

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.1082 of 2018

and

C.M.P.No.9006 of 2018

Andhrapradesh State Road Transport Corporation Ltd.,
Rep. by its Vice Chairman and Managing Director,
Bus Bhavan, Musheerabad,
Hyderabad - 500 020,
Andhra Pradesh State. ... Appellant/Respondent

Vs

1.Chandralekha

2.Minor Gangadar

3.Minor.Murugesh

Minors are represented by their N.F. Mother 1st petitioner

... Respondents/Petitioners

PRAYER : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act against the award and decree dated 11.07.2017 passed by the Special Subordinate Judge, Motor Accident Claims Tribunal, Thirupathur in M.C.O.P.No.1461 of 2013, praying to set aside the above said Award and Decree against this Appellant.

For Appellant : Ms.G.V.Shoba

For Respondents : Mr.K.Karthick Asath

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Transport Corporation against the award of Rs.12,73,400/- for the death of one Venkataramappa, aged about 45 years, Agriculturalist and Flower Merchant, allegedly earning about Rs.15,000/- per month in the accident which occurred on 16.11.2012, when the deceased was riding his TVS Super XL, which was hit down by the bus belonging to the appellant/Transport Corporation. Therefore,

claim petition.

2.On contest the Tribunal found that the accident had occurred because of the rash and negligent driving of the bus driver and awarded a sum of Rs.12,73,400/-. The said award is being challenged before this Court on the question of quantum alone.

3.Heard Ms.G.V.Shoba, learned counsel for the appellant.

4.The learned counsel for the appellant would submit that Rs.1,00,000/- has been awarded towards loss of consortium, which is contrary to the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Similarly, she would submit that Rs.2,00,000/- awarded towards loss of love and affection to the 2nd and 3rd respondents is also contrary to the above said Constitution Bench's judgement. Hence, she seeks for reduction of the compensation amount.

5.However, a perusal of the award would disclose that the deceased was aged about 45 years, Agriculturalist and Flower Merchant, allegedly earning about Rs.15,000/- per month. The Tribunal in the absence of any proof regarding income took Rs.6,500/- as monthly income. The date of accident is 16.11.2012. The Honourable Supreme Court in the judgment delivered in Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 whereas, in this case the accident occurred after four years. Therefore, Rs.6,500/- fixed by the Tribunal based on the aforesaid judgment may not be appropriate. Therefore, this Court takes into consideration the above factor and determines the monthly income at Rs.9,000/- per month.

6.The Tribunal added 30% towards future prospects. Relying upon the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) the learned counsel for the appellant rightly pointed out that 25% has to be awarded towards future prospects for the person aged about 45 years, who is employed privately. Therefore, 25% has to be added towards future prospects. Along with 25% future prospects, the monthly income would be Rs.11,250/- (Rs.9,000/- + 25% of Rs.9,000/-).

7.The size of the family is three and therefore, the Tribunal rightly deducted 1/3rd towards personal expenses and the same is confirmed. After deducting 1/3rd loss of monthly income would be Rs.7,500/- (Rs.11,250/- (-) 1/3 of Rs.11,250/-).

8.The Tribunal rightly took the appropriate multiplier '14' as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) and therefore, the same is confirmed and the loss of income would be Rs.12,60,000/- (Rs.7,500/- X 12 X 14).

9.Loss of consortium:

The learned counsel for the appellant contended that as per the Constitution Bench's judgment of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), Rs.40,000/- has to be awarded towards loss of consortium to the 1st respondent, whereas the Tribunal awarded a sum of Rs.1,00,000/- and the same has to be reduced. Accordingly, loss of consortium is reduced to Rs.40,000/-.

10.Loss of love and affection:

A sum of Rs.1,00,000/- each was awarded by the Tribunal to the minor children, 2nd and 3rd respondents. Though it is contended by the learned counsel for the appellant that no amount could be awarded as per the Constitution Bench judgment of the Honourable Supreme Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), this Court awards a sum of Rs.75,000/- each to the 2nd and 3rd respondents. The Hon'ble Supreme Court would not have meant that no amount could be awarded towards loss of love and affection. The amount awarded towards loss of love and affection to the children and the parents is akin to the amount awarded towards loss of consortium.

11.Funeral expenses:

A sum of Rs.25,000/- was awarded by the Tribunal towards funeral expenses. As per the Constitution Bench's judgment in Pranay Sethi's case, the same is reduced to Rs.15,000/-

12.Loss of estate:

No amount was awarded by the Tribunal towards loss of estate. As per the Constitution Bench's judgment in Pranay Sethi's case, a sum of Rs.15,000/- is awarded towards loss of estate.

13.Transportation charges:

A sum of Rs.2,000/- was awarded by the Tribunal towards transportation charges, which is very low. Hence, the same is enhanced to Rs.15,000/-.

14.Hence, the total compensation payable in this case is Rs.14,95,000/- rounded off to Rs.15,00,000/-

Head	Amount (Rs.)
Total loss of contribution	1260000
Loss of consortium	40000
Loss of love and affection	150000
Loss of estate	15000
Funeral expenses	15000
Transportation	15000
	1495000

15.The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered.

16.Though the Transport Corporation has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.12,73,400/- is enhanced to Rs.15,00,000/-, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

17.Out of the award amount, the 1st respondent/wife is entitled to get Rs.7,00,000/-; the 2nd and 3rd respondents/minor children are entitled to get Rs.4,00,000/- each.

18.The claimants are directed to pay the additional court fee, if any, within a period of two weeks from the date of receipt of a copy of this order.

19.The appellant/Transport Corporation is directed to deposit the entire award amount, with interest and costs, as per the modified award passed by this Court, before the Tribunal, on or before 16.08.2018, failing which, the Chairman-cum-Managing Director of Andhrapradesh State Transport Corporation shall appear before this Court on 17.08.2018.

20.On such deposit being made, The Tribunal is directed to transfer the share of the 1st respondent to her bank account through RTGS. As far as 2nd and 3rd respondents/minors' share are concerned, the same shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

21.With the above directions, this Appeal is dismissed and the award amount is enhanced from Rs.12,73,400/- to Rs.15,00,000/-. Consequently connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

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To
The Special Subordinate Judge,
(Motor Accident Claims Tribunal)
Tirupattur.

+1cc to Mr.G.V.SHOBA, Advocate, S.R.No.34717

C.M.A.No.1082 of 2018

KK(CO)
TR(07/06/2018)

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