IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2018

CORAM:

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

C.M.A. No.328 of 2018
and
C.M.P.No.3298 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Salem. ... Appellant/Respondent

-vs-

1.Anarkali
2.Minor Sumiya
3.Minor Sheif Moosa
4.Minor Shalva
Minors represented by their next friend and mother R1 Anarkali
5.Kairunbee
... Respondents/Petitioners

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 08.03.2016 made in MCOP.No.276 of 2012 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Kallakurichi.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.K.Suryanarayanan

J U D G M E N T
[Judgment of the Court made by R.SUBRAMANIAN,J.]

The Transport Corporation which had suffered an award for payment of Rs.55,67,000/- as compensation for the death of one Sheik Dawooth in a road accident that occurred on 24.06.2011 is the appellant.

2. The claimants are the wife, three minor children and the mother of the deceased. The claimants contend that while the deceased was riding his motor cycle bearing registration No.TN-

32-K-4807 on the extreme left side of the road, the bus belonging to the appellant Corporation driven in a rash and negligent manner by its driver dashed against the motor cycle and as a result of the accident the said Sheik Dawooth died on the spot. Contending that the deceased was working as a Purchase Officer in Qatar earing about 10,800 Qatari Riyals, the claimant sought for a compensation of Rs.40,00,000/- for the death of the said SheikDawooth.

3. The said claim was resisted by the appellant Corporation contending that the driver of the bus was not responsible for the accident. It was claimed that it was the deceased who drove the vehicle in a rash and negligent manner and hit the bumper of the bus, hence, the Corporation is not liable to pay compensation. The Corporation also denied the age and income claimed in the Claim petition.

4. The Tribunal on an analysis of the oral and documentary evidence, taking note of the FIR filed against the bus driver and the evidence of PW1, concluded that the rash and negligent driving of the bus was the sole cause of the accident.

5. On the quantum, the Tribunal took the monthly income of the deceased at Rs.1,20,000/-, after deducting 1/3rd towards personal expenses, the Tribunal arrived at a pecuniary loss per month at Rs.80,000/-. The Tribunal also deducted 10% towards income tax and took the monthly income at Rs.72,000/-. Applying split multiplier of '5' on the assumption that the deceased would have worked in Qatar for another 5 years, the Tribunal arrived at the pecuniary loss for the next 5 years at Rs.43,20,000/- and thereafter, the Tribunal took the notional income of the deceased at Rs.12,000/- per month. After deducting 1/3rd towards personal expenses, the Tribunal arrived at a pecuniary loss at Rs.9,000/- per month. Applying the multiplier of '9', the Tribunal arrived at a pecuniary loss at Rs.9,72,000/- for the remaining 9 years. The Tribunal also granted Rs.50,000/- towards loss of estate, Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and transportation. In all the Tribunal awarded a sum of Rs.55,67,000/- as compensation. Aggrieved, the Transport Corporation has come forward with the appeal.

6. We have heard Mr.D.Venkatachalam, learned counsel appearing for the appellant Transport Corporation and Mr.K.Suryanarayanan, learned counsel appearing for the

respondents/ claimants.

7. Mr.D.Venkatachalam, learned counsel appearing for the Transport Corporation would contend that the salary certificate produced as Ex.P3 does not contain any authentication, on the other hand, the annexure to the said document would show that the deceased was earing about 1150 riyals as monthly salary during the year 2004. Therefore, according to him, the Tribunal was not right in taking the monthly salary at Rs.1,20,000/- which is equivalent to about 10,000 Qatari Riyals. Therefore the learned counsel would seek our interference in the quantum of compensation.

8. Contending contra, Mr.K.Suryanarayanan, learned counsel appearing for the respondents/ claimants would submit that the Tribunal has not solely relied upon the salary certificate. The Tribunal has taken into account the monthly remittance made by the deceased from Qatar to his account and his wife's account. Taking all these circumstances only, the Tribunal has arrived at a monthly income of Rs.1,20,000/-. Mr.K.Suryanarayanan, would also point out that the Tribunal has deducted 1/3rd as personal expenses, which according to him is on the higher side, considering the fact that the deceased has left behind his wife and three minor children. Therefore, according to Mr.K.Suryanarayanan, the over all compensation is just and reasonable and there is no scope for reducing the same.

9. We have bestowed our anxious consideration to the contentions of the learned counsel on either side. We have no hesitation in upholding the income fixed by the Tribunal. The salary certificate marked as Ex.P3 would show that the deceased was earning a salary of about Rs.10,800/- Qatari Riyals which is equivalent to Rs.1,29,600/- at Rs.12 per Riyal. The Tribunal has not granted any amount towards future prospects. Considering the age of the deceased atleast 25% should have been added towards future prospects, which would be about Rs.23,400/-. The Tribunal has also deducted 1/3rd towards personal expenses. It is a common knowledge that the labourers working in Gulf Countries are provided with free boarding and lodging. It is also seen from the records that the deceased had left behind three children apart from his wife and mother, therefore, the normal deduction towards personal expenses should have been 1/4th. Considering all these aspects, we find that the over all compensation awarded by the Tribunal is just and reasonable.

10. We also find that the Tribunal has adopted a split multiplier. Taking into account the fact that the deceased might have come back to India at some point of time and his income would not be the same as in Qatar when he returns to India and granted compensation based on the income at Qatar only for five years and for remaining 9 years, the Tribunal adopted income of Rs.9,000/- only. Therefore, we do not find any ground to interfere with the award of the Tribunal on the head of pecuniary loss.

11. We however find that the Tribunal has granted a sum of Rs.1,00,000/- towards loss of consortium which is not in tune to the judgment of the larger bench of the Hon'ble Supreme Court, we are therefore of the view that the award of loss of consortium has to be reduced to Rs.25,000/-, resulting in the award being modified and reduced to Rs.54,92,000/- and the same is rounded of to Rs.55,00,000/-.

12. In fine the appeal is partly allowed. The compensation payable is fixed at Rs.55,00,000/- with 7.5% interest and proportionate costs. The compensation is apportioned as follows:-

(i) The wife, 1st respondent would be entitled to Rs.20,00,000/- with proportionate interest and entire costs;

(ii) The minor children, respondents 2 to 4 would be entitled to Rs.10,00,000/- each with proportionate interest and

(iii) The mother, 5th respondent would be entitled to Rs.5,00,000/- with proportionate interest.

13. The Transport Corporation is granted eight (8) weeks time to deposit the compensation awarded with interest at 7.5% per annum from the date of petition till the date of deposit and on such deposit, the Tribunal is directed to invest the share of the minor children in an interest earning Fixed Deposit till they attain majority. The 1st respondent mother would be entitled to withdraw quarterly interest from the amount so deposited. Consequently, the connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Motor Accident Claims Tribunal,
   Subordinate Judge, Kallakurichi.

2. The Managing Director,
   Tamil Nadu State Transport Corporation,
   Salem.

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.60194
+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.60179

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sj(co)
cs/09/10/2018