

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :01.12.2016

Judgment Pronounced on :15.09.2017

CORAM: THE HON'BLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1385 of 2009
and M.P.No.1 of 2009
and Cros.Obj.No.11 of 2014

CMA.No.1385 of 2009 :

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division No.II
Vellore. ... Appellant/Respondent

Vs

1.Kasturi
2.M.Subramanian ... Respondents/Appellant

Cros.Obj.No.11 of 2014

1.Kasturi
2.M.Subramanian ... Cross Objectors

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division No.II
Vellore. ... Respondent

Prayer in CMA.No.1385 of 2008: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award made in MCOP.No.173 of 2005 dated 29.04.2008 on the file of the Motor Vehicles Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

Prayer in Cros.Obj.No.11 of 2014: Cross Objection filed under Order 41 Rule 22 of CPC to enhance the compensation from Rs.4,23,000/- to Rs.10,00,000/- with higher rate of interest.

In CMA.No.1385 of 2005 :

For Appellant : Mr.S.V.Vasantha Kumar
For Respondents : Mr.Mohan Choudhary

In Cros.Obj No.11 of 2014:

For Cross Objectors : Mr.Mohan Choudhary
For Respondent : Mr.S.V.Vasantha Kumar

COMMON JUDGMENT

On 06.12.2003, Udayakumar was riding his bicycle along Jawaharlal Nehru 100 Feet Road at Ashok Nagar, when fate struck him in the form of a State Transport Corporation bus bearing No.TN 23N 1430, that knocked him down from behind and killed him on the spot. For the loss suffered, his parents preferred a claim for Rs.10,00,000/-, whereas the Tribunal has passed an award for Rs.4,23,000/-. While the Insurance Company, has preferred an appeal challenging chiefly the quantum of compensation awarded by the Tribunal, the claimants/respondents preferred cross objection seeking enhancement of compensation.

2. The deceased at that relevant time was 22 years and was working as a mason and stated to be earning Rs.350/- a day. The Tribunal, however has fixed his monthly income notionally at Rs.3,000/- and after deducting 1/3rd towards his personal expenses, has determined his monthly support to his family at Rs.2,000/-. Accordingly, his annual support to his family was determined at Rs.24,000/-, and since he was 22 years at that time, the Tribunal adopted 17 as the multiplier, and awarded Rs.4,08,000/- towards loss of support to the claimants/cross-objectors. Including the compensation granted on other heads of non-pecuniary damages, it arrived at the total compensation payable at Rs.4,23,000/- and directed the same to be paid with interest at 7.5% per annum. The break-up of compensation awarded on various heads by the Tribunal is tabulated below :

Heads of compensation	Amount awarded (Rs.)
Towards loss of support	4,08,000.00
Funeral expenses	5,000.00
Towards loss of love and affection @ Rs.5,000/- each x 2	10,000.00
Total :	4,23,000.00

3. The learned counsel for the appellant/Transport Corporation contended that the deceased at that relevant time was a bachelor and in the case of a bachelor, the Tribunal ought

to have deducted 50% towards his personal expenses. Secondly, the Tribunal should have adopted the multiplier that corresponds to the age of the mother of the victim.

4. Per contra, the learned counsel for the claimants/cross objectors contended that their son at that relevant time was working as a mason and was earning Rs.250/- per day and necessarily Rs.7,500/- per month. So far as the choice of multiplier is concerned it has been settled Vide the authoritative pronouncement of the Supreme court in Amrit Bhanu Shali & others Vs.National Insurance Co. Ltd., & Others [2012(2) TNMAC 321 (SC)], that the evaluation of compensation on the head of loss of dependency of the parents arising out of the death of their bachelor son should be based on the multiplier corresponding to the age of the deceased. Accordingly, the age of the victim should be reckoned and the choice of multiplier should be 18 and not 17. On the heads of non-pecuniary damages, the compensation awarded was insensitively low.

5. There is some merit in the contention of counsel for both sides. Since the victim was a mason aged 22 years, by 2003-2004 standards, the notional monthly income of Rs.3,000/- as fixed by the Tribunal appears reasonable. However, the Tribunal was in error in deducting only 1/3rd towards the personal expenses of the victim. At the same time, based on Sarla Verma dictum another 50% has to be awarded towards future prospects of increase in income. Ultimately it does not bring about any change and the multiplicand would be Rs.3,000x12. Accordingly, the total compensation payable on the head of loss of support to the family would be [3000x12x18] Rs.6,48,000/-. Towards loss of love and affection for the parents, Rs.25,000/- each is awarded. Towards funeral expenses Rs.10,000 is awarded. In all, the compensation amount is enhanced from Rs.4,23,000/- to Rs.7,08,000/-, the details of which is indicated below :

Heads of compensation	Amount awarded (Rs.)
Towards loss of support	6,48,000.00
Funeral expenses	10,000.00
Towards loss of love and affection @ Rs.25,000/- each	50,000.00
Total :	7,08,000.00

6. In the result, the appeal is dismissed and the cross objection is partially allowed and the compensation is enhanced to Rs.7,08,000/-. The appellant is directed to deposit the entire award of compensation along with accrued interest at 7.5% p.a, less any amount already deposited, within six weeks from

the date of receipt of a copy of this order, whereupon the claimants/cross objectors are permitted to withdraw the same forthwith. The award is directed to be shared among the claimants in the same ratio as was directed by the Tribunal. The claimants are directed to pay the necessary court fee for the enhanced portion of the award amount. The claimants are not entitled to the interest of award for the period of delay in filing the cross objection. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ds

To

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

2.The Section Officer,
V.R.Section,
High Court, Madras 104.

+2cc's to Mr.V.Mohan Chaudary, Advocate, S.R.No.67828

CMA.No.1385 of 2009
and
Cros.Obj.No.11 of 2014

VG II(CO)
CA(20/11/2017)

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