IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A. No.2624 of 2011

1.Amar Chand Bhandari

2.A.Surendar

3.A.Mahaveer

4.Tija Devi

5.S.Rekha Jain

6.Ranjana ... Appellants /Claimants

-vs-

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai 600 002. ... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 29.03.2011 made in M.C.O.P.No.99 of 2010 on the file of the III Judge, Motor Accident Claims Tribunal (The III Court of Small causes), Chennai.

For Appellants : Ms.P.T.Salim fathima

For Respondent : Mr.S.V.Vasantha Kumar

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.99 of 2010 on the file of the III Judge, Motor Accident Claims Tribunal (Court of Small causes), Chennai. The appellants/claimants filed the above claim petition for the death of Mrs.Vimala Devi W/o 1st claimant and the mother of the claimants 2, 3, 5 and 6.

2.The brief facts of the case in nutshell are as follows:

On 06.11.2009, the deceased was travelling as a pillian rider in a scooter bearing registration No.TN-01 S 5460 along Triplicane High Road. At about 22.15 hrs, when she was nearing Kellet Higher Secondary School Bus stop, a speeding bus bearing registration No.TN-01 N 5749 hit the scooter, as a result of which, the deceased sustained severe head injury and died on spot.

3.According to the appellants/claimants, the rash and negligent driving of the driver of the bus bearing registration No. TN-01 N 5749 was the cause of the accident and therefore, the respondent is liable to pay the compensation of Rs.11,00,000/- to the appellants/claimants.

4.The respondent filed a counter denying all the allegations of the appellants/claimants. However, the trial Court after analysing the evidence on record, awarded a compensation of Rs.4,31,000/- together with interest at the rate of 7.5% per annum to the claimants.

5.Aggrieved over the quantum of compensation awarded by the trial Court, the claimants have filed this present appeal under Section 173 of Motor Vehicles Act, 1988 seeking for an enhancement of compensation. Ms.P.T.Salim fathima, learned Counsel appearing for the appellants would contend that the deceased was an income tax assessee earning a sum of Rs.10,000/- to Rs.12,000/- per month and though the income tax returns for the years 2008-2009, 2009-2010 and 2010-2011 were filed, the trial Court has fixed only a sum of Rs.3,000/- as monthly income which according to him is very meagre.

6.A perusal of the records shows that the accident took place on 06.11.2009 and income tax statement filed for the year 2010-2011 (Ex.P.7) shows that the income was Rs.1,68,810/-, which would mean that even after the death of the deceased, income tax return was submitted by the 1st claimant/appellant. The learned Counsel appearing for the respondent would contend that the entire business was done by the husband of the deceased and therefore, the trial Court was right in not taking up the monthly income as Rs.10,000/- per month.

7.However, in the interests of justice, the monthly/notional income of the deceased should have been fixed as Rs.6500/- and as per the judgment of the Hon'ble Supreme Court in "National Insurance Co. Ltd vs Pranay Sethi and others reported in 2017 (2) TN MAC 27" , 10% is added towards future prospects and since the age of the deceased is 52 years on the date of the accident and the proper multiplier, as per the decision of the Honourable Supreme Court in "Sarla Verma & Others .Vs. Delhi Transport Corporation & another", reported in 2009 (2) TNMAC 1 (SC), is '11'. The loss of income of the deceased would be thus, [Monthly income Rs.6500 + 10% of future prospects = Rs.7150].

8.Though there are 6 claimants in the instant case, the claimants 1, 4 and 5 cannot be said to be depending on the income of the deceased and therefore, 1/3 of the monthly income is deducted towards the personal expenses of the deceased. Applying multiplier of 11, the loss of dependency would be Rs.6,29,200/- (7150x12x11x1/3 deduction). Apart from that, an amount of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- are awarded towards the loss of consortium, loss of estate and funeral expenses respectively as per the Constitution Bench judgment of the Honourable Apex Court in "National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC)". Hence, the award of the tribunal is modified and thus,

S.No.	Heads	Amount
1.	Loss of monthly income	Rs.6,29,200/-
2.	Loss of consortium	Rs.40,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of estate	Rs.15,000/-
	TOTAL	Rs.6,99,200/-

9.The respondent is directed to deposit the enhanced compensation amount together with interest at the rate of 7.5% per annum to the credit of the M.C.O.P.No.99 of 2010 on the file of the III Judge, Motor Accident Claims Tribunal (Court of Small causes), Chennai within a period of six weeks from the date of receipt of a copy of this order and on such deposit being made by the respondent, the appellants are at liberty to withdraw their respective shares in the same proportion as per the orders passed by the trial Court.

10.With the above observations, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The III Judge,
Motor Accident Claims Tribunal,
(The III Court of Small causes),
Chennai.

Copy to

The Section Officer,
VR Section,
High Court, Madras. (+2 Copies)

+1cc to M/S.M.Swamikannu, Advocate Sr.80671
+1cc to Mr.S.V.Vasanthakumar, Advocate Sr.80642

C.M.A. No.2624 of 2011

svn[co]
srg 28/12/2018