IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 16.12.2016

Judgement Pronounced on : 24.02.2017

CORAM: THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

C.M.A.No.3236 of 2004

State of Tamil Nadu
rep. By the District Collector,
Erode District. ... Appellant

Vs.

1. Periya Chellappan,
2. Thirumbayee
3. Chinnappon
4. Selvam
5. Selvamani,
6. Minor Sudha
7. Wahab. ... Respondents

Prayer**:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree made in M.C.O.P.No.285 of 2000 dated 24.07.2003 on the file of the Motor Accidents Claims Tribunal [Sub Court], Bhavani, Erode District.

For Appellant : Mr.M.Venugopal
Spl G.P. (C.S.)

For RR1 to 6 : Mr.D.Selvaraju

JUDGMENT

In a road accident that took place on 06.09.2000, one Chellamuthu, while walking along the road was knocked down by a jeep belonging to the

Government [the appellant herein], consequent to which, the victim died. Claiming compensation under various heads his legal representatives approached the Motor Accidents Claims Tribunal [Sub Court], Bhavani, Erode District, and on appreciation of evidence before it, the Tribunal passed an award of Rs.3,25,648/-, on various heads payable with interest at 9% per annum. The details are as below:

Heads	**Amount awarded by Tribunal**
Loss of income	2,19,648
Loss of love and affection	50,000
Loss of consortium	50,000
Funeral Expenses	5,000
Transport	1,000
Total	**3,25,648**

Challenging the same, the owner of the vehicle, viz., the Government has preferred this appeal.

2. One of the essential arguments advanced by the learned Special Government Pleader is that the victim was a life convict having been convicted by the Sessions Court, Erode in S.C.No.4 of 1998 and given the fact that he was a life convict for the reminder period, he could not have been presumed to have an opportunity to earn, and hence dependency cannot be calculated at the rate in which the Tribunal has assessed it. The Tribunal has partly considered this aspect and it has proceeded to

consider that if the deceased were to continue to be in prison he would have been there for 14 years atleast and accordingly added 13 years to his age [which was 45 years at the time of the accident] and then applied multiplier 8 appropriate to 58 years. In essence, the learned Special Government Pleader attacks this presumption of the Tribunal that the appellant would have been released on completion of 14 years, which in law, the Tribunal could not presume.

3. Countering the aforesaid argument of the learned Special Government Pleader, the learned counsel for the respondents/claimants submitted that the deceased Chellamuthu had challenged his conviction in Crl.A.No.447 of 1998 and it is during the pendency of this appeal before this Court, he died on 06.09.2000. He added that while under law his sentence of imprisonment has abated, it appears that the factum of his death was not brought to the notice of this Court when it heard his appeal in Crl.A.No.447 of 1998, the appeal was heard and vide judgment dated 21-06-2005, the appellant was found not guilty. The learned counsel produced a typed set of papers along with a certified copy of judgment of the said case for comparison which established the truth of this submission. Now, it is the turn of the claimants' counsel to contend that the factual misconception as to the life-sentence of the victim of the accident that the Tribunal has entertained was demonstrated to be

misconceived and justice should be done to the claimants by reworking the compensation payable on the head of loss of dependency by applying that multiplier which corresponds to his age when he died. He is submitted that the appellant was a coolie and he was presumed to have earned a notional income of Rs.3,000/- per month and relied on the dictum of the Supreme Court in ***Sarala Varma & Other Vs. Delhi Transport Corporation & another*** [2009(2) TNMAC 1]: [2009 ACJ 1298] and ***Santosh Devi Vs. National Insurance Co.,*** [2012(2) TNMAC (SC)].

4. The judgment in Crl.A.No.447 of 1998 instantly settles two issues: (a) That the fundamental premise on which the appellant constructed its argument is not tenable any more ; and (b) that compensation for loss of dependecy must be reworked by applying multiplier appropriate to 45 years, the age at which the victim died in the accident involved in this case.

5. The Tribunal has reckoned the income of the deceased notionally at Rs.3,000/- p.m. Out of this as per ***Sarala Varma*** dictum 1/4 is liable to deducted towards his personal expenses. This leaves the value of monthly family support that he provided to the family at Rs.2,250/-. There is no dispute that he was 45 years when he died and hence another

30% must be added to it towards future prospects. The appropriate multiplier being 14, compensation for loss of dependency is (2925X12X14) Rs.4,91,400/-. On other heads this Court does not consider it appropriate to interfere with the award of the Tribunal. Accordingly, the claimants are entitled to a total compensation of Rs.5,97,400/-.

6. In the result, the appeal is dismissed but without costs. The compensation however, is enhanced from Rs. 3,25,648/- to Rs.5,97,400/- which the appellant shall deposit with interest at 9% per annum, within four weeks from the date of receipt of copy of this order, whereupon the respondents are free to receive the same. The appellants are directed to pay additional court fee on the enhanced portion of the award.

24.02.2017

kmi

To:
1. The Sub Court,
Motor Accidents Claims Tribunal,
Bhavani, Erode District.

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

N.SESHASAYEE, J.,

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24.02.2017