IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2017

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.520 of 2017
C.M.P.No.3288 of 2017

The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Trichy. ... Appellant

-vs-

1. S.Vasanthi
2. Minor S.Sindhu
(Minor represented by mother
and natural guardian, 1st respondent)
3. S.Kumarasamy
4. K.Meenakshi ... Respondents

Appeal against the judgment and decree, dated 16.02.2016, passed in M.C.O.P.No.562 of 2011, on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For appellant : Mr.D.Venkatachalam

JUDGMENT

(Judgement of this Court was made by S.MANIKUMAR, J.)

In the accident, which occurred on 26.12.2009, husband of the 1st respondent, aged about 48 years, Advocate by profession, died. A case in Cr.No.606 of 2009, on the file of the Inspector of Police, Uthamapalayam Police Station, was registered. Contending inter alia that the accident occurred, due to the rash and negligent driving of the driver of the bus, bearing Registration No.TN 45 N 2569, owned by Tamil Nadu State Transport Corporation Ltd., Trichy, legal representatives of the deceased filed M.C.O.P.No.562 of 2011, on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2. Supporting their claim, legal representatives of the deceased have contended that before the death, the deceased was an Advocate, practising in this Court and a panel lawyer for Tamil Nadu Tourism Development Corporation, Tamil Nadu Civil Supplies Corporation and Tamil Nadu Ex-Servicemen's Corporation Ltd., and Thirunallar Community Panchayat. They also contended that he was a Special Government Pleader for Pondicherry Government, and had good private practice.

3. Further contention has been made that at the time of death, deceased had a bar experience of 24 years and assisted Mr.N.R.Chandran, Senior Counsel, Former Advocate General of Tamil Nadu and Additional Solicitor General for South India, in many cases. He was an income-tax assessee and according to the legal representatives, he earned an annual income of Rs.5 Lakhs.

4. The appellant-Transport Corporation opposed the claim, denying negligence. Without prejudice to the above, they also denied the income of the deceased.

5. Besides examining the wife of the deceased as PW.1, five other witnesses, including Mr.N.R.Chandran, Senior Advocate, has been examined. Among 20 documents marked, the following documents prove avocation and receipt of remuneration, from the Corporations, stated supra,

(i) Ex.P7 - Enrollment Certificate
(ii) Ex.P8 - Appointment letter issued by TNCSC
(iii) Ex.P9 - Form 16-A
(iv) Ex.P10 - Copy of cheques
(v) Ex.P11 & P12 - (S) Form No.16A
(vi) Ex.P13 - Pan Card
(viii) Exs.P18 to P20 - Form No.16A

On the side of the appellant-Transport Corporation, there was no oral and documentary evidence.

6. On evaluation of pleadings and evidence, the Claims Tribunal held that the driver of the appellant-Transport Corporation bus, bearing Registration No.TN 45 N 2569, was negligent in causing the accident. Accepting the oral and documentary evidence, the Tribunal has determined the compensation of Rs.56,19,100/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit, as hereunder:

Loss of Dependency	:	Rs.54,75,600/-
Loss of Consortium	:	Rs. 50,000/-
Loss of Love and Affection	:	Rs. 50,000/-
Funeral Expenses	:	Rs. 25,000/-
Transportation	:	Rs. 18,500/-
Total	:	Rs.56,19,100/-

7. Being aggrieved by the quantum of compensation and in particular, income of Rs.40,000/-, determined by the Tribunal, the Transport Corporation has filed the present appeal.

8. Assailing the correctness of the same, Mr.D.Venkatachalam, learned counsel for the appellant-Transport Corporation submitted that the Tribunal ought not to have fixed the monthly income of the deceased as Rs.40,000/-. According to him, no income-tax returns were filed before the Tribunal and therefore, the said determination is erroneous. It is his further contention that the Tribunal cannot fix income of the deceased, based on Form 16A and Pan Card. Except the above, no other submission has been made.

Heard the learned counsel for the appellant-Transport Corporation and perused the materials available on record.

9. To prove that the deceased was a practising advocate, Ex.P7 - Enrolment Certificate has been filed. PW.1, wife of the deceased, has deposed that the deceased was practising under PW.6, Mr.N.R.Chandran, Former Advocate General of Tamil Nadu and Additional Solicitor General for Southern India. PW.6, has deposed that the deceased was engaged by him and during 2008-09, he used to pay him Rs.20,000/- as junior fees.

10. To prove that the deceased was a panel advocate for Tamil Nadu Tourism Development Corporation, Tamil Nadu Civil Supplies Corporation and Tamil Nadu Ex-Servicemen's Corporation Ltd., Ex.P8 - Appointment letter issued by TNCSC, has been marked. Exs.P9, P11, P12, P18 to P20 - Form 16-A have been produced by the respondents/claimants, to prove that the above Corporations have paid remuneration to the deceased, a panel counsel.

11. Contention of the respondents/claimants that the deceased was a practising Advocate in this Court, for nearly 24 years, is supported by Ex.P7 - Enrollment Certificate. Testimony of PW.6, Mr.N.R.Chandran, Former Advocate General of Tamil Nadu and Additional Solicitor General for South India, is unassailed. Form 16-A is a Tax deducted at source certificate, certifying

the amount of TDS, nature of payments and income tax deposited with the Income Tax Department. Remuneration made by the Corporations would reflect in Form 16-A. Therefore, 16-A Forms produced before the Tribunal, would certainly support the case of the respondents/claimants. Ex.P13 is the Pan Card of the deceased.

12. Though the respondents/claimants have not filed the income-tax returns, receipt of remuneration or professional fees, in Form 16-A, cannot be disputed. As the said forms have been issued by the Corporations, owned and controlled by the Government, a sum of Rs.40,000/- fixed as monthly income of the deceased, on the basis of oral and documentary evidence, for a lawyer, with 24 years of experience, and been a panel counsel for the abovesaid Corporations, besides holding private brief, cannot be said to be grossly excessive, warranting interference.

13. As the deceased was aged less than 50 years, following a decision in Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55 (SC), the Tribunal has added 30% of the monthly income, under the head, future prospects and determined the monthly income, as Rs.52,000/- (Rs.40,000 x 30/100 = 12,000 + 40,000 = 52,000). Added further, the Tribunal has deducted 10% towards income-tax and for the purpose of computation, the Claims Tribunal has taken Rs.46,800/- (Rs.52,000 - 5,200) as monthly income. As there are four claimants, the Tribunal has deducted 1/4th towards the personal and living expenses of the deceased, and after applying '13' multiplier, to the age of the deceased, computed the loss of contribution to family, as Rs.54,75,600/- (Rs.46,800 x 12 x 13 x 3/4).

14. Apart from to the above, the Tribunal has awarded Rs.50,000/- towards Loss of Consortium, Rs.50,000/- towards Loss of Love and Affection, Rs.25,000/- for Funeral Expenses and Rs.18,500/- towards transportation. Altogether, the Claims Tribunal has awarded Rs.56,19,100/-, with interest, at the rate of 7.5% per annum. There is no award for conventional damages.

15. In the light of the discussion, eetermination of monthly income and the consequential computation of compensation, cannot be said to be erroneous. Appeal is dismissed. Deducting the amount already deposited and the statutory deposit of Rs.25,000/-, the appellant-Transport Corporation is directed to deposit the balance award amount, with proportionate accrued interest at the rate of 7.5% per annum, within a period of six weeks, from the date of receipt of a copy of this order. On deposit, except the minor, the other claimants are permitted to withdraw the amount, apportioned to them, with interest and costs, by making necessary applications before the Tribunal. The share of the minor shall be deposited

in any one of the Nationalised Banks in a fixed deposit under the reinvestment scheme initially for a period of three years and renewed thereafter, till he attaining majority. The interest accruing on the share of the minors shall be paid to the guardian once in three months, till they attain majority. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

skm

To

The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes,
Chennai.

+ 1 cc to Mr.D. Venkatachalam, Advocate Sr.11248

C.M.A.No.520 of 2017

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