IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.09.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2883 of 2017
and
C.M.P.No.16885 of 2017

The Manager
Tamil Nadu State Transport Corporation Ltd.,
Mettupalayam Road, Coimbatore .. Appellant/2nd Respondent

/Vs/

1. Saraswathi ..1st Respondent/Claimant
2. S.Yuvaraja (set exparte) ..2nd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.04.2015 made in M.C.O.P.No.273 of 2012 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Tiruppur.

For Appellant : Mr.K.J.Sivakumar
For Respondent : Mr.K.Myilsamy for R-1
R2 Exparte

JUDGMENT

The deceased, Kumararaja, aged about 24 years, employed as a Manager in Vadivel Knit Process, Tirupur, earning a sum of Rs.12,000/- per month, met with an accident on 06.08.2012 and succumbed to the injuries. Hence, the mother of the deceased filed claim petition claiming a sum of Rs.15,00,000/-.

2. The Tribunal, considering the oral and documentray evidence, awarded a sum of Rs.11,72,200/-, the break up of which is as hereunder :-

Loss of Dependency	:	Rs.10,97,200/=
Funeral Expenses	:	Rs. 20.000/=
Loss of Love & Affection	:	Rs. 50,000/=
Loss of Estate	:	Rs. 5,000/=
Total		Rs.11,72,200/=

Challenging the compensation awarded as excessive, the present appeal has been preferred by the appellant/Transport Corporation.

3. Learned counsel appearing for the appellant submits that in the absence of any valid documents to show the age and income of the deceased, the compensation arrived at fixing the notional monthly at Rs.8,000/- per month is not proper and multiplier adopted is also on the higher side. According to the learned counsel, the tribunal should have arrived at age of the deceased based upon evidence of PW1 and the post mortem report, especially in the absence of contra evidence. Therefore, the compensation awarded should be reduced.

4. A perusal of the order passed by the Tribunal reveals that the Tribunal while taking into consideration the evidence of P.W.1 and P.W.3 who have deposed that the deceased was earning a sum of Rs.12,000/- per month, however, in the absence of any documentary evidence to show the actual income of the deceased, notionally fixed the monthly income at Rs.8,000/- and adding 30% towards the future prospective increase in income and deducting 50% towards the personal expenses of the deceased and adopting multiplier of 18, quantified the compensation towards loss of dependency at Rs.10,97,200/=. The Tribunal has also awarded a sum of Rs.20,000/- towards funeral expenses; Rs.50,000/- towards loss of love and affection and Rs.5,000/- towards loss of estate. In all, the Tribunal has awarded a compensation of Rs.11,72,200/-.

5. Though it is contended by the learned counsel for the appellant that the compensation awarded towards loss of dependency is excessive and that the notional income fixed is on the higher side and the multiplier adopted is also not correct, however, this Court is of the considered opinion that the said contention does not deserve acceptance.

6. It is evident from the records that despite the evidence of PW3, who has deposed that the deceased was employed in the private concern and was earning a sum of Rs.12,000/- per month, however, in the absence of any documents to substantiate the said evidence, the Tribunal notionally fixed the income at Rs.8,000/-. It is to be pointed out that the Supreme Court even in Syed Sadiq's case (2014 (2) SCC 735), relating to persons employed in the unorganised sector, has fixed the monthly income at Rs.6,500/-. In such circumstances, the deceased having been employed as Manager in a private concern, fixing of Rs.8,000/- towards notional income cannot be said to be excessive. It is further to be pointed out that future prospects ought to have been considered at 50%, keeping in mind the age of the deceased. However, the Tribunal has taken only 30% towards the future prospective increase in income of the deceased. Therefore, under no circumstances, the income fixed by the Tribunal could be termed to be excessive or disproportionate. Accordingly, the quantification of compensation arrived at by the Tribunal under the head loss of dependency is confirmed.

7. Insofar as the compensation awarded under the other non-pecuniary heads are concerned, the Tribunal has taken into account all the factors and has awarded compensation conservatively, which is just and reasonable and cannot be said to be excessive. Accordingly, the compensation awarded under the other heads are also confirmed.

8. For the reasons aforesaid, this civil miscellaneous appeal is dismissed confirming the award passed by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

9. The appellant/Transport Corporation is directed to deposit the award amount along with interests and costs as awarded by the Tribunal, less the amount, if any, already deposited to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sms/GLN
To

1. The Chief Judicial Magistrate
   Motor Accident Claims Tribunal
   Tiruppur.

2. The Section Officer, VR Section,
   High Court, Madras.

TM(CO)
sm:27.4.2018