BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)Nos.146 & 459 of 2017
and
C.M.P(MD)No.4960 of 2017

C.M.A(MD)No.146 of 2017

1.Girija
2.Minor Shakthidharan
(Minor petitioner is represented by
his mother/next friend 1st appellant) ... Appellants/Petitioners

vs.

1.Tamil Nadu State Government Transport Corporation,
Represented by its Managing Director,
Tirchirappalli.

2.M.Soundarawathi

3.D.Muthuvel ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of M.V. Act, against the judgment and decree, dated 29.09.2016 in M.C.O.P.No.899 of 2014 on the file of Motor Accident Claims Tribunal/Special District Judge, Tiruchirappalli and seeking enhancement of compensation.

For Appellant : Mr.N.Sudhagar Nagaraj
For R1 : Mr.D.Sivaraman
For R2 & R3 : Mr.Y.Krishnan

C.M.A(MD)No.459 of 2017

Tamil Nadu State Government Transport Corporation,
Represented by its Managing Director,
Tirchirappalli. ... Appellant/1st Respondent

vs.

1.Girija
2.Minor Shakthidharan :R1 and R2/Petitioners 1 and 2
(Minor petitioner is represented by
his mother/next friend 1st appellant)

3.M.Soundarawathi

4.D.Muthuvel ...R3 and R4/R2 and R3

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of M.V. Act, against the judgment and decree dated 29.09.2016 in M.C.O.P.No.899 of 2014 on the file of Motor Accident Claims Tribunal/Special District Judge, Tiruchirappalli.

For Appellant : Mr.D.Sivaraman

For R1 & R2 : Mr.N.Sudhagar Nagaraj

For R3 & R4 : Mr.S.Arunachalam

COMMON JUDGMENT

[Judgment of the Court was made by **K.KALYANASUNDARAM,J.]**

CMA(MD)No.146 of 2017 is preferred by the claimants seeking enhancement of compensation, whereas CMA(MD)No.459 of 2017 is filed by the Transport Corporation questioning the award passed by the Tribunal.

2.Brief facts of the case are that on 02.03.2014, while the deceased Sezhiyan was proceeding in his two-wheeler TN-45-AY-3156 on Trichy-Srirangam Road near Sathyam Hotel, a bus TN-45-N-2204 belonging to the Transport Corporation driven by its driver in a high speed came from opposite direction, ran over the centre median and rammed the two-wheeler. In the accident, the deceased died on the spot.

3.The claimants have further stated that the deceased was a MBA Graduate and he was working as an Assistant Professor in National Institute of Technology, Trichy and was drawing a sum of Rs.75,000/- per month. He was also doing PHD and he died at the age of 30 years. The Claim was made for Rs.3 Crores.

4.Before the tribunal, the claimants in order to prove their case, examined 6 witnesses as P.Ws.1 to 6. Among them PW2 is an eye witness and marked 15 documents as Exs.P1 to Ex.P15. On the side of the respondents, 2 witnesses were examined, but no document was produced.

5.PW2 in his evidence has supported the case of the claimants. The driver of the bus, who was examined as RW1 has admitted in his evidence that the bus, after crossing the centre median, came to the wrong side and caused the accident. Perusal of the First Information Report (Ex.P1) reveals that a criminal case was registered against the driver of the bus. Based on the evidence, the Tribunal has rightly come to the conclusion that the driver of the bus was responsible for the accident.

6.As regards the quantum, on the basis of the evidence of PW1, Ex.P2 postmortem certificate, Ex.P5 Central Board of Secondary Education Certificate and Ex.P6 Family Card, the Tribunal held that the deceased died at the age of 39 years. Exs.P13 and P14 would show that the deceased had successfully complete BBA, MBA and M.Phil. PW3 and PW4 are the officials from Pondicherry University and they have produced Exs.X1 to X6, which reveal that the deceased was working as Assistant Professor and his salary was Rs.75,000/- per month. After deducting 20% for Income Tax, he was receiving Rs.36,868/-. PW5 was a Guide for the deceased for doing PHD. PW3 has stated that the retirement age of the National Institute of Technology is 65 years. The Tribunal has taken the income of the deceased as Rs.40,000/- and after deducting 1/4th for his personal expenses taken his contribution to the family as Rs.30,000/-, by adding 50% toward future prospects, fixed the monthly income at Rs.45,000/- and by applying multiplier '15' awarded a sum of Rs.81,00,000/- towards loss of dependency. In addition, the tribunal has awarded Rs.25,000/- towards transportation and funeral expenses; Rs.50,000/- for consortium and Rs.1,00,000/- towards of loss of love and affection. In total, the tribunal has awarded Rs.82,75,000/- together with interest @ 7.5% p.a.

7.Heard the learned counsel for the appellants and the learned counsel for the respondents and perused the materials available on record.

8.In the instant case, it is not in dispute that the deceased was working as 'Assistant Professor' and his monthly salary was Rs.65,381/, which is evident from PW3 to PW5 and Ex.P4. It is also not in dispute that the deceased died at the age of 39 years. As per the latest decision of the Hon'ble Apex Court, 20% have to be deducted towards Income Tax and 50% have to be added towards future prospects. The annual income of the deceased comes to Rs.7,84,572/- (Rs.65,381/- x 12). After deducting 20% towards income tax and after adding 50% towards future prospects, the annual income is arrived at Rs.9,41,486/- and 1/3rd has to be deducted therefrom towards his personal expenses. The income would be Rs.6,27,658/- and by applying proper multiplier '15', this Court awards **Rs.94,14,864/-** towards loss of dependency. As per the decision of the the Hon'ble Supreme court in the case of **Pranay**

Sethi, wife is entitled to Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards transportation and funeral expenses. The claimants are entitled for compensation of **Rs.94,84,870/-** along with interest @ 7.5% p.a.

9.It is an admitted fact that the claim petition was filed by wife and minor child of the deceased and the parents of the deceased were impleaded as respondents 2 & 3.

10.The Tribunal has awarded Rs.15,00,000/- each to the first claimant and the respondents 2 and 3 and the remaining amount was awarded to the minor children. It is not in dispute that the parents of the deceased are retired Government servants and they are pensioners.

12.Considering the above fact, this Court is of the opinion that the apportionment of the tribunal requires modification. In that view, the parents would be entitled for Rs.10,00,000/- each. The first claimant is entitled for Rs.24,00,000/- and the minor second claimant is entitled for Rs.50,84,870/-.

13.In the result, C.M.A(MD)No.146 of 2017 is partly allowed. The award of the tribunal is enhanced to Rs.94,84,825/- as against Rs.82,75,000/- and consequence thereof CMA(MD)No.459 of 2017 filed by the Transport Corporation is dismissed. The Transport Corporation is directed to deposit the modified amount, less the amount already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such compliance, the major claimants are permitted to withdraw their share as per the apportionment made by this Court. The share of the minor claimant is directed to deposit in any one of the Nationalized Bank, in a fixed deposit scheme, till he attains majority. The first claimant/mother, being the guardian of minor claimant, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

am

To

The Special District Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli.

COPY TO : THE SECTION OFFICER, V.R.SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI (2COPIES)

+1cc to Mr.Y.Krishnan, Advocate in SR.No. 86756
+2cc to Mr.D.Sivaraman, Advocate in SR.Nos.8627 & 86828
+1cc to Mr.N.Sudhagar Nagaraj, Advocate in SR.No. 86971
+1cc to Mr.S.Arunachalam, Advocate in SR.No.87141

GJM/CVC/SAR-3-22.3.18-5p-9c

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