IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2017

CORAM:

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

Civil Miscellaneous Appeal No.730 of 2017
C.M.P.No.4060 of 2017

The Managing Director
Tamil Nadu State Transport
Corporation (Coimbatore Division-I) Ltd.,
Coimbatore. ...Appellant/Respondent

v.

1. Renugadevi
2. Minor Vinodhini
3. Lakshmi ...Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 02.02.2016, made in M.C.O.P.No.1505 of 2014 on the file of the Motor Accident Claims Tribunal, IInd Additional District Judge, Tirupur.

For appellant : Mr.K.J.Sivakumar

J U D G M E N T

(Judgment of the Court was made by S.MANIKUMAR, J.)

Challenge in this appeal is to the judgment and decree, made in M.C.O.P.No.1505 of 2014, dated 02.02.2016, on the file of the Motor Accident Claims Tribunal, IInd Additional District Judge, Tirupur. A sum of Rs.14,50,000/- has been awarded as compensation, with interest, at the rate of 7.5% p.a., and costs, from the date of claim, till realisation, as hereunder:-

Loss of contribution to the family	...	Rs.	13,50,000/-
Transportation	...	Rs.	10,000/-
Funeral expenses	...	Rs.	10,000/-
Loss of consortium	...	Rs.	50,000/-
Loss of love and affection	...	Rs.	35,000/-
Total			Rs.14,55,000/-

(Compensation is rounded-off to Rs.14,50,000/-)

2. With the consent of the learned counsel for the parties, Civil Miscellaneous Appeal is taken up for hearing.

3. Though the grounds have been raised, questioning the finding fixing negligence on the driver of the appellant-Transport Corporation, Mr.K.J.Sivakumar, learned counsel for the appellant-Transport Corporation, restricted the challenge, only to the quantum of compensation. Placing on record, his submission, there is no need to advert to the finding, on negligence.

4. In the accident which occurred on 11.08.2014, Thangavel, husband of the first respondent, stated to be aged about 40 years, wood cutter, died. Legal representatives, wife, daughter and mother, filed M.C.O.P.No.1505 of 2014, on the file of the IInd Additional District Judge, Tirupur, claiming compensation of Rs.20 lakhs. To support employment and earning, the 1st respondent/claimant examined one Vijayakumar, as PW.3, a co-worker. Though PW.3, in his evidence, has stated that both himself and the deceased were working under one Selvam and that the deceased earned Rs.15,000/- per month, there is no document to support the same. However, considering the rise in prices, the Tribunal fixed monthly income of the deceased as Rs.7,500/- and considering the age of the deceased, applied 50% towards future prospects. As the dependants were three in numbers, the Tribunal deducted 1/3rd towards the personal and living expenses of the deceased and after applying '15' multiplier, computed the loss of contribution to the family, as Rs.13,50,000/-.

5. Though no document has been filed to prove employment, to provide food, shelter, clothing, education and to meet out the regular expenditure, such as payment of electricity charges and other incidental expenses, it could be reasonably presumed that the deceased would have engaged in some avocation. In Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Ltd., reported in 2011 (2) TNMAC 190 SC, the Hon'ble Supreme Court having considered the wages, which prevailed in 2004, fixed the monthly income as Rs.4,500/- for a labour.

6. In Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459, the Hon'ble Apex Court determined a sum of Rs.6,500/- as the monthly income for a vegetable vendor, who sustained injury in the accident occurred on 14.02.2008. In the present case, the accident has occurred on 11.08.2014. Considering the escalation in price, determination of Rs.7,500/- as monthly income cannot be said to be excessive.

7. On the aspect of adding certain sum under the head ''future prospects'', recently, in C.M.A.No.3273 of 2014, dated 13.10.2015 [Royal Sundaram Alliance Insurance Co. Ltd., v. Tmt.Vennila], this Court observed as follows :

> "56. As tabulated in the foregoing paragraphs, it should be noted that Consumer Price Index, Gross Domestic Product and Per Capita Income, have increased. One cannot disown the fact that the percentage of those in unorganized sectors is more than the organised sectors. While that be so, would it be appropriate for the Insurance Companies and Transport Corporations, to contend that there is absolutely no chance of any upward revision in wages or salary of those, employed in unorganised sectors or for that matter in the earnings of self-employed. If the contentions of the Insurance Companies and Transport Corporations have to be accepted, whether the self-employed or those engaged in unorganised sectors, can never have any expectation of an event in future, ie., increase in earnings or wages? With the basic study of the statistics, we are of the considered view that the answer should be a clear 'No'. When the Consumer Price Index is applicable uniformally to rich or raff, it cannot be contended that those who are engaged in unorganized sectors or self-employed, would continue to earn the same income, for years together.
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> 57. For the abovesaid reasons, we are of the considered view that the word, "prospects" should not be read and understood, only in plural sense, meaning thereby, its prospects or an apparent probability of advancement in employment, in organised sectors alone. Narrowing down the meaning of the words, "future prospects" only to the employment prospects and consequently, more possibility of earning income, only in the case of organised sector and not in unorganised sector or self-employed, would affect the majority and therefore, the meaning of the word, "prospect" used in singular, meaning thereby, expectation, possibility or probability, chances of earning more income in future, depending upon the factors, stated supra, should also be considered.
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> 58. Thus, from the above particulars, extracted supra, it is evident that both the Central and State Governments have periodically revised the minimum wages across the country. It has been raised taking into consideration the Consumer Price Index. In respect of scheduled employments, for skilled, semi-skilled, unskilled, construction workers, labourers,

etc., wages, are fixed in various scheduled employments, right from Agarbathi Industry to Woolen Carpet and Shawl wearing machinery.

59. While that be the position in organised sectors, it cannot be contended that insofar as unorganised sectors or self-employed, is concerned, there would not be any revision in the wages or salary or earning. When the minimum wages of an employee in the organised sector, is revised periodically, taking into consideration the Consumer Price Index and Variable Dearness Allowance, the living conditions, then the others, in a unorganised sector may expect more or less the same wage, and if there are more number of persons, there may be chances of lesser wage, on account of surplus human resources and in such cases, the bargaining power of certain class of employees, depending upon the field, for revision of wages or earning, may be less.

60. If a non-salaried domestic worker sells a piece of any article, which he or she manufacturers and if the customer bargains the rate, he or she would immediately reply, as to how much amount, he/she has to spend for buying the basic materials, other materials used, compare the erstwhile travel expenses and the cost of labour. Can anyone in this Country can say that the electricity charges, water charges, rent, fee received by the Government, cost of education, price of commodities, etc., have remained the same, without any change. Cost of tea sold in a ordinary tea stall is the same for any person, whether engaged in organised or unorganised. Contenting inter alia that there would not be any increase in wages or earning for those engaged in unorganised sectors, for years to come, can it be said that he would never take a cup of tea, outside?

61. At this juncture, it should be borne in mind that Consumer Price Index is fixed, taking into consideration that the majority consumers are from unorganised sectors. Thus, with reference to Gross Domestic Product, Per Capita Income, Consumer Price Index and such other economic factors, determined on the basis of participation and contribution of both organised and unorganised sectors, the classification that those engaged in unorganised sectors, should be totally denied of any addition of income under the head, future prospects, would in our humble view, would affect Article 14 of the Constitution of India. When the majority of persons, in unorganised sectors,

also decide the economic factors, stated supra, it would be unjust and unreasonable to contend that there would not any prospect or addition in the earning of those engaged in unorganised sector, forever. If there is addition of Variable Dearness Allowance to the basic wages, in the case of organised sector, depending upon the Consumer Price Index, applicable for a particular period, one would reasonably expect the same factor of variable Dearness Allowance, to be a relevant factor, for determining the variation in the wage in case of unorganised sector also, as Consumer Price Index is common to all, whether engaged in organised or unorganised sector.

62. At this juncture, we deem it fit to consider, what "Dearness Allowance" means? "Dearness Allowance" is a cost of living adjustment allowance paid to Government employees, Public sector employees (PSU)and pensioners. Dearness Allowance is calculated as a percentage of an Indian's basic salary to mitigate the impact of inflation. Variable Dearness Allowance is always linked to Consumer Prince Index. The notifications of Minimum wages by the Central and State Government reflects how much is the Variable Dearness in each field.

63. In the light of what we have tabulated above, judicial notice can also be taken that the cost of labour, whether it is in agricultural field or manufacturing or services, has increased. Thus, focusing on the increase in wages or earning, in almost all the fields of operation, right from agricultural or industrial or manual labourers, tea shop or road side vendor, the Consumer Price Index, being the same to rich or raff and therefore, correspondingly to meet out the living conditions, atleast for providing the basic amenities, like food, shelter and clothing, and not to add up the expenditure towards health, education, certainly, there would be revision of wages or earning, even in unorganised sectors also. Future is the period of time that will come after the present or things that will happen. Having regard to the consistent and periodical revision of wages by the Governments, it cannot be contended by the Insurers or Transport Corporations that a person in unorganised sector, has no future at all, in the matter of revision of wages or earning.

64. In R.K.Malik's case (cited supra), the Hon'ble Supreme Court considered the quantum of compensation, payable to the legal representatives of

the deceased children, aged between 10 and 18 years. Referring to the inflation, price rise, etc., the Hon'ble Supreme Court, by observing that the there would be a future prospects, for the children also, granted a sum of Rs.75,000/- under the head, future prospects, though as on the date of accident, they were children, studying in a school. In V.Mekala's case (cited supra), the injured was a student studying in 11th Standard. While determining the monthly income of the injured as Rs.10,000/-, the Hon'ble Supreme Court added 50% of the income, under the head, future prospects. In the recent decision in Munna Lal Jain's case (cited supra), the Hon'ble Supreme Court added 50% under the head, future prospects.

65. Thus, from the line of judgments, it could be noticed that the Hon'ble Supreme Court has considered the addition of a quantified sum, under the head, future prospects, in effect, indicating that there is a prospect or chance or possibility of earning more income, after a passage of time, though not periodically, as done in the case of Government or Public Sector Undertakings or Boards or Corporations, Companies owned and controlled by the Government or Limited Companies.

66. We have already extracted the orders of the Chief Labour Commissioner, Ministry of Labour and Employment, Government of India, New Delhi and taken into consideration a sample case, City of Chennai. Wage revision may vary in rural or urban areas or metropolitan cities. At the risk of repetition, as observed earlier, the number of persons, engaged in unorganized sectors, agriculture or industrial, or home based or self-employment, etc., are more in number, than those employed in organised sectors.

67. Income from the organised sector alone, is not the deciding factor, for determining Gross Domestic Product, Consumer Price Index or Per Capita Income. Thus, from a basic study of the factors, taken into consideration by the Governments for revision of wages, to the enumerated categories of employees, one cannot lose sight of the fact that the said factors, would also have an indeligible effect on those, engaged in unorganized sectors also. In the light of our discussion and the details considered, we are of the considered view that addition of certain percentage of income under the head, future prospects, has to be done in the case of those engaged in unorganized sector or self-employed also, otherwise,

they would be deprived of just compensation. Addition of income under the head,future prospects, should not be restricted to only salaried persons, with stable jobs.

68. Though it is the case of the Insurance Companies and Transport Corporation that in the case of persons engaged in unorganised sector or salaried or persons, who do not have any permanent job, addition of certain percentage of income, under the head, "future prospects", to the income drawn, at the time of death, should not be made, for computation loss of dependency compensation, we are not inclined to accept the same, for the reason that the expression "future prospects" should not be confined only to the prospects of the deceased in the career, progress or upgradation of position, in which, he was engaged, prior to death, but the expression "future prospects" should also be extended to the likelihood of increase in wages/salary, earned by either a skilled or semi-skilled person, clerical and others, considering the upward increase in the cost price, inflation and such other factors."

8. Though wife, aged about 30 years, mother, aged about 70 years and minor child, aged about 9 years, have lost the love and affection of their bread winner of the family, the Tribunal has awarded an overall compensation of Rs.35,000/- only, under the head loss of love and affection. Minor daughter has lost the love and affection of her father. In Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55, the Hon'ble Apex Court has awarded Rs.1,00,000/- each, to the legal representatives of the deceased, towards the loss of love and affection. Loss of love and affection, for the rest of her lifetime, cannot be measured, in terms of money. But the same has to be just.

9. The Claims Tribunal has awarded only Rs.50,000/- for loss of consortium. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owned by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." Consortium is not a pecuniary loss. It is certainly a conventional damage awarded to a widow, who has lost her husband. In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Apex Court, while observing that at least a sum of Rs.1 Lakh has to be awarded to the widow, for loss of consortium, held as follows:

"In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

10. Quantum of Compensation of Rs.10,000/- awarded under the head, funeral expenses, is less. On the aspect of quantum of compensation, under the head, funeral expenses, the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883, held as follows:

"21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

11. A sum of Rs.10,000/- awarded towards transportation is reasonable. However, there is no award under the head damage to clothes and articles. Compensation of Rs.14,50,000/- with interest at the rate of 7.5% per annum, cannot be said to be on the higher side, warranting interference.

12. In view of the above discussion and decisions, this Civil Miscellaneous Appeal is dismissed. The appellant-Transport Corporation is directed to deposit the award amount, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.1505 of 2014 on the file of the Motor Accident Claims Tribunal, IInd Additional District Judge, Tirupur, within a period of four weeks, from the date of receipt of a copy of this order. On such deposit being made, except the minor, the respondents/claimants are permitted to withdraw the same, by making necessary applications before the Tribunal. Minor's share shall be deposited in any Nationalised Bank in fixed deposit, under the reinvestment scheme initially for a period of three years, proximate to the residence of the 1st respondent herein/claimants. The interest accruing on the share of the minor shall be paid to the first respondent/guardian once in three months, till they attain majority. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

skm

To

The Motor Accident Claims Tribunal,
IInd Additional District Judge, Tirupur.

Civil Miscellaneous Appeal No.730 of 2017

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