IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE B.GOKULDAS

C.M.A.No.1082 of 2017
and CMP No.5433 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram. ... Appellant/2nd Respondent

vs.

1.Kalaiyarasi
2.Minor Thennarasi D/o.Thennarasu, ...Respondents/Petitioners
3.Minor Kalaiyarasan S/o.Thennarasu,
4.Poorasami S/o.Veerappan ... Respondents/1st Respondent
(Minors 2,3 rep by their mother and natural guardian, 1st Respondent)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order in MCOP No.169 of 2011 dated 30.10.2015 on the file of Motor Accidents Claims Tribunal, [II Additional District Judge], Chidambaram.

For Appellant : Mr.P.Paramasiva Doss
For Caveators : Mr.T.Gopinath

J U D G M E N T

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

In the accident, which occurred on 17.09.2009, husband of the first respondent and father of two minor children aged about 17 and 14 years, respectively, died. He was stated to be a Milk Dealer and doing business, in the name and style of TKS Raja & Agency Milk Store at Chidambaram, East Car Street Junction. The respondents also claimed that he was a vendor of Ice-cream and Cool Drinks, Airtel & Aircel recharge/top-up cards and had a xerox Machine, through which, he earned income of Rs.25,000 Per Month. But the respondents have not adduced any documentary evidence to prove that he was vendor of Ice-cream and Cool Drinks, Airtel & Aircel recharge, top-up cards and had a xerox Machine.

2. On the basis of Ex.P9, Professional Tax receipt, indicating business in the name of TKS Raja & Agency Milk Store at Chidambaram, East Car Street Junction, Ex.P8, statement of Milk supplied by the J.P.R. Milk Products Private Limited, in the year 2009 to the deceased and Ex.P15, Receipts issued by JPR Milk Products Private Limited, the tribunal came to the conclusion that prior to death, he was engaged in Milk business and accordingly, determined Rs.12,000/- as monthly income. Supporting the avocation, PW2 to PW4 have adduced evidence.

3. Thus, by fixing the monthly income as Rs.12,000/-, the tribunal arrived at the Annual Income as Rs.1,44,000/-. Dependants being '3', by deducting 1/3 towards the personal and living expenses of the deceased, for the purpose of computing the loss of contribution, the tribunal arrived at a sum of Rs.96,000/-, as annual loss.

4. On the basis of entry in Ex.P4, Postmortem report, tribunal determined the age of the deceased as 45, which cannot be found fault with in view of the decision of this Court in The Managing Director, Tamilnadu State Transport Corporation, Madurai v. Mary [2005 (5) CTC 515], wherein, this Court has held that in the absence of proof relating to the age, such as birth extract or any supporting document, entry in the Postmortem Report, can always be considered for the purpose of computation of compensation.

5. After applying '12' multiplier, for the age group of persons between 41 and 45, the tribunal computed the loss of contribution to the family as Rs.11,52,000/-. That apart, the tribunal has awarded Rs.1,00,000/- under the head of Consortium, Rs.1,00,000, under the head loss of Love and Affection, Rs.30,000 under the head of Loss of Estate, Rs.6,000/- for Transportation Charges, Rs.25,000/- under the head of Funeral Expenses. Altogether, the tribunal awarded compensation of Rs.14,13,000/- with interest at the rate 7.5%, from the date of claim till realisation and costs, and apportioned the same to the respondents/claimants.

6. Challenging the award, Managing Director, Tamilnadu State Transport Corporation, Villupuram, is on appeal.

7. Tamilnadu State Transport Corporation, appellant in this appeal, has contended that when the accident occurred on 17.09.2009, in the absence of any valid documentary evidence, the tribunal ought not to have fixed the monthly income as Rs.12,000/- for the purpose of computing the loss of contribution to the family. Except the above, compensation awarded under the other heads is not seriously disputed.

8. We have heard Mr.T.Gopinath, learned counsel for the caveator, who submitted that as per the decision of Hon'ble Apex

Court in Sarla Verma and others Vs. Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1 (SC), for the age group of persons between 41 and 45, the proper multiplier to be applied for computing the loss of contribution to the family is '14' and whereas, the tribunal has erred in applying '12' multiplier instead of '14'. He submitted that there is no grounds to interfere with the award.

9. Heard the learned counsel for the parties and perused the materials available on record.

10. Though, Mr.P.Paramasivadoss, learned counsel for Tamilnadu State Transport Corporation, Villupuram, appellant herein, sought for reduction, in the monthly income of the deceased and consequently, prayed for reworking, this Court is not inclined to accept the said contention for the reason that after giving due consideration to the oral and documentary evidence produced by the claimants / respondents, in particular Ex.P8, Accounts statement, Ex.P9, Provisional Tax paid for the business, in the name and style of 'TKS Raja & Agency Milk Store, Ex.P15, Receipts issued by JPR Milk Products Private Limited, and accordingly, by accepting the avocation, the tribunal has determined the monthly income.

11. As stated supra, it is to be noted that avocation and income, are also supported by the testimony of PWs 2 to 4. There is no irregularity in determining the monthly income of the deceased, survived by wife and two minor children, at the time of accident. Moreover, to provide food, shelter, clothing, education and such other basic needs and to meet out electricity, water and other incidental charges, one may require a reasonable income. In the case on hand, there is substantive evidence.

12. In the light of the above discussion, we are not inclined to reduce the monthly income determined by the tribunal. Added further, as per the decision in Sarla Varma's case, the tribunal ought to have applied '14' multiplier. Quantum of compensation awarded under other heads, is reasonable. Overall quantum of compensation of Rs.14,13,000/- with interest at the rate of 7.5% per annum from the date of claim, till deposit cannot be said to be a bonanza to the legal representatives of the deceased, who have lost their breadwinners. Hence, award is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

13. Consequent to the dismissal of the appeal, the appellant-Transport Corporation, is directed to deposit the entire award amount with interest at the rate of 7.5% per annum, from the date of claim and costs, to the credit of MCOP No.169

of 2011 dated 30.10.2015 on the file of Motor Accidents Claims Tribunal, [II Additional District Judge], Chidambaram, within a period of four weeks from the date of receipt of a copy of this order.

14. At the time of filing the claim petition, in the year 2009, numbered as MCOP No.38 of 2009, in Sub Court, Chidambaram, claimants/respondents 2 and 3, were aged 17 and 14 years respectively. Thereafter, MCOP No.38 of 2009, has been transferred to the file of Fast Track Court / MACT, Chidambaram and renumbered as MCOP No.169 of 2011. All the respondents/claimants are majors. They are entitled to seek for disbursement of the share apportioned to them with proportionate interest by filing necessary applications before the tribunal.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ars/dm

To

The Motor Accident Claims Tribunal,
[II Additional District Judge], Chidambaram.

(Direction to display in the notice Board that C.M.A.No. 1082 of 2017, filed by the Tamil Nadu State Transport Corporation, against the Judgment in MCOP.No. 169 of 2011, has been dismissed, with a direction, to the Transport Corporation, to deposit the entire award amount, to the credit of MCOP.No. 169 of 2011 on the file of Motor Accident Claims Tribunal, (II Additional District Judge), Chidambaram, 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.)

C.M.A.No.1082 of 2017
and CMP No.5433 of 2017

SKS(CO)
VR(13/04/2017)