

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 10-04-2018

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.3257 OF 2017

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division,
37, Mettupalayam Road,
Coimbatore - 641 043 ...Appellant/2nd Respondent

-vs-

1.Rangasamy
2.Pappathi
3.Ponmani
4.Sathyaseelan

...Respondents/Petitioners 1 to 3 & 1st Respondent

Appeal against the award, dated 14.03.2016, passed in
M.C.O.P.No.840 of 2014, on the file of Motor Accident Claims
Tribunal, I Additional District Judge, Tiruppur.

For appellant : Mr.J.Lokesh

For respondents

1 to 3 : Mr.M.Lokesh

for Mr.Ma.P.Thangavel

JUDGMENT

(Judgment of the Court was delivered by N.Kirubakaran,J)

This appeal has been preferred by Tamil Nadu State Transport Corporation, aggrieved over the compensation of Rs.15,63,000/- awarded by the Motor Accident Claims Tribunal to the respondents/claimants 1 to 3, for the death of one Senthilkumar, husband of the third respondent herein, in the accident, which occurred on 08.05.2014, when he was riding his motorcycle on Coimbatore-Trichy Main Road and hit by a bus belonging to the appellant-corporation, driven by its driver in a rash and negligent manner.

2. Heard Mr.J.Lokesh, learned counsel for the appellant; and Mr.M.Lokesh, learned counsel appearing for respondents 1 to 3.

3. It is represented by Mr.J.Lokesh, learned counsel for the appellant, that the accident was a head-on collision involving the bus belonging to the appellant-corporation and the two wheeler driven by the deceased and, therefore, the negligence is to be fixed in the ratio of 50 : 50. He would further submit that Rs.7,000/- taken by the Tribunal as monthly income is on higher side and other amounts awarded are not in consonance with the Constitution Bench judgment of the Hon'ble Supreme Court in National Insurance Company Ltd. v. Pranay Sethi and Others, reported in 2017 (2) TAN MAC 609.

4. However, Mr.M.Lokesh, learned counsel appearing for respondents 1 to 3, would not only defend the award, but also, seeks enhancement of compensation, as the deceased was a tailor, earning about Rs.15,000/- per month.

5. It is clear from the records, especially, Ex.P-1/F.I.R and the eye-witness evidence of P.W.2, that the driver of the bus alone caused the accident. P.W.2, Ramamurthy, was the person, who gave Ex.P-1/F.I.R. and examined as P.W.2. Though R.W.1, driver of the bus, was examined, he categorically admitted that he did not give any complaint against the deceased. If really the deceased were at fault, R.W.1 would have given a complaint against the deceased immediately. Moreover, departmental action has been taken against R.W.1. In view of the same, the Tribunal rightly believed the evidence of P.W.2 and came to the conclusion that the accident had occurred due to rash and negligent driving of the driver of the bus belonging to the appellant-corporation. Hence, the said finding cannot be interfered with.

6. Though Mr.J.Lokesh, learned counsel for the appellant, would point out that in the absence of any proof of income, the Tribunal took Rs.7,000/- as monthly income and it is on higher side, this Court has to consider the date of the accident. The accident occurred on 08.05.2014. The Hon'ble Supreme Court, in Syed Sadiq v. Divisional Manager, United India Insurance Company Ltd. (Civil Appeal Nos.662-664 of 2014), dated 16.01.2014, determined the monthly income of a vegetable vendor, who got injured in an accident in the year 2008, at Rs.6,500/-, whereas, in this case, the accident occurred six years thereafter, in the year 2014. In addition, in this case, the deceased was a tailor, aged about 23 years, and, therefore, he would have certainly earned not less than Rs.10,000/- per month. Even in the year 2014, it would be very difficult to get a servant maid for Rs.10,000/- per month. Therefore, this Court redetermines the monthly income of the deceased at Rs.10,000/-.

7. The Tribunal, based on the dictum of the Hon'ble Supreme Court in Rajesh and Others v. Rajbir Singh and Others, reported in 2013 (9) SCC 54, added 50% towards future prospects. However, in the light of the Constitution Bench decision of the Supreme Court in Pranay Sethi's case, cited supra, this Court reduces it from 50% to 40%, as the deceased was a self-employee. On addition of 40% towards future prospects, the monthly income of the deceased would be Rs.10,000/- + 4,000 = Rs.14,000/-.

8. The size of the family of the victim is three. Therefore, as per the judgment of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation, 2009 (6) SCC 121, one-third needs to be deducted. After deduction of one-third, the loss of income would come to Rs.10,500/-.

9. As per the post-mortem certificate/Ex.P-6, the deceased was aged 23 years. Even though the Tribunal relied upon Ex.P-5/Identity Card to come to the conclusion that the deceased was aged about 26 years, the doctor opined in the death certificate/Ex.P-3 that the deceased was aged about 23 years. Therefore, this Court takes 23 years as the age of the deceased and applies the multiplier '18'. Accordingly, the loss of income of the deceased is redetermined as under :

Rs.10000/- + 4000 - $1/3 \times 12 \times 18$ = Rs.20,16,000/-

10. The Tribunal awarded Rs.50,000/- towards consortium and the same is reduced to Rs.40,000/- as per the decision in Pranay Sethi's case, referred to above. Similarly, Rs.25,000/- awarded towards funeral expenses is reduced to Rs.15,000/-. No amount was awarded by the Tribunal towards loss of estate. Therefore, a sum of Rs.15,000/- is awarded under the said head. The sum of Rs.10,000/- awarded by the Tribunal towards transportation is confirmed. Rs.50,000/- awarded towards loss of love and affection, which is akin to loss of consortium, is confirmed. Though it is pointed out by the learned counsel for the appellant that there is no scope for any award towards loss of love and affection to the parents, the amount awarded towards loss of love and affection is equal or akin to the amount awarded towards loss of consortium to the wife. Since the parents, namely, first and second respondents have lost their child, who would have taken care of them during their old age had he been alive, they are together entitled to a sum of Rs.50,000/-. Accordingly, we rework the award as under :

Loss of income	-	Rs.20,16,000/-
Loss of consortium	-	Rs. 40,000/-
Loss of love and affection-		Rs. 50,000/-
Loss of estate	-	Rs. 15,000/-
Transportation	-	Rs. 10,000/-
Funeral expenses	-	Rs. 15,000/-

Rs.21,46,000/-

Thus, the total compensation comes to Rs.21,46,000/-. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.15,63,000/- to Rs.21,46,000/-, as the facts and circumstances of the case and the evidence enable this Court to award more compensation. This Court invokes Order 41, Rule 33 read with Section 138 of the Code of Civil Procedure to reappraise the evidence to award just compensation. Even in the absence of any appeal for cross appeal, this Court is empowered to award compensation, as per the dictum of the Hon'ble Supreme Court in Nagappa v. Gurudayal Singh and Others, 2004 (2) TN MAC 398 (SC). Of the awarded amount of Rs.21,46,000/-, first and second respondents, who are parents, are entitled to a sum of Rs.6,50,000/- each and third respondent-wife is entitled to the balance amount of Rs.8,46,000/-. The rate of interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

11. The appellant is directed to deposit the entire amount along with interest as per the order of this Court within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to transfer the respective shares of amount along with proportionate interest to the respondents/claimants through RTGS within one week thereof. It is made clear that for the enhanced amount, the respondents are directed to pay appropriate court fee before this Court within two weeks from the date of receipt of a copy of this order.

12. Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.No.20300 of 2017 is closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The I Additional District Judge,
Motor Accident Claims Tribunal-cum-
Tiruppur.
2. The Section officer
VR Section, High court, Madras 104.

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+1 CC to Mr.K.J. Sivakumar, advocate sr 26339.
+1 cc to Mr.Ma.P. Thangavel, Advocate sr 26334.

C.M.A.No.3257 OF 2017

KK (CO)
SP (04/09/2018)



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