes,
Motor Accidents Claims Tribunal, Chennai.

2.The Section Officer
V.R.Section
High Court, Madras.(2 copies)

C.M.A.No.391 of 2017
and
C.M.P.No.2795 of 2017

NMI(CO)
sm:5.2.2018