BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2017

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.(MD).No.36 of 2017

1.S.Marieeswari
2.Minor S.Karthika
3.Minor S.Mani Mehalai
4.R.Karpagam
5.R.Mahalakshmi .. Appellants/Claimants

Vs.

The Tamil Nadu State Transport Corporation Ltd.,
(Madurai Division)Bye-pass Road,
Tirunelveli District ..Respondent/Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment passed in M.C.O.P.No.256 of 2010 dated 22.12.2010 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.1, Thoothukudi.

For Appellants : Mr. S.Siva Thilakar
For Respondent : Mr. P.Prabakaran

J U D G M E N T

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment passed in M.C.O.P.No.256 of 2010 dated 22.12.2010 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.1, Thoothukudi.

2. Heard Mr.S.Thivathilagar, learned counsel appearing for the appellants/claimants and Mr.Prabhakaran, learned counsel for the respondent Transport Corporation and perused the records.

3. This appeal has been preferred by the claimants aggrieved by the quantum of compensation of Rs.1,95,000/- awarded by the Tribunal for the death of one Senthilkumar aged about 37 years.

4. The accident had occurred on 05.05.2010 when he was travelling in a motorcycle, which was knocked down by the respondent Transport Corporation bus. There is no appeal with regard to either negligence or quantum by the respondent Transport corporation. The only question to be decided is with regard to quantum.

5. The Tribunal, in the absence of any material proof regarding the income of the deceased, took only Rs.15,000/- per annum as notional income and adopted multiplier '16'. The Tribunal totally awarded compensation of Rs.1,95,000/-.

6. The Honourable Supreme Court in ***New India Assurance Company Limited v. Smt.Kalpana and others*** reported in ***2007 (1) TN MAC 1 (SC)***, determined the monthly income of a driver, who died in the accident occurred in 1999, at Rs.4,500/- (Rupees Four Thousand and Five Hundred only) in the absence of any material evidence to prove the income and after deducting 1/3rd amount towards his personal expenses, arrived at the monthly income of the deceased at Rs.3,000/- (Rupees Three Thousand only) per month. The Honourable Supreme Court in ***Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.*** reported in ***2014 (1) TNMAC 459 (SC)***, determined the monthly income at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month for a vegetable vendor, who sustained injury in the accident occurred on 14.07.2008. When such is the position, it is not understandable as to how the Tribunal awarded the said quantum. Therefore, the amount taken by the Tribunal as notional income has to be set aside. Accordingly, Rs.6500/- is taken as monthly income of the deceased.

7. The Honourable Supreme Court in ***Rajesh and others v. Rajbir Singh and others*** reported in ***(2013) 9 Supreme Court Cases 54*** added 50% of future prospectus for those who are upto 40 years and 30% to those persons aged 40 to 50 years. In this case, the deceased was 37 yeas old and as per Ex.P.2, Postmortem Certificate and therefore, 50% has to be added to future prospectus. If 50% added to future prospectus income would be Rs.9750/-. As per the said judgment of the Honourable Supreme Court, 50% has to be added towards future prospects as the deceased was aged about 37 years. Accordingly, the monthly income of the deceased would be Rs.9,750/- (Rupees Nine Thousand Seven Hundred and Fifty only) [Rs.6,500/- + Rs.3,250/-].

8. The members of the family is 5. ¼ has to be deducted as per judgment of ***Sarla Verma v. Delhi Transport Corporation*** reported in ***2009 (2) TN MAC 1 (SC).*** Accordingly, 1/4th is deducted towards personal expenses and after deducting 1/4th loss of income comes to Rs.13,16,250/-. The first claimant is entitled for Rs.1,00,000/- towards consortium and the claimants 2 and 3 are entitled Rs.75,000/- each towards love and affection and the claimants 4 and 5 are entitled for Rs.50,000/- each and the Rs.25,000/- is awarded towards funeral expenses and Rs.25,000/- is awarded towards loss of estate and Rs.5000/- is awarded towards Transportation. Totally, Rs.17,21,250/- rounded upto

Rs.17,25,000/- is awarded as enhanced compensation.

9. Accordingly, the appellants/claimants are entitled to get the following compensation:

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of Income	1,60,000.00	13,16,250.00
2.	Loss of consortium to the first appellant/wife	20,000.00	1,00,000.00
3.	Loss of Love and Affection to the appellants 2 and 5	10,000.00	-
4	Loss of love and affection to the appellants 2 and 3		1,50,000.00
5.	Loss of love and affection to the appellants 4 and 5	Nil	1,00,000.00
6.	For funeral Expenses	3,000.00	25,000.00
7.	For loss of estate	2,000.00	25,000.00
8.	Transportation Charges		5,000.00
	Total	1,95,000.00/-	17,21,250.00
			Rounded upto 17,25,000/-

The rate of interest at **7.5%** p.a is confirmed.

10. The first appellant/wife is entitled to Rs.6,50,000/- and the second and third appellants are entitled to Rs.4,50,000/- each and the fourth respondent mother is entitled to Rs.1,00,000/- and the fifth respondent sister is entitled to Rs.75,000/-. The Transport Corporation is directed to deposit the entire award amount with interest and costs within a period of 12 weeks from the date of receipt of copy of this judgment.

11. The appellants are directed to pay additional court fee to such deposit within a period of two weeks from the date of receipt of copy of this judgment. As far as the share amount of the minor is concerned, the amount is directed to be deposited in a nationalized bank and the first appellant is permitted to withdraw interest once in two months till they attain majority. It is made clear that the appellants are not entitled to interest for the delayed period of 1167 days, which period the appellant failed to file the appeal in time.

12. In the result,

(i) This Civil Miscellaneous Appeal is allowed;

(ii) The appellants /claimants are entitled to the total compensation of **Rs.17,25,000/-** (Rupees seventeen lakhs and twenty five thousand only) with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(iii) Each of the appellants/claimants is entitled to get their respective share amount as per the apportionment made by this Court;

(iv) The appellants/claimants are directed to furnish their Personal Savings Bank Account Numbers to the appellant-Insurance Company **forthwith**, who, on receipt of the same, is directed to transfer the entire compensation amount along with accrued interest and proportionate costs, to the respective Personal Savings Bank Account Numbers of the appellants/claimants through RTGS/NEFT, within a period of **two weeks thereafter**; and

(v) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To,

Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.1, Thoothukudi.

Copy to

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court.

+1cc to Mr.S.Siva Thilakar, Advocate Sr.No.3181
+1cc to Mr.P.Prabakaran, Advocate Sr.No.2613

CM

VB/RR/17.04.2017/4P/5C