IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2583 of 2017
and
C.M.P.No.14087 of 2017

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Div.I, 37, Mettupalayam Road,
Coimbatore. ... Appellant /Respondent

Vs

1.Vimalarani
2.Tharini
3.Minor.Vinoth
4.Pachiammal ... Respondents/Petitioners

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and decree dated 04.02.2016 made in M.C.O.P.No.2000 of 2014 on the file of the Motor Accident Claims Tribunal, the II Additional District Judge, Tirupur.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Mr.M.Lokesh
for Ma.Pa.Thangavel

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 awarding of Rs.34,00,000/- for the death of one Mr.K.Chandrasekar, aged about 53 years, who was working as Conductor in Tamil Nadu State Transport Corporation Limited, Thirupur, earning about a sum of Rs.30,000/- per month, in the accident which occurred on 15.01.2014, when he was travelling in the transport Corporation bus, which was driven rashly and negligently by its driver and while taking a turn, he was thrown out and sustained severe injuries on 15.01.2014. Inspite of treatment the conductor died on 14.06.2014. Therefore, the claim petition.

2.The Tribunal found that the accident occurred because of the rash and negligent driving of the transport corporation driver and awarded a sum of Rs.34,00,000/-. The said award is being challenged before this Court by the Transport Corporation.

3.Heard Mr.K.J.Sivakumar, learned counsel for the appellant and Mr.M.Lokesh, learned counsel for the respondents/claimants.

4.Mr.K.J.Sivakumar, learned counsel appearing for the appellant would very strenuously argue that the negligence has been wrongly fixed on the driver of the transport corporation and therefore, there is no liability. He would further submit that the Tribunal took Rs.25,000/- as monthly income of the deceased, which is on the higher side and awarded higher amounts under various other headings. Therefore, he seeks to set aside the negligence fixed on the driver of the transport corporation and the compensation.

5.On the other hand, Mr.M.Lokesh, learned counsel for the respondents/claimants would submit that the Tribunal rightly fixed the negligence on the part of the driver of the transport corporation and awarded lesser amount by not taking the monthly income as per Ex.P.7-Salary slip, Ex.P.8-Salary certificate issued by the transport corporation. Further, he would submit that whatever amounts have been already awarded by the Tribunal are on the lower side. Therefore, he seeks enhancement.

6.A perusal of the records would show that based on PW2 eyewitness evidence, who deposed that the driver of the transport corporation, drove the vehicle on 15.01.2014 rashly and negligently, violating the road rules and regulations and turned the vehicle suddenly, which resulted in the conductor being thrown out of the bus and sustaining injuries, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the driver of the transport corporation bus. The trial Court after appreciating the evidence of PW2 eyewitness as well as PW1, the driver of the bus, found that the accident occurred because of the rash and negligent driving of the bus. Further, the Tribunal taking note of the filing of the FIR against the driver of the transport corporation bus and departmental proceedings initiated against the said driver of the transport corporation bus, rightly came to the conclusion that the bus was driven rashly and negligently. Therefore, the said finding reached by the

Tribunal is based on evidence and cannot be disturbed.

7.With regard to the compensation, what is to be considered is the monthly income of the deceased. It is proved before the Tribunal that the deceased was a conductor as admitted by the transport corporation, earning about Rs.26,980/- per month as proved by Ex.P.8 salary certificate for the month of January 2014, during which time only the conductor died on 14.06.2014 because of the injuries caused to him in the accident which occurred on 15.01.2014. However, the Tribunal by considering Ex.P.7, salary slip for the month of October 2013, wherein the salary drawn by the deceased was shown as Rs.25,591.72/-, took Rs.25,000/- wrongly, when the last salary drawn has been proved by Ex.P.8. The Tribunal should have fixed the monthly income at Rs.26,980/- as per Ex.P.8. Therefore, determination of monthly income at Rs.25,000/- per month is set aside and Rs.26,980/- is fixed as monthly income as per Ex.P.8 salary certificate.

8.No amount was awarded towards future prospects and following the judgment of the Constitution Bench of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 15% has to be added towards future prospects as the deceased was aged about 53 years and was in Government service (Transport Corporation). After adding 15% towards future prospects the monthly income would be Rs.31,027/- (Rs.26,980/- + 15% of Rs.26,980/-). The yearly income would be Rs.3,72,324/- (Rs.31,027 x 12).

9.The size of the family is four and therefore 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), ¼th has to be deducted towards personal expenses. After deducting ¼th the yearly contribution would be Rs.2,79,243/- (Rs.3,72,324/- (-) ¼th of Rs.3,72,324/-). It is also evident from the exhibits, Ex.P.7, Ex.P.8 that the deceased had received during 2013-2014 a sum of Rs.6,772/- towards bonus. The said amount has to be added towards yearly income. After adding the bonus, the yearly income would be at Rs.2,86,015/- (Rs.2,79,243/- + Rs.6,772/-).

10.The age of the deceased has been proved to be 53 years as per Ex.P.4, post mortem certificate and other documents and 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) the appropriate multiplier is "11". Hence, the loss of income would be Rs.31,46,165/- (Rs.2,86,015/- x 11).

11.Medical bills:

Based on Ex.P.3, the Tribunal has awarded a sum of Rs.6,95,000/- towards medical bills and the same is confirmed.

12.Pain and suffering:

The Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering and the same is confirmed.

13.Extra nourishment:

The Tribunal has awarded a sum of Rs.25,000/- towards extra nourishment and the same is confirmed.

14.Attendant charges:

The Tribunal has awarded a sum of Rs.30,000/- towards attendant charges and the same is confirmed.

15.Loss of consortium:

The Tribunal has awarded a sum of Rs.50,000/- towards loss of consortium to the 1st appellant and the same has to be reduced to Rs.40,000/- 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). Accordingly, loss of consortium is reduced to Rs.40,000/-.

16.Loss of love and affection:

The Tribunal has awarded a sum of Rs.50,000/- to claimants 2 and 3 for loss of love and affection. The award of any amount towards loss of love and affection to the children is akin to the amount awarded towards loss of consortium to the spouse. Hence, a sum of Rs.1,00,000/- is awarded to claimants 2 and 3 towards loss of love and affection. The Tribunal has awarded a sum of Rs.10,000/- to the 4th claimant/mother of the deceased towards loss of love and affection. The same is enhanced to Rs.25,000/-.

17.Funeral expenses:

A sum of Rs.10,000/- was awarded by the Tribunal towards funeral expenses. As per the Constitution Bench's judgment in Pranay Sethi's case, the same is enhanced to Rs.15,000/-

18.Transportation charges:

A sum of Rs.10,000/- was awarded by the Tribunal towards transportation charges. The same is confirmed.

19.Loss of estate:

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

Head	Amount (Rs.)
Total loss of contribution	3146165
Medical bills	695000
Pain suffering	50000
Extra nourishment	25000
Attendant charges	30000
Loss of consortium	40000

Head	Amount (Rs.)
Loss of love and affection	125000
Funeral expenses	15000
Transportation	10000
Loss of estate	15000
	4151165

20.Hence, the total compensation payable in this case is Rs.41,51,165/- rounded off to Rs.41,50,000/-

21.The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. 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.34,00,000/- is enhanced to Rs.41,50,000/-, 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).

22.Out of the award amount, the 1st respondent is entitled to get Rs.20,00,000/-, respondents 2 and 3 children are entitled to get Rs.9,00,000/- each and the 4th respondent is entitled to get Rs.3,50,000/-. The claimants are directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order.

23.The Transport Corporation is directed to deposit the award amount as per the modified award passed by this Court, within a period of twelve weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the respective shares of claimants 1, 2 and 4 along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon. As far as minor claimant/3rd respondent is concerned, his share shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till he attains majority. The 1st claimant/mother is permitted to withdraw interest accruing on such deposit once in three months.

24.This case would only demonstrate as to how the transport corporation drivers invariably drive the vehicles rashly and negligently, with great speed. It is a common sight in the city of Chennai that the Transport Corporation drivers are violating the rules and regulations, like jumping the road signals, overtaking other vehicles with speed, endangering lives of innocent people including the travellers in other vehicles and pedestrians.

25.It is evident from the records that for the past 10 years, the Transport Corporation drivers cause so many accidents causing death of 1347 people and injury to 4338 people. As a result, the Transport Corporation is compelled to pay heavy compensation in the absence of any insurance coverage for the vehicles. In this case, one of the employees of the Transport Corporation viz., conductor himself was thrown out of the bus, because of the rash and negligent driving of the appellant Transport Corporation and he died due to the injuries. Instead of paying compensation to the family of his own employee, as per the amount fixed by the Tribunal, still the transport corporation unnecessarily filed this appeal, which eventually enabled this Court to enhance the compensation from Rs.34,00,000/- to Rs.41,50,000/-. Therefore, it is for all the stakeholders involved in the administration of the Transport Corporation viz., Management, Staff, Employees, especially, Union leaders to work by following the rules and regulations and not to wriggle out of the same. If the heavy loss suffered by the Transport Corporation is not curtailed or reduced, it will lead to unnecessary enforcement of privatisation of Transport Corporation. The erring staff of the transport corporation should be dealt with sternly by taking appropriate departmental proceedings.

26.Accordingly, this appeal is dismissed, enhancing the award of the Tribunal from Rs.34,00,000/- to Rs.41,50,000/- with interest @ 7.5% per annum. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

sai

To

1.The II Additional District Judge,.
(Motor Accident Claims Tribunal)
Tirupur.

2.The Record Keeper,
VR Section, High Court,
Madras.(2 Copies)

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.36299
+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.36523

C.M.A.No.2583 of 2017

AK(CO)
GN(23/07/2018)