

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03.01.2017

Judgment Pronounced on : 03.03.2017

CORAM : THE HON'BLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1726 of 2013

1.P.Subburaj
2.N.Chitra

..Appellants/Claimants

Vs

The Managing Director,
Tamil Nadu State Transport
Corporation, Madurai Ltd.,
Dindigul, Dindigul Region
and District - 624 004.

..Respondent/Respondent

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act against the judgment and decree made in MCOP.No.1483 of 2010, dated 10th day of July 2012, on the file of XVI Additional Judge, Chennai.

For Appellants : Mr.N.Easwaran

For Respondent : Mr.A.Damodaran
for Mr.A.Paramasiva Doss

JUDGMENT

The claimants/appellants are the legal representative of deceased Pitchai, who died in a road accident while travelling in a bus belonging to the respondent on 22.12.2009. Seeking compensation on various heads, the claimants have approached the Tribunal with a claim of Rs.5,00,000/-, as against which the Tribunal has passed an award for Rs.60,000/- with interest at 7.5% per annum. Since both the claimants are the children of the deceased and both of who were also settled in life, the Tribunal awarded Rs.30,000/- each, but did not state explicitly the specific head under which the compensation was awarded. This is now under challenge.

2. The foundational principle on which the Tribunal rooted its basis for determining the compensation is faulty. The law is settled that in all cases where the legal representatives of the victims of road accidents are economically not dependent on the victim, then it was not the loss of dependency or support that

should guide the Tribunal but the loss to the estate of the deceased. What would have the victim done, if he were alive, with the money that he earned after meeting his personal expenses and when he had no more mouths to feed? He surely would have saved, as every prudent and reasonable man would. This precisely is the loss to the estate and the heirs of the victim would succeed to this estate as they would have succeeded to any other estate of his.

3. The learned counsel for the appellant submitted that the victim in the instant case was rearing goats and was earning Rs.10,000/- per month and this is established by Ext.P-7 and was also spoken to by P.W.3, the person whom he was regularly supply goats. Unfortunately there was no whisper for not believing Ext.P7. Even otherwise it is imperative on the Tribunal to fix notionally income at a reasonable rate and arrive at the loss to the estate. He added that Sarala Varma formula needs to be applied.

4. There is merit in the aforesaid submissions of the learned counsel. I notionally fix the income of the deceased at Rs.5,000/-. The deceased was aged 55 years and therefore on a combined reading of Sarla Varma Vs DTC [2009(2) Tn MAC 1 (SC)], Santhosh Devi Vs National Insurance Co., Ltd., [2012(2) TN MAC 1 (SC), and Rajesh & Others Vs Rajbir Singh & Others [2013 ACJ 1403], he is entitled to 15% increase towards future prospects in rise in income. Accordingly this amount would be Rs. 5,750/-. From this 1/3 has to be deducted towards his personal expenses. The net multiplicand thus arrived would be $[5,750 - (5,750 \times 1/3) \times 12]$ Rs. 23,000/-. Applying a multiplier of 11 appropriate to the age of the victim, the total loss to the estate is determined at Rs.2,53,000/-. Towards funeral Rs.10,000/- is granted and for transportation another Rs. 5,000/- is awarded. The amount awarded by the Tribunal is taken against the compensation for loss of love and affection to which the claimants are entitled to receive as their personal loss. The compensation payable is thus arrived as below:

Heads	Enhanced Amount (Rs.)
Loss to estate	2,53,000/-
For Funeral Expenses	10,000/-
For Transportation	5,000/-
For loss of love and affection	60,000/-
Total :	3,28,000/-

5. To conclude the appeal is partially allowed and the compensation payable to the claimants/appellants is enhanced from Rs.60,000/- to Rs.3,28,000/- and the respondent is directed to deposit the same with interest at 7.5% p.a, less if any already deposited, within four weeks from the date of receipt of a copy of this order, whereupon the appellants would be free to withdraw the same. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ds

To:

1.The Motor Accident Claims Tribunal,
XVI Additional Court, Chennai.

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

+1cc to Mr.P. Paramasivadoss, Advocate, S.R.No.495,

+2ccs to Mr. N, Easwaran, Advocate, S.R.No.14360, 618

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