IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

C.M.A.NO.367 OF 2002

1.Tmt.Devagi (Died)
M.Audikesavan
(Mr.M.Audikesavan was substituted as the guardian of the minor appellants 3 and 4)

2.Srividhya
(The second appellant name was changed as Srividhya instead of Vijaya in which wrongly typed in the cause title, as per the Court order dated 09.04.2016.
The second appellant declared as a major and discharge the guardianship the 1st appellant vide order of Court dated 21.04.2016 made in CMP No.33 of 2014 in CMA No.367 of 2002)

3.Rajini (Minor)
4.Selvamuthukumar (Minor)
(Appellants 2 to 4 represented by the 1st appellant) .. Appellants

Versus

1.Tamil Nadu State Transport Corporation
Kumbakonam Division.

2.Swaminathan

3.United India Insurance Co. Ltd.,
Mayiladuthurai. .. Respondents

PRAYER: Civil Miscellaneous appeal filed under Section 173 of the Motor Vehicles Act against the order dated 27.09.2001 passed in M.A.C.T.O.P.No.37/2001 by the learned Principal Subordinate Judge, Mayiladuthurai, in awarding lessor compensation of Rs.2,47,000/- over the claim of Rs.5,00,000/-.

For Appellants : Ms.R.Rathna Thara
For Respondent-1 : Mr.S.Partheeban
for Mr.Krishnamoorthy

J U D G M E N T

This appeal by the claimants is for enhancement of the compensation awarded in M.A.C.T.O.P.No.37 of 2001 on the file of Motor Accident Claims Tribunal (Principal Subordinate Judge) Mayiladuthurai.

2. The first appellant Tmt.Devagi is the wife of Late Natarajan, who died in a road traffic accident involving a Car driven by him and a bus owned by the first respondent – Transport Corporation. The owner of the Car is the second respondent and the third respondent is the insurer of the said Car. Late Natarajan left behind him four dependents, namely, the appellants, the first of whom is the widow Tmt.Devagi, who

was then aged about 30 years and three minor children aged between 5 years and eight months. The appellants 2 and 3 are minor girl children. During the pendency of this appeal, Tmt.Devagi passed away due to terminal illness in 2007. The second appellant, namely Srividhya (wrongly typed as Vijaya) has attained majority and the cause title was accordingly amended and the guardianship was discharged vide order dated 09.04.2016.

3. The issues which falls for consideration in this appeal are namely;

(i) Whether the salary of the deceased was calculated correctly by the Tribunal.

(ii) Whether the multiplier adopted was proper.

(iii) Whether the deduction for personal expenses of the deceased was at the correct percentage; and

(iv) Whether the compensation awarded under the non pecuniary heads were just and proper.

4. The Transport Corporation, namely, the first respondent, which resisted the claim before the Tribunal contended that the accident occurred due to the rash and negligent driving of the deceased Natarajan. This aspect of the matter was considered by the Tribunal and in paragraph no.7 of the order, the Tribunal has elaborately discussed the evidence, appreciated the same, in particular, the cross examination of the Conductor of the bus and came to a conclusion that the accident occurred due to the rash and negligent driving of the bus owned by the Transport Corporation. There is no appeal at the instance of the Transport Corporation on the said finding. Thus, the finding regarding negligence stands confirmed and it is fixed on the bus owned by the first respondent Transport Corporation.

5. With regard to the salary of the deceased, the claimants contended that the deceased was a Driver, having professional Driving Licence and employed by the second respondent and was earning a salary of Rs.6,000/- per month. However, this appears to be the oral evidence of the deceased first appellant, who examined herself as P.W.1. Though the owner of the vehicle and the insurance company were impleaded as

respondents 2 and 3 and the third respondent though filed a counter, did not specifically deny the plea raised by the claimants with regard to the income of the deceased. That is, there is no specific averment made in the counter filed by the third respondent - insurance company that the deceased did not earn Rs.6,000/- as monthly salary, nor there was any other facts pleaded in the counter affidavit. In other words, the counter affidavit is a bare denial. The Tribunal while faced with this situation ought to have assessed as what could/would have been paid as appropriate salary at the relevant time for a Driver of a private car. However, it adopted the salary of Rs.2,000/- per month.

6. With regard to the age of the deceased, the post-mortem report stated that the age is 29 years, whereas, the driving licence, which was marked as Ex.P5, shows that the deceased was 42 years. Thus, the Tribunal adopted the age of the deceased as 42 years which calls for no interference. However, with regard to the monthly salary, considering the fact that the deceased was employed as a professional Driver in the year 2000, the average salary prevailing at the relevant point of time for such private drivers was not less than Rs.4,500/-. This salary, if adopted, would

not only be a reasonable approach, but also be a just approach. Accordingly, this Court fixed the salary of the deceased at Rs.4,500/- per month.

7. The next issue is as to whether the multiplier adopted by the Tribunal at 15 was just and proper. It is not in dispute that in terms of the decision of the Honourable Supreme Court in ***SARLA VERMA VS. DELHI TRANSPORT CORPORATION [2009 (2) TNMAC 1 (SC)]*** taking the age of the deceased at 42 years, the proper multiplier will be 14. This fact is not disputed by the appellants. Thus, the correct multiplier to be adopted is 14.

8. The next issue is as to what would be the amount which would be taken for personal expenses. Once again relying upon the decision of the Supreme Court in the case of ***SARLA VERMA (cited supra)*** as the deceased had left behind him four dependents, the proper deduction towards personal expenses of the deceased would be $1/4^{th}$.

9. This leaves us with the only question with regard to non-pecuniary damages. It may be true that in the claim petition, specifically the amounts have not been claimed under different heads. Nevertheless, considering the facts and circumstances of the case, this Court is of the view that adequate compensation should be granted to the claimants, who are at present are the three children of the deceased, considering the hard facts of the present case.

10. As pointed out earlier, the deceased left behind him his young widow and three minor children, of whom, one was eight months at the relevant time. As of now, two of the claimants are still minors and the second appellant has attained majority only in 2016. Though the Court may not be fully justified in taking note of subsequent events to test the correctness of the award passed by the Tribunal, this Court cannot loose sight of the fact that the first appellant, the wife of the deceased also passed away in the year 2007 due to terminal illness. This has resulted in the three minor children being left under the care and custody of their maternal grandfather, who has already crossed 70 years.

11. The learned counsel for the appellants referred to the decision of the Honourable Supreme Court in ***RAJESH AND OTHERS VS. RAJBIR SINGH AND OTHERS [2013 (2) TNMAC 55 (SC)]*** and submitted that in the said case, the Supreme Court enhanced the award for loss of consortium from Rs.10,000/- to Rs.1,00,000/- and also enhanced the award for loss of love and affection / care and guidance to minor children to Rs.1,00,000/-. The decision rendered by the Supreme Court was considering the facts and circumstances of the particular case on hand. Therefore, the decision in the case of ***RAJESH (cited supra)*** can be considered as a basis for assessing as to what would be the just compensation under the head non-pecuniary damages.

12. The Tribunal awarded as sum of Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of love and affection. However, the Tribunal did not consider the fact that the first appellant (since deceased) lost her husband at a very young age and she is entitled to be compensated for the loss of consortium. Similarly, the three minor children were of the very tender age and they lost the love and affection / care and guidance of the father. Therefore, the Tribunal should have

endeavoured to award a reasonable amount under this head. Considering the facts and circumstances and also taking note of the fact that the children were all minors, this Court is of the view that under the head non-pecuniary damages, a sum of Rs.1,50,000/- would be the just compensation.

13. Accordingly, the appeal is allowed to the extent indicated below.

(i) The salary of the deceased is determined at Rs.4,500/- per month.

(ii) As the age of the deceased was 42 years at the time of accident, the multiplier to be adopted is 14.

(iii) After deducting personal expenses of the deceased at 1/4th of his income, the monthly income is determined at Rs.3375/- and the annual income is fixed at Rs.40,500/-. If the multiplier 14 is adopted, the total loss of income comes to Rs.5,67,000/-.

(iv) The total compensation under the head non-pecuniary damages is fixed at Rs.1,50,000/-.

CALCULATION OF COMPENSATION

Loss of income	-	Rs.5,67,000.00
Non-pecuniary damages	-	Rs.1,50,000.00
Total	-	**Rs.7,17,000.00**

14. The apportionment of the above amount shall be in terms of the award passed by the Tribunal. While effecting apportionment, the amount falling to the share of the first appellant (since deceased), from which the shares of the two minors have to be calculated, shall be kept in a deposit, as done with respect of the other amount paid as compensation till they attain the age of majority.

15. Out of the enhanced compensation payable, $1/4^{th}$ share payable to the first appellant (since deceased) shall be divided by 3, out of which, one share will be allotted to the second appellant permitting her to withdraw the entire amount. The remaining $2/3^{rd}$ shares shall be retained in deposit in any one of the Nationalised Banks till the appellants 3 and 4 attain majority. Similarly, in respect of the compensation payable to the second appellant, the same shall be permitted to be withdrawn by the

second appellant in full. The enhanced compensation for the appellants 3 and 4 shall be retained in fixed deposit in any one of the Nationalised Banks in an interest bearing account till they attain majority.

16. The first respondent Transport Corporation is directed to deposit the enhanced compensation amount with interest at 9% per annum to the credit of the Bank account of the learned Principal Subordinate Judge, Mayiladuthurai directly by NEFT or RTGS mode within a period of six weeks from the date of receipt of a copy of this order and intimate the deposit details to the Tribunal with a copy of the said Bank advise. The Tribunal is directed to credit the compensation amount as apportioned amount directly into the Bank account of the respective claimants by NEFT.

17. The award amount of the minor claimant / petitioner shall be deposited in a Nationalised Bank in a fixed deposit till the minor petitioner attains majority and the accrued interest shall be credited to the account of the guardian of the Minor petitioner regularly once in 3 months. The award amount of the minor petitioner will be directly

transferred into his Bank account after he attains majority through NEFT or RTGS mode.

18. With regard to interest, the Tribunal, taking into account the fact that the accident took place in the year 2000, awarded 9% interest.

19. The learned counsel for the first respondent - Transport Corporation submitted that the interest would be only 7.5% per annum taking note of the recent decisions of this Court in other appeals. However, this Court is of the view that this appeal is by the claimants for enhancement and taking note of the facts and circumstances of the case as well as the date of accident namely 01.02.2000, interest on the enhanced compensation shall be on same percentage, as awarded by the Tribunal, namely 9%. Furthermore, this Court is convinced to award interest at 9% per annum, since on earlier occasions, the Transport Corporation was not even willing to negotiate for a reasonable settlement before the Lok Adalat on more than five occasions.

20. The Civil Miscellaneous Appeal is allowed. No costs.

02.01.2017

Index : Yes/No
Internet : Yes/No
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To

1. Tamil Nadu State Transport Corporation
Kumbakonam Division.

2. United India Insurance Co. Ltd.,
Mayiladuthurai.

T.S.SIVAGNANAM, J.

TK

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