

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2017

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A. No.876 of 2017

The Managing Director,
Tamil Nadu Express State Transport Corporation,
Near Pallavan House,
Anna Salai,
Chennai.

.... Appellant/
Respondent in Tribunal Below

Versus

Sundari

... Respondent/
Petitioner in Tribunal Below

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decretal order and Judgment passed by the Motor Accidents Tribunal - Sub Court, Gingee in M.C.O.P. No.306 of 2010, dated 24.03.2014.

For Appellant : Mr.K.S.Suresh

JUDGMENT

The deceased, Jayaraman, aged 47 years, earning a sum of Rs.9,000/-, as an old Iron Merchant, met with an accident on 14.10.2010. Immediately, he was taken for treatment to the Government Hospital, Chennai but despite treatment, he succumbed to the injuries and died on 29.10.2010. The daughter of the deceased has filed the claim petition for compensation claiming for a sum of Rs.15,00,000/-.

2. The Tribunal on a consideration of materials, both oral and documentary, awarded compensation in a sum of Rs.3,61,000/-, the break up of which are as under :-

Loss of dependency		
Rs.4500 - $1/2 \times 12 \times 13$	:	Rs.3,51,000/-
Loss of love and affection	:	Rs. 5,000/-
Funeral expenses	:	Rs. 5,000/-

Total	:	Rs.3,61,000/-

Challenging the compensation granted as excessive, the appellant has filed the present appeal.

3. The transport Corporation has challenged this award on the ground that the Tribunal has adopted higher multiplier as the age of the deceased was not properly proved by the claimant and evidence has not been properly appreciated to prove the negligence on the part of the driver. Furthermore, as the claimant, being the married daughter of the deceased, she cannot be termed as dependent on the deceased. Therefore, the claim laid by her is unsustainable. Accordingly, the learned counsel for the appellant prays that the amount awarded is excessive and the same is liable to be interfered with.

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

5. A perusal of the order of the Tribunal reveals that based on Ex.P9 the age of the deceased has been fixed at 48. Further, based on the composition of the family, deduction towards the personal expenses has been made at 50%. For the age group of 45 to 50 years, the proper multiplier has been adopted by the Tribunal. Therefore, this Court is of the considered opinion that the quantification of compensation under the head loss of income cannot be said to be excessive.

6. However, the main contention advanced by the learned counsel for the appellant is that the claimant, being the married daughter of the deceased cannot be said to be dependent on the deceased and, therefore, the compensation awarded under the head loss of income is wholly unsustainable.

7. There is no dispute that the claimant is married and is leading a separate family. But, mere marriage and having a separate family alone cannot be a ground to reject the claim for loss of income of the deceased. It is not only the dependency at the point of time of death which is necessary for the award of compensation, but future dependency also. A father naturally leaves his inheritance to his children on his passing away under normal circumstances. Whatever the parents earn is for the children to enjoy. The deceased was earning his livelihood being an scrap iron merchant. Definitely, the deceased would be providing her with his savings as and when his daughter requires. The untimely death of the deceased due to the accident has curtailed the receipt of the daughter of her father's benevolence by way of giving her money in times of need. Therefore, what is earned by the deceased is lost to the claimant. Therefore, the same needs to be compensated.

8. Useful reference in this regard can be had to the judgment of the apex Court in *Manjuri Bera - Vs - Oriental Insurance Co. Ltd.* (2007 (10) SCC 643), wherein the Supreme Court has categorically held that even the married daughter is entitled to maintain claim for compensation in case of death of the parent, though not actually dependent on the deceased, as she being a legal representative of the deceased, is entitled to a share in the estate of the deceased.

9. The above ratio laid down by the Supreme Court is squarely applicable to the facts of the present case. The claimant, being the legal representative of the deceased, is entitled to a share in the estate of the deceased and she cannot be deprived of her legal entitlement on the mere ground that the question of dependency. Therefore, the contention of the appellant that the married daughter is not a dependent and, therefore, the compensation awarded to her is not sustainable is liable to be rejected.

10. Insofar as the compensation awarded under the other heads are concerned, the Tribunal has awarded paltry sum of Rs.5,000/- towards funeral expenses and Rs.5,000/- towards love and affection. The above amount, cannot be said to be excessive. Rather, the said amount is below par than what is normally being awarded under the said heads.

11. For the reasons aforesaid, this civil miscellaneous appeal, being devoid of merits, is liable to be dismissed and, accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

12. The appellant / Transport Corporation is directed to deposit the entire award amount, along with interest and costs as ordered by the Tribunal, 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 claimant through RTGS within a period of two weeks thereafter.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

vsi2/GLN

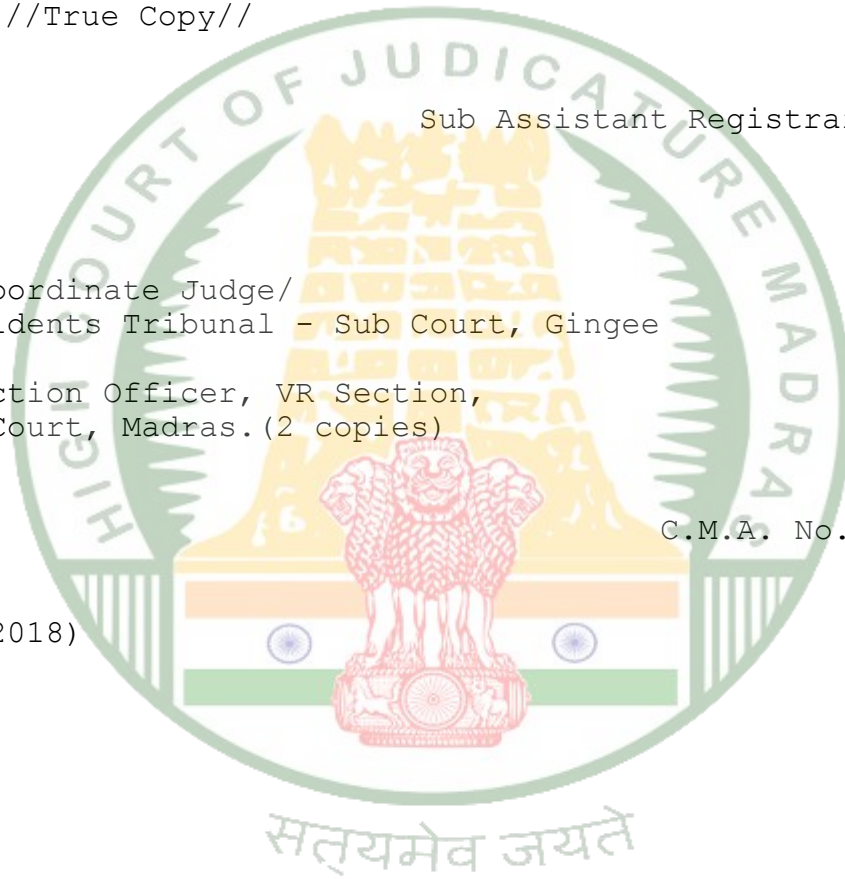
To

1. The Subordinate Judge/
Motor Accidents Tribunal - Sub Court, Gingee

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

C.M.A. No.876 of 2017

ssv(CO)
TR(28/03/2018)



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