IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.972 of 2017
and CMP No.4842 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam ... Appellant/1st Respondent

vs.

1. A.Poongothai
2. Azhaganandan ..Respondent 1 & 2/Petitioners
3. The Bajaj Allianz General Insurance Company Limited, Coimbatore.
... 3rd Respondents/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order in MCOP No.369 of 2008 dated 10.04.2013 on the file of Motor Accidents Claims Tribunal, (Principal District Judge), Villupuram.

For Appellant : Mr.G.Ramar

J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

In the accident, which occurred on 12.04.2008, son of the respondents working as Marketing Executive in Mangalore Chemicals and Fertilizers Limited, Vellore, aged about 27 years died. According to the claimants, he was Marketing Executive and earned Rs.27,000/- per month.

2. Supporting the avocation and income, respondents/claimants have filed Ex.P6, salary certificate for February 2008 and Ex.P7, income tax assessment. Going through the same, the tribunal fixed the monthly income of the deceased as Rs.13,461/-. As the deceased was a bachelor, deducted 50% towards the personal and living expenses and by applying '17' multiplier, computed the loss of contribution to the family as Rs.13,73,022/- and rounded off the same to Rs.13,73,030/-. That apart, the tribunal has awarded Rs.5,000/- for funeral expenses and Rs.40,000/- for loss of love and affection.

3. Deceased was aged 27 years. The tribunal ought to have added 50% of the income under the head future prospects and computed the loss of contribution to the family. Compensation of Rs.5,000/- under the head funeral expenses is less. Compensation of Rs.40,000/- for loss of love and affection is also less. There is no award under the head transportation and conventional damages. While determining the monthly income of the deceased as Rs.13461/- tribunal has detailed as hereunder.

> "PW1 Azhaganandan the father of the deceased has stated that his son was working as marketing Executive in a Managalore Chemicals and Fertilizers at Vellore and earned Rs.27,000/- per month. He was aged about 27 years and remained a bachelor at the time of accident. In Ex.P5, Driving License, the age of the deceased is mentioned as 20-12-1980. The accident happened on 12.04.2008. Ex.P2, is the copy of Post-mortem certificate of the deceased, which shows that age of the deceased was 27 years at the time of accident. In the absence of any acceptable evidence, the age mentioned in the postmortem certificate has to be considered. Therefore, the age of the deceased is fixed as 27 years. Ex.P9, is the Legal heir certificate issued by the Tahsildar, from which it is seen that both the petitioners are legal heirs of the deceased Jayaprakash. On the side of the petitioners, to prove the income of the deceased Ex.P6, Salary certificate and Ex.P7, Income tax certificate are filed. Ex.P7, is relating to the Assessment Year 2007-08. In Ex.P7, gross salary is mentioned as Rs.2,60,396/-. It cannot be fixed the monthly income of the deceased, on the basis of Ex.P7, since the pay and other allowances are not given separately. On a perusal of Ex.P6, Salary certificate issued for February 2008, it came to know that the deceased earned Rs.50,878/- as the following rates; basic pay Rs.9,615/- conveyance allowance - Rs.2,000/- House rent allowances - Rs.3,846/-, Sales incentive Rs.24,990/-, Medical Reimbursement - Rs.6,043/-, Personal Allowance - Rs.2,784/-, Telephone Reimbursement - Rs.1,600/-, Except Basic pay of Rs.9,615/- and House rent allowance of Rs.3,845/- all other allowance cannot be treated as income of the deceased. Medical reimbursement, Telephone Reimbursement are payable only after incurring the same. Personal allowance, conveyance allowance and Sales Incentive are only payable to the deceased, while he was alive. Therefore, the monthly income of the deceased is fixed as Rs.13,461/-. If it is so, the annual income of the deceased will be Rs.1,61,532/-. As per the guideline issued in the second schedule of the motor vehicle act, the proper multiplier for the age group of the deceased would be 17. Therefore, the

overall loss of income of the deceased would come to Rs.1,61,532 x 17 = Rs.27,46,044/-. Admittedly, the victim is a bachelor and therefore in obedience to the law declared by the Hon'ble Supreme Court in Sarla Verma case 50% should be treated as his personal expenses. Hence half of the above total amount should be deducted, towards the expenses of the deceased, if he would have incurred, had he been alive, which shall come to Rs.13,73,022/-, thereby leaving a reminder of Rs.13,73,022/-. So the overall loss of income calculated and fixed as Rs.13,73,022/- which is rounded to Rs.13,73,030/-."

4. Going through the impugned judgment, we are of the view that the tribunal has properly considered the entries in Ex.P6, salary certificate issued to the deceased for the month of February 2008 and Ex.P7, Income Tax certificate. We do not find any illegality in computing the monthly income.

5. In view of the above discussion, we find no merits in the appeal warranting intervention. Hence, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

6. Consequent to the dismissal of the appeal, the Managing Director, Tamilnadu State Transport Corporation, Kumbakonam, is directed to deposit the entire award amount, with proportionate interest and costs, less the statutory deposit, to the credit of MCOP No.369 of 2008 on the file of Motor Accidents Claims Tribunal, (Principal District Judge), Villupuram, within a period of four weeks from the date of receipt of a copy of this order.

7. On such deposit being made, respondents/claimants are permitted to withdraw their share with proportionate interest, as apportioned by the tribunal, by making necessary applications.

8. Registry is directed to send a copy of this order to the Motor Accidents Claims Tribunal, (Principal District Judge), Villupuram, and display the same in the notice Board that C.M.A.No.972 of 2017 filed by the Managing Director, Tamil Nadu State Transport Corporation, Kumbakonam, against the judgment in MCOP No.369 of 2008, has been dismissed, with a direction, to the Transport Corporation, to deposit the entire award amount, to the credit of MCOP No.369 of 2008 on the file of Motor Accidents Claims Tribunal, (Principal District Judge), Villupuram, within a period of four weeks from the date of

receipt of a copy of this order. Motor Accident Claims Tribunal is further directed to mention the M.C.O.P number in the said notice. The Tribunal is directed, to disburse the amount only on proper identification and proof.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

The Motor Accident Claims Tribunal,
(Principal District Judge), Villupuram
- is directed to affix, as ordered in Judgment

+1cc to Mr.D.Venkatachalam,Advocate sr.15813

C.M.A.No.972 of 2017
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ss(4/4/2017)