IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.02.2017

CORAM

THE HON'BLE Dr.JUSTICE S.VIMALA

C.M.A.No.791 of 2017
and C.M.P.No.4158 of 2017

Tamil Nadu State Transport Corporation Ltd.,
Usilampatti Road,
Thirumangalam Depot,
Madurai District 625 706.
... Appellant

Vs.

1.Anthony Ammal
2.Arokiya Selvi [minor]
3.Arokiya Raj [minor]
4.Anthony Raj [minor]
5.Jenifer [minor]
6.D.Sebasthiammal [died]
Minors 2 to 5 are rep. by their mother and
next friend F.Anthony Ammal ... Respondents

Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.09.2006 made in M.C.O.P.No.4182 of 1999 on the file of the Motor Accidents Claims Tribunal, [IV Court of Small Causes], Chennai.

For Appellant : Mr.N.Anand

J U D G M E N T

Challenging the award dated 19.09.2006 passed in M.C.O.P.No.4182 of 1999 by the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai, as excessive, the appellant/Transport Corporation has filed this appeal.

2.In the accident that took place on 13.08.1998, the deceased, Michalesamy @ Michale, aged about 55 years, breathed his last. The legal representatives of the deceased, viz., the wife and children filed claim petition claiming a sum of Rs.6,50,000/- as compensation.

3.The Tribunal, considering the oral and documentary evidence, awarded compensation in a sum of Rs.5,60,000/-, the break up of which are as hereunder :

i. Funeral expenses	-	Rs. 5,000/-
ii.Loss of happy life to the petitioners	-	Rs. 5,000/-
iii.Mental agony	-	Rs. 10,000/-
iv.Loss of income [3000X12X15]	-	Rs.5,40,000/-
Total		Rs.5,60,000/-

Challenging the award of compensation as excessive, the Transport Corporation has preferred this appeal.

4.Though very many grounds have been raised in the appeal assailing the order of the Tribunal, however, at the time of argument, learned counsel appearing for the appellant restricted his argument only insofar as the quantum of compensation awarded by the Tribunal and, therefore, this Court is dealing only with the said issue pertaining to quantum of compensation.

5.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. 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.

6.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.

7.A perusal of the award passed by the Tribunal reveals that on the side of the claimants, Ex.P7-Ration card has been marked, which shows the age of the deceased as 38 years, whereas, in the claim petition, the age of the deceased was mentioned as 40 years. Hence, the Tribunal has fixed the age of the deceased as 38 years based on Ex.P7. So far as the avocation of the deceased is concerned, it is claimed in the claim petition that the deceased was proprietor of a Cement Works and owner of a van and earning a sum of Rs.5,000/-. 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 40 years, the Tribunal has adopted the multiplier of 15 and quantified the compensation towards loss of income at Rs.5,40,000/- [Rs.3,000 x 12 x 15]. The Tribunal has also awarded a sum of Rs.5,000/- towards funeral expenses and

Rs.5,000/- towards loss of happy life to the petitioners and Rs.10,000/- towards mental agony.

8.Though it is the contention of the learned counsel for the appellant that the Tribunal has fixed the monthly income at higher side, 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.

9.Insofar as the compensation awarded under the other heads, viz., funeral expenses, loss of happy life to the petitioners and mental agony 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.

10.The appellant/Transport Corporation is directed to deposit the entire award amount along with interest at 7.5% per annum from the date of petition till the date of deposit, 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 claimants/respondents through RTGS within a period of two weeks thereafter, as apportioned by the Tribunal. The amount payable to the minor claimants shall be kept in interest bearing fixed deposit, till they attain majority.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

gya/GLN
To

1.The IV Judge, Small Causes Court
Motor Accidents Claims Tribunal,
[IV Court of Small Causes], Chennai

2.The Section Officer,
V.R.Section, High Court,
Madras.

3.The Managing Director,
Metropolitan Transport Corporation Ltd.,
Anna Salai, Chennai-2.

C.M.A.No.791 of 2017
and
C.M.P.No.4158 of 2017

KJI(CO)
SP(27/03/2018)