

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.01.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.54 of 2017
and C.M.P.No.537 of 2017

The Managing Director,
TNSTC Villupuram Limited,
Villupuram.

... Appellant/Respondent

versus

1. Malliga
2. Vadivelu
3. Rukmani

...Respondents/Petitioners

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.06.2014 made in M.C.O.P.No.189 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court), Gingee.

For Appellant : Mr.A.Damodharan

JUDGMENT

The deceased, Mani, aged 45 years, running a General Store and thereby, earning a sum of Rs.15,000/- per month, met with an accident that took place on 28.01.2009 and succumbed to the injuries sustained in the accident. Therefore, the legal representatives of the deceased filed a claim petition claiming compensation in a sum of Rs.20,00,000/=.

2. The Tribunal, on a consideration of oral and documentary evidence, awarded compensation in a sum of Rs.4,21,000/-, the break-up details of which are as under:

Loss of dependency	-	Rs.3,96,000/-
Loss love and affection	-	Rs. 15,000/-
Loss of consortium	-	Rs. 5,000/-
Funeral Expenses	-	Rs. 5,000/-

Total - Rs.4,21,000/-

Challenging the award as excessive, the Transport Corporation has filed this appeal.

3. Though very many grounds have been raised in the appeal, however, at the time of argument, the learned counsel for the appellant has restricted his argument to the quantum of compensation alone and therefore, this Court is not venturing into the other grounds raised by the appellant.

4. Learned counsel appearing for the appellant submitted that there being no proof for income of the deceased, the fixation of notional income at Rs.4,500/- p.m. is on the higher side and the Tribunal should have fixed the income at Rs.3,000/-. He further submitted that the Tribunal ought to have deducted 50% from the annual income of the deceased towards personal expenses instead of 1/3rd deduction. Hence, the award requires to be reduced.

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

6. A perusal of the award passed by the Tribunal reveals that on the side of the claimants, Ex.P4-Postmortem report has been marked, which shows the age of the deceased as 55 years, whereas, in the claim petition, the age of the deceased was mentioned as 45 years. Hence, the Tribunal has fixed the age of the deceased as 55 years based on Ex.P4. So far as the avocation of the deceased is concerned, it is claimed in the claim petition that the deceased was running a General Store and earning a sum of Rs.15,000/-. However, no proof has been filed by the claimants to substantiate the same. In the absence of any documentary evidence, the Tribunal has fixed the monthly income of the deceased at Rs.4,500/- and considering the number of members, the Tribunal deducted 1/3rd amount (i.e.1,500/-) towards personal expenses and quantified the contribution of the deceased to the family at Rs.3,000/- p.m. Based on the age of the deceased at 55 years, the Tribunal has adopted the multiplier of 11 and quantified the compensation towards loss of dependency at Rs.3,96,000/- (Rs.3,000 x 12 x 11). The Tribunal has also awarded a sum of Rs.15,000/- towards loss of love and affection and Rs.5,000/- towards loss of consortium and Rs.5,000/- towards transport expenses.

7. Though it is the contention of the learned counsel for the appellant that the Tribunal ought to have fixed the monthly income at Rs.3,000/=-, however, the said contention is liable to be rejected for the simple reason that the Supreme Court, in Syed Sadiq - Vs - United India Insurance Co. (2014 (2) SCC 735) has fixed the monthly income at Rs.6,000/- even for a vegetable vendor. The Tribunal, following the ratio laid down in the said decision, has fixed the monthly income at Rs.4,500/-, which, in the considered view of this Court is justifiable and warrants no interference. Further, the Tribunal, as per the ratio laid down in the decision of the Apex Court in Sarla Verma's case (2009 5 LW 561), has deducted 1/3rd amount towards personal expenses and adopted the correct multiplier of 11, while quantifying the compensation. Therefore, the compensation quantified towards loss of dependency cannot be said to be excessive and warrants no interference.

8. Insofar as the compensation awarded under the other heads, viz., loss of love and affection, loss of consortium and funeral expenses are concerned, the compensation awarded is very low. However, at this point of time, this Court is not inclined to enhance the compensation awarded under the non-pecuniary heads. Accordingly, the compensation awarded under the above heads are confirmed.

9. For the reasons aforesaid, there being no merits the appeal is liable to be dismissed. Accordingly, the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10. The appellant/Transport Corporation is directed to deposit the entire amount of compensation as awarded by the Tribunal, less the amount, if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. The claimants are entitled to compensation as per the ratio of the apportionment made by the Tribunal. On such deposit being made, the Tribunal is directed to transfer the respective share amounts of the claimants directly to their bank account through RTGS within a period of two weeks thereafter.

Sd/--

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

1. The Subordinate Judge, Motor Accident Claims Tribunal
(Sub Court), Gingee.

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

+1cc to Mr.A.Damodaran, Advocate Sr.No.4520/18

CA(CO)

sm:27.3.2018

C.M.A.No.54 of 2017