IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.284 of 2017
and C.M.P.No.6779 of 2018

1.Usha
2.N.Subramaniyan ..Appellants/Claimants

-Vs-

The Managing Director
Metropolitan Transport Corporation Ltd.,
Chennai-2
..Respondent/Respondent.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and decree dated 27.11.2014 made in M.C.O.P.No.2187 of 2013 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For appellants : : Mr.K.Varadha Kamaraj
For Respondent : : Mr.S.S.Swaminathan

J U D G M E N T

The Appellants are the claimants and has filed this appeal challenging the Judgment and decree dated 27.11.2014 made in M.C.O.P.No.2187 of 2013 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the Petitioner is that on 07.03.2013 at about 7 a.m., while the deceased was standing on the left side of the road, near Lakshmikoil Bus Stop, the respondent Transport Corporation bus bearing Reg.nO.TN-10-N-4119 came from behind at high speed, driven in a rash and negligent manner, dashed against the bullock cart and in the said impact, the bullock cart's wheel ran over the deceased Yojith, causing injuries to him. Due to the injuries suffered by Yojith, he died on the same day in the hospital. The accident occurred only due to rash and negligent driving of the respondent transport corporation bus by its driver. The deceased was six years old and he was a student. The Petitioners who are the parents of the deceased lost their young son and suffering due to mental agony.

Thus the Petitioner sought for a sum of Rs.6,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the respondent/Transport Corporation contends that the accident does not occur in the manner alleged by the Petitioners. Their bus bearing Reg.No.TN01-N-4119 was proceeding from Thiruvortriyur to Broadway at normal speed and while coming in th e Thiruvottiyur Highways Road at 7 a.m., the conductor gave whistle to stop the bus near Lakshmi Koil Bus stop and accordingly, the driver of the said bus stopped and after alighting and boarding of the passengers, moved the bus slowly. Then only the driver noticed the bullock cart going in front of the bus. On seeing that, he applied brake and tried to stop the bus., but at that time, the deceased boy suddenly crossed the road and fell in front of the bullock cart. The Bullock cart rider tried to turn the bullock cart towards the left side of the road. In this impact, the deceased boy sustained fatal injuries. Thus, the respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.4 to prove their claim. On the side of the respondent, R.W.1 was examined, but no documents was marked.

5. The Tribunal, after considering the evidence on record, concluded that the negligence of the bus rider alone caused the accident and passed an award for a sum of Rs.3,45,000/- payable by the respondent to the Petitioners.

6. Being aggrieved over the finding of the Tribunal, the respondent/Transport Corporation has come forward with the present appeal.

7. Heard both sides and perused the records carefully.

8. The learned counsel for the Petitioners/appellants contends that the Tribunal wrongly fixed the multiplier of ''15'' instead of '18'. The Tribunal provided for a very meagre amount towards loss of love and affection. Thus, the appellant/claimants sought for enhancement of the award by entertaining the appeal.

9. Per contra, the learned counsel for the respondent/Transport corporation contends that while the victim being a five year old child and non earning member, the quantum fixed by the Tribunal is on the higher side. Thus, the respondent sought for dismissal of the appeal.

10.The appeal is only on the quantum issue. Neither side advanced any argument on the issue of negligence. As such, the finding of the Tribunal that the respondent bus driver negligence alone caused the accident is based on the eyewitness account of P.W.1 and the contents of Ex.P.1 -FIR is just and proper and the same is confirmed.

11. The deceased was admittedly a non earning member. He was aged 5 years and a student. As per Ex.P.2-Post Mortem report, the age of the deceased is 5 years. In the absence of any other documentary proof, his age is fixed as 5 years. It is clear from Ex.P.4-Legal Heir Certificate that the petitioners are parents of the deceased.

12. As the deceased was 5 years old and a student, the Tribunal fixed his notional monthly income at Rs.15,000/- per annum and adopted multiplier 15. This according to the Petitioners/claimants is very nominal. Relying on the Ruling reported in 2013 (2) TN MAC 358 (SC) [Kishan Gopal and another Vs. Lala and others], the petitioners contended that the annual income of the deceased should be fixed at Rs.30,000/- per annum as fixed in the said case. In the said Ruling, in paragraph 18, it is held as follows:-

> "18. The Tribunal having answered the contentious issue No.1, against the appellants in its judgment the same is concurred with by the High Court by assigning erroneous reasons and it has affirmed dismissal of the claim petition of the appellants holding that the accident did not take place on account of the rash and negligent driving of the offending vehicle by the first respondent and therefore the contentious issue Nos.1 and 2 are answered in the negative against the appellants and it has not awarded compensation in favour of the appellants.
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> Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious issue Nos.1 & 2 by recording our reasons in the preceding paragraphs of this judgment and we have answered the point in favour of the appellants and also examined the claim of the appellants to award just and reasonable compensation in favour of the appellants as they have lost their affectionate 10 year old son. For this purpose, it would be necessary for us to refer to Second Schedule under Section 163-A of the M.V. Act, at clause No.6 which refers to notional income for compensation to those persons who had no income prior to accident. The relevant portion of clause No.6 states as under:

"6. Notional income for compensation to those who had no income prior to accident:

....

(a) Non-earning persons – Rs.15,000/- p.a." The aforesaid clause of the Second Schedule to Section 163-A of the M.V. Act, is considered by this Court in the case of Lata Wadhwa & Ors. v. State of Bihar & Ors.[2], while examining the tortuous liability of the tort-feasor has examined the criteria for awarding compensation for death of children in accident between age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs.12,000/- p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs.25,000/- was awarded. Thus, a total sum of Rs.1,57,000/- was awarded in that case. After noting the submission made on behalf of TISCO in the said case that the compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecoupable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs.50,000/- should be added and thus total amount in each case would be Rs.2 lakhs. Further, in the case referred to supra it has observed that in so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs.12,000/- p.a. appears to be on the lower side and held that the contribution of such children should be Rs.24,000/- p.a. In our considered view, the aforesaid legal principle laid down in Lata

Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non- earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma v. Delhi Transport Corporation[3], the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas[4], which is referred to in Lata Wadhwa's case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants. The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of Municipal Council of Delhi v. Association of Victims of Uphaar Tragedy[5], for the reason that the Insurance Company has been contesting the claim of the appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the appellants is legally justified.

13. In view of the above said Ruling and also considering the fact that the age of the Petitioners/parents of the deceased are 29 years and 35 years respectively, it will be appropriate to fix the annual income of the deceased at Rs.30,000/- and multiplier to be adopted is '15'. Thus, the loss of dependency would comes to Rs.4,50,000/- (Rs.30,000/- p.a., x 15). Following the decision of Apex Court in National Insurance Co.Ltd., Vs. Pranay Sethi and others, 2017 (2) TN MAC 609 (SC), under conventional heads, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate is provided. Further, it would be appropriate to grant Rs.25,000/- each to the Petitioners under the head "loss of love and affection". The modified award amount is as under:-

Loss of dependency	- Rs.4,50,000/-
Loss of estate	- Rs. 15,000/-
Funeral expenses	- Rs. 15,000/-
Loss of love and affection	-Rs. 50,000/-
Total	-Rs.5,30,000/-

14. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) The award amount is enhanced to Rs.5,30,000/- from Rs.3,45,000/-.

(iii) The award amount will carry interest at the rate of 7.5% p.a. from the date of petition till the date of realisation;

(iv) The respondent/Transport corporation is directed to deposit the entire award amount along with proportionate interest and cost, within a period of six weeks from the date of receipt of a copy of this order.

(v) The appellants/claimants are entitled to withdraw the award amount in equal share, along with accrued interest. The appellants are not entitled for interest in respect of delay of 460 days in filing the appeal. The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount.

No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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

Copy to

The Section Officer,VR Section,High Court Madras.

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.41507

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.41993

SV(CO)
GSP(11/08/2018)