BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:07.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD).No.1259 of 2015
and
M.P.(MD)No.2 of 2015
and
Cros.Obj.(MD)No.2 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Trichy Division,
Trichy. ... Appellant / 1st Respondent

Vs.

1.Rajeswari
2.Minor.Sanjay
3.Minor.Sakthi Hanvey
(Respondent Nos. 2 and 3 are minors represented by their mother and natural guardian the 1st respondent)
4.Natarajan
5.Packiammal ... Respondents 1 to 5/Petitioners

6.Indhumathi

7.Universal Transport Service
Represented by its partner
C.Ravindran
Office at: Thirunallar main road,
Pachur, Karaikal.

8.Sri Ram General Insurance Company Limited,
Represented by its Manager,
Office at: 406, Bharathiyar Road,
Near Bharat Petroleum,
Opp. to Agriculture Office,
Thala Theru,
Karaikal - 609 605.
... Respondents 6 to 8/ Respondents 2 to 4

PRAYER in C.M.A.(MD).No.1259 of 2015: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, against the judgment and decree made in M.C.O.P.No.80 of 2013, dated 20.03.2014 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Kanyakumari District.

For Appellant : Mr.P.Prabhakaran
For R-1 to R-5 : Mr.C.Sankar Prakash
For R-6 & R-7 : No Appearance

In Cros.Obj.(MD)No.2 of 2016

1.Rajeswari
2.Minor.Sanjay
3.Minor.Sakthi Hanvey
(Petitioner Nos. 2 and 3 are minors represented by their mother and natural guardian the 1st petitioner)
4.Natarajan

5.Packiammal ... Cross Objectors/Respondents 1 to 5

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Trichy Division,
Trichy.

2.Indhumathi

3.Universal Transport Service
Represented by its partner
C.Ravindran
Office at: Thirunallar main road,
Pachur, Karaikal.

4.Sri Ram General Insurance Company Limited,
Represented by its Manager,
Office at: 406, Bharathiyar Road,
Near Bharat Petroleum,
Opp. to Agriculture Office,
Thala Theru,
Karaikal - 609 605. ... Respondents / Respondents

PRAYER in Cross Obj.(MD) No.2 of 2016: The Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code, against the judgment and decree made in M.C.O.P.No.80 of 2013, dated 20.03.2014 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Kanyakumari District.

For Appellants : Mr.C.Sankar Prakash
For R-1 : Mr.P.Prabhakaran
For R-2 & R-3 : No Appearance

COMMON JUDGMENT

An accident took place on 05.09.2011 involving the bus belonging to TNSTC and an omni-bus. There were a number of casualties. The driver of the omni-bus also passed away. His dependents filed M.C.O.P.No.80 of 2013 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Kanyakumari District. The Tribunal had awarded a sum of Rs.13,06,800/-. Questioning the award on the ground of quantum the Transportation Corporation filed C.M.A.(MD).No.1259 of 2015. The claimants filed cross objection in Cros Obj.(MD).No.2 of 2016 for enhancement.

2. The deceased was aged around 34 years. Even though Ex.P.5 was filed to sustain the claim that he was earning a sum of Rs.8,000/- per month, the employer was not examined. Taking his monthly income as Rs.8,000/-, the Tribunal awarded the said sum by applying multiplier 16. While so awarding, a sum of Rs.1,45,200/- was deducted towards income tax. The deduction towards the income tax cannot be done mechanically. It must be seen whether the amount is liable to be deducted. If the salary of the deceased was taken as Rs.8,000/-, the question of paying the income tax will not arise. Therefore, the award passed by the Tribunal requires modification.

3. Even though the learned counsel appearing for the claimant would contend that future prospects should be added, I am not inclined to agree with the said submission. This is because, since there is no income proof, the monthly income ought to have been taken only as Rs.6,000/- because the accident took place in the year 2011. If the future prospects is added to the said sum it will come to Rs.8,000/-. Either way there is no change in the quantum of award. Interference is made only with regard to the income tax deduction. There shall be no deduction towards income tax. The appellant Transport Corporation is directed to deposit the entire compensation along with the sum of Rs.1,45,000/-, (which was directed to be deducted for income tax by the Tribunal) with interest at 7.5% per annum and costs from the date of petition till the date of realisation within a period of eight weeks from the date of receipt of a copy of this order, to the credit of M.C.O.P.No.80 of 2013 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Kanyakumari District, if the same has not been deposited already. On such deposit, the claimants are permitted to withdraw the same in the manner directed by the Tribunal, less the amount already withdrawn by them, if any, as per the apportionment made by the Tribunal.

4. C.M.A(MD).No.1259 of 2015 filed by the appellant Corporation is dismissed. The cross objection in Cro.Obj.(MD).No.2 of 2016 is partly allowed to the extent as indicated above.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Kanyakumari District.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.P.Prabhakaran, Advocate SR.No. 85803
+1cc to M/S.C.Sankar Prakash, Advocate SR.No. 85604

C.M.A.(MD).No.1259 of 2015

kmi
JM/SKN RSK/SAR 1/26.02.2018/4P/6C