IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.12.2017

Pronounced on : 28.04.2018

Coram

The HONOURABLE Dr.JUSTICE S.VIMALA
AND
The HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.M.A.No.1211 of 2016
and
C.M.A.No.2201/2016 & CMP.No.15707/2016

C.M.A.No.1211 of 2016
1.M.Mythili
2.M.Santhosh
3.M.Sathish .. Appellants/Petitioners

Vs.

The Managing Director,
Metropolitan Transport Corporation Limited,
Anna Salai, Chennai-600 002. .. Respondent/Respondent

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 07.07.2015 in M.C.O.P.No.5331 of 2012 on the file of the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes, Chennai).

For Appellants Mr.Amar D.Pandia for
Mr.P.Natarajan

For Respondent :Mr.S.S.Swaminathan

C.M.A.No.2201 of 2016

The Managing Director,
Metropolitan Transport Corporation Limited,
Anna Salai,
Chennai-600 002. ... Appellant/Respondent

vs

1.M.Mythili
2.M.Santhosh
3.M.Sathish .... Respondents/Petitioners

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal order dated 07.07.2015 passed in M.C.O.P.No.5331 of 2012 by the Motor Accidents Claims Tribunal, (III Judge, Court of Small Causes, Chennai), Chennai.

For Appellant :Mr.S.S.Swaminathan
For Respondents :Mr.Amar D.Pandia
for Mr.P.Natarajan

COMMON JUDGMENT

(The Judgment of the Court was made by P.RAJAMANICKAM.J.,)

C.M.A.No.1211 of 2016 has been filed by the claimants for enhancement of the award passed by the Motor Accidents Claims Tribunal, Chennai (III Judge, Court of Small Causes, Chennai) in MCOP.No.5331 of 2012 dated 07.07.2015.

C.M.A.No.2201 of 2016 has been filed by the Transport Corporation for modification of the award passed by the Motor Accidents Claims Tribunal, Chennai (III Judge, Court of Small Causes, Chennai) in MCOP.No.5331 of 2012 dated 07.07.2015.

2.For the sake of convenience, the parties are referred to as described in the claim petition.

The first claimant as wife and the claimants 2 and 3 as sons of the deceased Murali have filed a petition under Section 166 of the Motor Vehicles Act, claiming a compensation of Rs.30 lakhs. The tribunal has awarded Rs.23,06,752/- and rounded to Rs.23,07,000/- as compensation. Aggrieved by the same, the Transport Corporation has filed C.M.A.No.2201 of 2016 to modify the award. For enhancement of the compensation, the claimants have filed C.M.A.No.1211 of 2016.

3.On 16.12.2010 at about 19.30 hours, the deceased Murali was travelling in the respondent's bus bearing Regn.No.TN-01-N-8993 and when the said bus was passing over the Irumbuliyur over-bridge in GST Road near Thambaram, the driver of the said bus has driven the bus in a rash and negligent manner and dashed against the iron barricade, which was placed in the centre of the road. Due to the said accident, the iron rod pierced the bus and caused severe injuries to several passengers and the deceased Murali was one among them and the deceased died, due to the said accident. The case of the claimants is that at the time of the accident, the deceased was aged about 53 years and he was working as Technical Supervisor in the office of the Chief Post-Master General, Tamil Nadu Circle, Chennai and he was drawing salary of Rs.27,878/- per month and hence, they claimed Rs.30 lakhs as compensation.

4.The respondent has contested the said claim petition by filing counter. The respondent has denied the allegation that the accident took place due to the rash and negligent driving of the driver of the bus. According to the respondent, the driver has driven the bus slowly with care and caution, but suddenly, an auto-rickshaw overtook the bus on the left side and crossed the centre median of the road and in order to avoid the dashing of the bus with the auto, the driver has applied brake. The respondent's further case is that the front right side tyre slipped and pulled towards the platform and hit against the iron barricade unexpectedly and the said accident is purely an act of God. The respondent also denied the age and income of the deceased.

5.During enquiry, on the side of the claimants, 4 witnesses were examined as P.Ws.1 to 4. Exs.P.1 to P.17 were marked. On the side of the respondent, one witness was examined as R.W.1 and no exhibits were marked.

6.The tribunal, after considering the materials, placed before it, found that the accident took place due to the rash and negligent driving of the driver of the respondent's bus and awarded compensation as detailed below:

Monthly income of the deceased	= Rs.27,423/-
Less 10%[Towards tax deduction]	= Rs.27423 - 2742.30
	= Rs. 24,680/-
After deducting 1/3rd amount towards the personal expenses of the deceased the pecuniary loss p.m., is	= Rs. 16,453/-
(Rs.16453.80 x 12 x 11) (multiplier of 11 adopted)	= Rs.21,71,901.60
Loss of consortium	= Rs. 25,000.00
Loss of Love and affection	Rs. 75,000.00
Medical expenses	Rs. 19,851.00
Funeral expenses	Rs. 15,000.00
Total=	Rs.23,06,752.00
Rounded off to	Rs.23,07,000/-

Aggrieved by the same, the claimants and the Transport Corporation have filed the present appeals.

7.The learned counsel for the Transport Corporation has contended that the tribunal failed to consider that the accident has occurred due to the sudden overtaking by the auto on the left side of the bus and in order to avoid the collision dash against the auto, the bus driver has applied the brake and the front right side tyre pulled on the right side and dashed against the iron barricade and hence, the aforesaid accident was purely due to the act of God. He further contended that the tribunal has erred in fixing the monthly income of the deceased at Rs.27,000/- without any acceptable documentary evidence. He further contended that the tribunal ought to have deducted 15% of the income tax in stead of 10%.

8.The learned counsel for the respondents/ claimants has contended that the Transport Corporation herein has failed to establish that the accident was due to the act of God. He further submitted that the tribunal has fixed monthly income of the deceased at Rs.27,423/-, based on the salary certificate of the deceased, but it failed to consider that as per the statement submitted by the Accounts Officer of the Postal Department (Ex.P17), the deceased got revised pay of Rs.30,013/- per month. He further submitted that as per the decision in National Insurance Company Ltd., Vs. Pranay Sethi and Others reported in 2017 (2) TNMAC 609 (SC), for the age group of 50 to 60 years, the tribunal ought to have added 15% of the pay towards future prospects and apart from that the claimants are entitled to get compensation under the conventional heads also and hence he prayed to allow the appeal filed by the claimants and dismiss the appeal filed by the Transport Corporation.

9.There is no dispute that at the time of accident, the deceased Murali was travelling in the respondent's bus and due to the accident, the deceased sustained fatal injuries and died. In order to prove the rashness and negligence on the part of the respondent's driver, the claimants have examined P.W.3. According to P.W.3, the driver of the respondent has driven the bus bearing Regn.No.TN-01-N-84 in a rash and negligent manner and hit against the iron barricade, which was placed in the centre of the road and due to the said accident, the iron rod pierced the bus and caused injuries to several passengers and the deceased was also sustained injuries and subsequently, died. The oral evidence of P.W.3 has been corroborated by the F.I.R (Ex.P.1). The F.I.R was registered against the driver of the respondent. In order to controvert the evidence of P.W.3, the respondent has not examined either Driver or Conductor of the said bus or any other person who has witnessed the accident. On the contrary, the respondent has examined one Murugesan as R.W.1, who is working as Supervisor in the Transport Corporation. According to him, after receiving information with regard to the accident, he went to the place of accident and examined certain persons and came to know that the accident was due to overtaking of the auto on the left side, the driver of the bus has suddenly applied brake and hence, the bus hit against the iron barricade. So, it is clear that RW1 is not an eye witness and hence, the tribunal has not accepted his evidence as proof of negligence. After considering the F.I.R and also the evidence of P.W.3, the Tribunal has found that the driver of the respondent's bus was responsible for the aforesaid accident. The said finding has to be upheld.

10.As per the salary certificate (Ex.P.8), monthly gross salary of the deceased was Rs.27,878/-, but the tribunal has fixed the salary of the deceased as Rs.27,423/-. After deducting 10% towards income tax, it has fixed Rs.24,680.70/- as monthly income and $1/3^{rd}$ has been deducted towards personal expenses and after deducting $1/3^{rd}$ of the salary, the tribunal has fixed Rs.16,453.80 as income of the deceased.

11. As per the statement submitted by the Assistant Accounts Officer (Accounts), Office of the Chief Post Master General, Chennai 600002 (Ex.P17), revised monthly gross salary of the deceased for the month of November, 2010, was Rs.30,013/- and it is to be rounded off to Rs.30,000/-. As per the PAN Card (Ex.P9), the deceased Murali was born on 04.05.1957.He died on 18.12.2010 as per the death certificate (Ex.P5). So, on the date of death, he completed 53 years and 7 months. Therefore, his age has to be fixed as 53 years.

12. In National Insurance Company Ltd., Vs. Pranay Sethi and Others (supra), a Constitutional Bench of the Hon'ble Supreme Court has held that in case, the deceased was between the age of 50 and 60 years, the addition should be 15% towards future prospects. Since the deceased was 53 years, 15% of the salary has to be added towards future prospects. If 15% of the salary is added (Rs.30,000+Rs.4,500=Rs.34,500), that it would come to Rs.34,500/-. In the said amount, 10% should be deducted towards income tax. After deducting 10% towards income tax, it would come to (Rs.34,500-3,450=31,050)= Rs.31,050/-.

13. Since the dependants are three, one-third of the salary has to be deducted towards personal expenses of the deceased and after deducting one-third of the salary, the monthly income of the deceased would be (Rs.31,050-10,350=20,700)= Rs.20,700/-. In Sarla Varma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the Hon'ble Supreme Court has held that in the age group of 51 to 55 years, 11 multiplier to be used for calculating the loss of income. Hence, if 11 multiplier is applied (20,700x12x11=27,32,400) which comes to Rs.27,32,400/-. With this amount, a sum of Rs.19,851/- towards medical expenses (as per Ex.P14) to be added.

14. In National Insurance Company Ltd., Vs. Pranay Sethi and Others (supra), the Constitutional Bench of the Hon'ble Supreme Court has held that on conventional heads viz., loss of Estate, loss of consortium and Funeral Expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. If the aforesaid amounts are added towards conventional heads, the total compensation would be as follows:

Loss of dependency	-	Rs.27,32,400/-
Medical Expenses	-	Rs. 19,851/-
Loss of Estate	-	Rs. 15,000/-
Loss of Consortium	-	Rs. 40,000/-
Loss of Funeral Expenses	-	Rs. 15,000/-
		Rs.28,22,251/-

Rounded off to Rs.28,22,250/-

The claimants are entitled to get the aforesaid amounts as compensation. Accordingly to that extent, the appeal filed by the claimants in CMA.No.1211/2016 has to be allowed and the appeal filed by the Transport Corporation in CMA.No.2201/2016 has to be dismissed.

15. In the result, CMA.No.1211/2016 is allowed to the extent as stated above and the appeal filed by the Transport Corporation in CMA.No.2201/2016 is dismissed. Consequently, connected miscellaneous petition is closed. The appellants/claimants 1 to 3 in CMA.No.1211/2016 are entitled to get compensation of Rs.28,22,250/- with interest from the date of petition till the date of deposit of compensation at the rate of 7.5% interest per annum and with proportionate cost. The respondent/Transport Corporation in CMA.No.1211/2016 is directed to deposit the aforesaid amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. Out of the award amount, the first respondent/wife of the deceased is entitled to get Rs.14,00,000/- and 2nd and 3rd respondents being sons of the deceased, are entitled to get Rs.7,11,125/- each. On such deposit being made, the Tribunal shall transfer the amount as per apportionment made above directly to the bank account of the claimants through RTGS, within a period of two weeks thereafter.

vs

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To
1.The Motor Accident Claims Tribunal,
III Judge, Small Causes Court, Chennai

2. The Record Keeper,
V.R.Section,
Madras High Court, Madras.

+2cc to M/s.S.S.Swaminathan, Advocate SR.No.32543 & 32544

RJI(CO)
sm:7.6.2018

C.M.A.No.1211 of 2016
and
C.M.A.No.2201/2016
& CMP.No.15707/2016