IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1228 of 2017
and CMP Nos.6221 & 21108 of 2017
and
Cross Objection No.38 of 2018
and CMP No.11636 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram, Kancheepuram District.
... Appellant in CMA No.1228/17 &
Respondent in Cross Obj. 38/18/
Respondent

-vs-

1. R.Manonmani
2. R.Viknesh
3. * Minor R.Siddharth
[3rd respondent rep by his mother and
natural guardian R.Manonmani]
4. Jaya ...Respondents 1 to 4 in CMA.1228/17/
Cross objections in
Cross.Objection 38/18/Claimants

5. The Secretary to Government,
Government of Tamil Nadu,
Transport Department,
Fort St.George, Chennai 600 009. ...5th Respondent

[R5 impleaded as party respondent vide
order of Court dated 02/06/2017
made in CMP No.1228 of 2017]

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*R3 declared as major and his mother and natural guardian discharged from the guardianship vide Court order dated 26/06/2018 made in CMP No.9118 of 2018 in Cross Obj. Sr. 36478/17

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 29.01.2016 made in MCOP.No.62 of 2014 on the file of the Motor Accidents Claims Tribunal, Chennai (Sub Court), Maduranthagam.

Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to enhance the compensation amount awarded in the Judgment and decree dated 29.01.2016 passed in MCOP No.62 of 2014 on the file of the Motor Accident Claims Tribunal (Subordinate Court) at Madurantakam, Kancheepuram District.

For Appellant in CMA No.1228/17 & Respondent in Cross Obj. 38/18 : Mr.J.Lokesh for Mr.K.J.Sivakumar

For Respondents 1 to 4 in CMA No.1228/17 & Cross Objectors in Cross Obj. 38/18 : Mr.N.Manokaran for Mr.M.Marudhachalam

J U D G M E N T

[Judgment of the Court made by R.SUBRAMANIAN,J.]

The appeal is at the instance of the Managing Director, Tamil Nadu State Transport Corporation, Villupuram, which suffered an award for payment of compensation of Rs.29,31,260/- with interest and costs for the death of one Ramesh in the motor accident that occurred on 13.09.2013. The claimants who are the wife, children and mother of the deceased had sought for compensation of Rs.1,00,00,000/- for the death of said Ramesh.

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2. According to the claimants, the deceased was proceeding to Chengalpattu from his house in the two wheeler, bearing Registration No.TN-01-T-6565 on the GST Road, while nearing Hotel Ganesh Bhavan, the vehicle belonging to the respondent Corporation, which was driven by its driver in a rash and negligent manner in the opposite direction, dashed against

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him and as a result of the injuries suffered in the accident, the said Ramesh died on the spot. Claiming that the deceased Ramesh was working in Orchid Chemicals and Pharmaceuticals Ltd., and drawing a salary of Rs.58,554/- per month, the claimants sought for compensation of Rs.1,00,00,000/-.

3. The Claim Petition was resisted by the appellant Corporation contending that the accident did not happen due to the rash and negligence on the part of the driver of the bus belonging to the Corporation. It was the motor cyclist, namely the deceased Ramesh who was driving the vehicle in a rash and negligent manner and dashed against the bus. The very fact that the impact the point of impact was on the middle of the bus would show that there was no negligence on the part of the bus driver. The Corporation had also denied the claim regarding quantum of income as well as the Educational qualification of the deceased. The Tribunal on an appreciation of evidence on record, particularly the evidence of P.W.2, which according to it is disinterested testimony, as well as the contents of the FIR lodged against the driver of the bus, concluded that the accident occurred due to the rash and negligent driving of the bus.

4. While assessing the quantum of compensation, the Tribunal took note of Ex.P10, despite the objection raised by the Corporation that Ex.P10 is not a salary certificate. The Tribunal however, took into account only the basic salary of Rs.22,600/- drawn by him. The Tribunal did not take into account the future prospects relying upon the Judgment of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation, reported in 2009 INSC 756. Therefore, the Tribunal awarded a compensation of Rs.27,73,260/- towards pecuniary loss. The Tribunal also awarded Rs.1,00,000/- towards loss of love and affection and consortium, Rs.5,000/- towards funeral expenses, Rs.3,000/- towards Transport Charges and Rs.50,000 towards Loss of estate, in all the Tribunal awarded a sum of Rs.29,31,260/-.

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5. Aggrieved by the said award the Transport Corporation has come forward with the appeal and the claimants had filed a Cross Objection seeking enhancement.

6. We have heard Mr.J.Lokesh, learned counsel appearing for Mr.K.J.Sivakumar, for the appellant Corporation and Mr.N.Manoharan, learned counsel appearing for Mr.M.Muruthachalam, learned counsel for the respondents/cross objectors.

7. The counsel for the appellant Corporation did not challenge the finding of the Tribunal on the question of negligence, therefore, we are called upon to decide only the question of quantum in this Appeal as well as the Cross objection.

8. Mr.J.Lokesh, learned counsel appearing for the appellant Corporation would contend that the Tribunal erred in fixing the monthly income at Rs.22,010/-. According to him, the document namely Ex.P10 which is projected as a salary certificate, does not appear to be a genuine salary certificate. It appears to be an annual salary certificate issued at the instance of the claimants. Therefore, according to him, the said document should not have been taken as the basis for fixing the income at Rs. 22,010/-.

9. Per contra, Mr.N.Manoharan, learned counsel appearing for the respondents/cross objectors would vehemently contend that the Tribunal was not right in taking the basic salary alone. Relying upon the salary certificate namely, Ex.P10, the learned counsel would contend that the monthly gross salary is shown as Rs.48,694/-. Therefore, the Tribunal was not right in taking only Rs.22,010/- as the monthly income of the deceased Ramesh. Mr.L.Manoharan, learned counsel would also rely upon the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2017 (2) TNMAC 609 (SC), to contend that the irrespective nature employment the Hon'ble Supreme Court has held that future prospects should be taken into account. Admittedly, the deceased was an income-tax assessee and he also been paying income-tax. Ex.P10, salary certificate is not a standalone document, there are other documents to show that the deceased was actually employed in Orchid Chemicals and Pharmaceuticals Ltd., and he was drawing a salary of Rs.48,694/- per month. This sum of Rs.48,694/- per month, consists of various components, like education allowance, washing allowance, transport allowance, location allowance, personal allowance etc.

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10. The Tribunal has taken only the basic salary. We do not think that the Tribunal was right in taking only the basic salary eschewing all the other components. The basic salary is about Rs.22,010/-, house rent allowance is Rs.11,005/- and City compensatory allowance is about Rs.2,201/-, we are of the considered opinion that at least these three heads must have been taken to constitute the monthly income of the deceased. No doubt, the other components namely education allowance, washing allowance, transport allowance, location allowance, personal allowance etc. are dependent on certain exigencies, which can be excluded from the computation of the income. We are, therefore of the considered opinion that the monthly income of the deceased can be fixed as Rs.35,260/- per month, taking the basic salary, house rent allowance and the city compensatory allowance alone as the monthly income of the deceased.

11. In view of the judgment of the Larger Bench of the Hon’ble Supreme Court in Pranay Sethi and other’s case, cited supra, 30% has to be added for future prospects. If the monthly income is taken at Rs.35,260/- the annual pecuniary loss would be Rs.4,22,592/-, 30% of the same has to be added towards future prospects. Adding the said 30% the annual income works out Rs.5,49,369/-. Admittedly, the deceased was an income tax assessee and he would come under the second slab of 20%. After deducting 20% income tax, the annual loss of dependency works out to Rs.4,39,496/-. The deceased was aged about 42 years at the time of the accident, therefore, a multiplier of 14 could be safely adopted. Thus calculated the total pecuniary loss works out to Rs.61,52,944/-, the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium and love and affection, we find that the same is not in tune with the Larger Bench decision of the Hon’ble Supreme Court in Pranay Sethi and other’s cited supra, therefore, the same is reduced to be Rs.40,000/-. The sum of Rs.58,000/- granted towards loss of estate, transportation and funeral expenses is sustained. The total compensation works out to Rs.62,50,944/- and the same is rounded off to Rs.62,50,000/-. We have not deducted any amount towards the personal expenses of the deceased, because of the fact that we have excluded the personal allowance of sum of Rs.10,378/- which was paid to him in his salary.

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12. In view of the foregoing reasons, the appeal filed by the Transport Corporation in CMA 1228 of 2017 is dismissed and the Cross objection filed by the respondents in Cross Objection No.38 of 2018 is allowed. The award of the Tribunal is modified and granting a sum of Rs.62,50,000/- as compensation to the claimants. ***The Transport Corporation is directed to deposit the modified award amount, less any amount already deposited if any, with in a period of eight weeks from the date of receipt of copy of the Judgment. On such deposit the claimants are permitted to withdraw the same by filing necessary application. The apportionment between the Claimants is as follows;**

13. Of the compensation awarded, the 1st respondent being the wife will be entitled to a sum of Rs.25,00,000/- with proportionate interest at 7.5% per annum. The 4th respondent being the mother will be entitled to a sum of Rs.5,00,000/- with interest at 7.5% per annum, the children namely the respondents 2 and 3 will be entitled to the remaining amount equally, namely Rs. 16,25,000/- each with interest at 7.5% per annum. There will be no order as to costs in the appeal. The cross objectors will be entitled to proportionate costs in the Cross Objection. Consequently, the connected miscellaneous petitions are closed.

jv

Sd/-
Assistant Registrar(CS IV)
Dated:26/09/2018

***Incorporated as per order dated 8/10/2018 and made in CMA No.1228 of 2017**
Sd/-
Assistant Registrar(CS-IV)
Dated:24/10/2018

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Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal, Chennai,
Maduranthagam.

To be substituted the order already despatched on 28/09/2018

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2.The Secretary to Government
Government of Tamilnadu,
Transport Department,
Fort St. George, Chennai 600 009

+1cc to Mr.K.J.Sivakumar, Advocate Sr.No.56925
+1cc to Mr.M.Marudhachalam, Advocate Sr.No.56937
***+1cc to Mr.M.Marudhachalam, Advocate Sr.69350**

TM(CO)
sm:26.9.2018

srg 25/10/2018

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