IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

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THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2983 of 2017
and
C.M.P.No.17581 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
37, Mettupalayam Road,
Coimbatore-43. .... Appellant

Vs.

1. S.Devaki
2. K.Subramaniam
3. C.Mani .... Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree passed in M.C.O.P.No.1015 of 2009, dated 21.01.2013, on the file of Motor Accident Claims Tribunal, the Additional District Judge No-III, Dharapuram.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Mr.Ma.pa.Thangavel

J U D G M E N T

The deceased, Mohan, aged 40 years, working as Kalasi, earning a sum of Rs.10,000/- died in an accident that happened on 3.6.08. The claimant, viz., the mother and father of the deceased filed claim petition claiming compensation in a sum of Rs.10,00,000/-

2. The Tribunal, on consideration of oral and documentary evidence, awarded compensation in a sum of Rs.8,03,620/-, the break up of which is as hereunder :-

Loss of Income	-	Rs.7,08,120/=
Transport Expenses	-	Rs. 5,000/=
Funeral Expenses	-	Rs. 10,000/=
Loss of Love & Affection (Rs.30,000 X 2)	-	Rs. 60,000/=
Pain & Sufferings	-	Rs. 20,000/=
Damage to Clothes	-	Rs. 500/=
Total		Rs.8,03,620/=

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

3. The main contention raised by the learned counsel for appellant is that in the absence of valid documentary evidence to substantiate the income of the deceased, the fixation of notional income at Rs.5,900/= by the Tribunal is excessive and, accordingly the same needs to be reduced. It is the further submission of the learned counsel for the appellant that the deduction of 1/3rd towards the

personal expenses of the deceased is not correct as the dependency on the deceased is only two in number and the deceased is not a married person. Therefore, the Tribunal ought to have deducted 50% towards the personal expenses of the deceased. Accordingly, the compensation awarded has to be reduced.

4. Per contra, learned counsel appearing for the respondents/claimants submitted that the Tribunal, taking into account the oral and documentary evidence has fixed the income of the deceased at Rs.5,900/=, but the Tribunal ought to have fixed the notional income at Rs.6,500/= based on the ratio laid down by the Supreme Court in *Syed Sadiq's case*. It is further submitted by the learned counsel for the claimants that the deduction towards personal expenses at $1/3^{rd}$ has been made keeping in mind the age of the deceased. In fine, it is submitted that the award requires enhancement by fixing the notional income on a higher rate.

5. This Court gave its anxious consideration to the contentions advanced on behalf of the parties and also perused the materials available on record as also the order passed by the Tribunal.

6. A perusal of the materials available on record reveals that the deceased was aged 43 years at the time of death. The Tribunal, based

on the post-mortem certificate fixed the age of the deceased at 40 years and in the absence of any documentary evidence to substantiate the income earned by the deceased, the Tribunal, on appreciation of the avocation of the deceased notionally fixed the monthly income at Rs.5,900/- and deducting 1/3rd towards the personal expenses of the deceased, adopting proper multiplier, quantified the loss of income at Rs.7,08,120/=. The Tribunal further awarded a sum of Rs.5,000/= towards transportation expenses; Rs.10,000/- towards funeral expenses; Rs.60,000/= (Rs.30,000 X 2) towards love and affection; Rs.20,000/= towards pain and suffering and Rs.5,00/= towards damage to clothes. In all, the Tribunal awarded a sum of Rs.8,03,620/- as compensation.

7. Though it is the contention of the learned counsel for the appellant that the notional income fixed is on the higher side, however, the said contention deserves to be rejected. As rightly contended by the learned counsel for the claimants, the Tribunal, in the absence of documentary evidence, for unorganised labour, ought to have fixed the notional income at Rs.6,500/- following *Syed Sadiq's* case. However, as rightly contended by the learned counsel for the appellant, the deduction of 1/3rd made towards personal expenses is against the ratio laid down in *Sarla Verma's case*. The deduction ought to have been made at 50%. Further, it is to be pointed out that the Tribunal has not

taken into consideration the future prospective increase in income of the deceased. In such view of the matter, this Court is of the considered opinion that the increase in notional income together with future prospective increase in income and the deduction of 50% towards the personal expenses are mutually exclusive and, therefore, it is not necessary to upgrade the notional income and downgrade the quantification by adopting 50% deduction towards personal expenses. Rather, it would suffice if the compensation awarded under the head loss of income to the family is confirmed. Accordingly, the compensation awarded by the Tribunal towards loss of income to the family is confirmed.

8. Insofar as the compensation awarded under the other heads are concerned, it is seen that the compensation under the non-pecuniary heads are very meagre. In fact, higher compensation ought to have been awarded under the various heads and no compensation has been awarded under the head loss of enjoyment of amenities. In such view of the matter, this Court is of the considered view that the compensation awarded cannot be said to be excessive or disproportionate and, therefore, the same warrants no interference at the hands of this Court.

9. In the result, the Civil Miscellaneous Appeal is dismissed. No

costs. Consequently, connected Miscellaneous petition is closed.

10. The Appellant / Transport Corporation is directed to deposit the entire award amount, along with interest and costs as awarded by the claims 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 judgement. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the savings bank accounts of the respective claimants through RTGS within a period of two weeks thereafter, as per the ratio of apportionment ordered by the Tribunal.

12.09.2017

kv/GLN

Index: Yes/ No

Internet: Yes/ No

To

1.The Motor Accident Claims Tribunal,
Additional District Judge No-III, Dharapuram.

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

Dr.S.VIMALA, J.

Kv/GLN

C.M.A.No.2983 of 2017
and
C.M.P.No.16277 of 2017

12.09.2017