IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 16.02.2018
Coram

The Hon'ble Mr.Justice R.Subbiah
and
The Hon'ble Mr. Justice P.D.Audikesavalu

C.M.A.Nos.606 & 117 of 2014
and
M.P.No.1 of 2014

C.M.A.No.606 of 2014:-

The Managing Director,
Tamil Nadu State Express Transport
Corporation (VPM) Division III Ltd.,
Kancheepuram Region, Kancheepuram. ...Appellant(Respondent)

Vs.

1. Karpagam
2. Surendar (Minor)
3. Harikrishanan (Minor)
(R-2 and R-3/Minors are represented by their mother and next friend Karpagam/R1) ...Respondents (Claimants)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 26.04.2013, made in M.C.O.P. Nos.3959 of 2010, on the file of the Motor Accident Claims Tribunal (II Small Causes Court) Chennai.

C.M.A.No.117 of 2014 :
1. Karpagam
2. Surendar (Minor)
3. Harikrishanan (Minor)
(A-2 and A-3/Minors are represented by their mother and next friend Karpagam/A1)... Appellants/claimants

Vs.

The Managing Director,
Tamil Nadu State Express Transport
Corporation (VPM) Division III Ltd.,
Kancheepuram Region, Kancheepuram. ...Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 26.04.2013 made in M.C.O.P. Nos.3959 of 2010 on the file of the

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Motor Accident Claims Tribunal (II Small Causes Court) Chennai.

For Appellant in C.M.A.No.606 of 2014
} Mr. K.J.Sivakumar
For Respondent in C.M.A.No.117 of 2014

For Respondents in C.M.A.No.606 of 2014
} Mr. K.Varadha Kamaraj
For Appellants in C.M.A.No.117 of 2014

COMMON JUDGMENT

(Judgment of the Court was delivered by R.Subbiah,J.)

The Civil Miscellaneous Appeal No.606 of 2014 is filed by the Transport Corporation, questioning the quantum of compensation awarded by the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) Chennai, dated 26.04.2013, made in M.C.O.P. Nos.3959 of 2010.

2.Whereas finding the compensation award amount as inadequate, the claimants have filed C.M.A.No.117 of 2014, seeking for enhancement of the compensation.

3.Since both these Appeals arise out of the common award passed by the Tribunal, these Appeals were heard together and disposed of by way of this common Judgment.

4.For the sake of convenience, the parties to these Appeals will hereinafter be referred to as 'claimants' and 'Transport Corporation'.

5.The claimants are wife and two minor sons of the deceased Prakash, who died in a motor accident, which took place on 05.10.2008, at Padappai to Tambaram High Road, near Manimangalam Coot Road, involving the Bus, bearing Registration No. TN-21-N-0667, belonging to the Transport Corporation, in which, the deceased was travelling as a Passenger. Hence, the claimants filed a Claim Petition against the State Transport Corporation claiming a sum of Rs.10,00,000/- as compensation.

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6.The Claim Petition was resisted by the Transport Corporation contending that the accident had occurred due to the negligent act of the deceased, as he in an inebriated mood suddenly got down from the moving bus and thereby, sustained head injuries and died. Therefore, it is contended that the deceased invited the accident and hence, the Transport Corporation is not liable to pay the compensation. It is further contended that the compensation amount claimed by the

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claimants is excessive and exorbitant.

7.Before the Tribunal, in order to prove the claim, the first claimant/wife of the deceased examined herself as P.W.1 besides examining two other witnesses as P.W.2 (Eye Witness to the accident) & P.W.3 (Co-worker of the deceased) and marked eight documents as Exs.P.1 to P.8. On the side of the Transport Corporation, the Driver of the Bus was examined as R.W.1 and no documentary evidence was adduced.

8.The Tribunal, on evaluation of both oral and documentary evidence, came to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the bus belonging to the Transport Corporation. By coming to such a conclusion, the Tribunal made the calculation under different heads and passed an award for a sum of Rs.15,000/-. The break up details of the compensation amount awarded by the Tribunal under various heads are as follows:-

i)	Pecuniary Loss	:	Rs.14,40,000
ii)	Loss of Consortium	:	Rs. 20,000
iii)	Funeral Expenses	:	Rs. 10,000
iv)	Love and Affection	:	Rs. 30,000
	Total	:	Rs.15,00,000/-

The said sum of Rs.15,00,000/- was directed to be paid together with interest at 7.5% per annum from the date of numbering the Claim Petition till the date of deposit.

9.Aggrieved by the quantum of compensation awarded by the Tribunal, the Transport Corporation filed C.M.A.No.606 of 2014. Per contra, not being satisfied with the compensation awarded by the Tribunal, the claimants have C.M.A.No.117 of 2014, as stated supra.

10.As the present Appeal is filed only questioning the quantum of compensation awarded by the Tribunal, we are not traversing into the other aspects of the award passed by the Tribunal.

11.The learned counsel appearing for the Transport Corporation assailed the compensation amount awarded by the Tribunal under the head the Pecuniary Loss on two grounds. Firstly, it is submitted that the Tribunal, while determining the compensation towards Pecuniary Loss has fixed a sum of Rs.12,000/- as monthly income of the deceased, and based on the same, arrived at a compensation of Rs.14,40,000/- under the head of Pecuniary Loss, which is on the higher side. It is contended that the deceased was only a self-employed (Electrician) and that there is no tangible evidence to show that the deceased was earning Rs.12,000/- per month. While that being so, the

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Tribunal ought not to have taken the sum of Rs.12,000/- as monthly income and awarded such an exorbitant sum of Rs.14,40,000/- under the head of Pecuniary Loss.

12. Secondly, it is contended by the learned counsel appearing for the Transport Corporation that the deceased was aged about 41 years at the time of death, hence, appropriate multiplier that has to be applied in this case is '14', whereas the Tribunal has applied higher multiplier of '15', which resulted in awarding excess amount. Thus, the learned counsel for the appellant/Transport Corporation prays for modification of the award of the Tribunal under the aforesaid two grounds.

13. Refuting the contention putforth by the learned counsel appearing for the Transport Corporation, it is submitted by the learned counsel appearing for the claimants that the deceased Prakash was self-employed, (Electrician) and was earning a sum of Rs.400/- per day. In order to prove the income of the deceased, the first claimant has examined one G.Rajasekar as P.W.3, viz., the co-worker of the deceased through whom Exs.P.6 and P.8 viz., i) Authorization Letter issued to P.W.3, ii) Salary Certificate and iii) Copy of the Salary Certificate were marked and all these documents would per se prove that the deceased was earning a Rs.12,000/- per month and by deducting 1/3rd towards his personal expenses and applying appropriate multiplier of '15' based on the age of the deceased at the time of death, arrived at a sum of Rs.14,40,000/- towards the Pecuniary Loss. However, while doing so, failed to add amount towards future prospects. It is further contended that, had the Tribunal added certain percentage towards future prospects along with monthly salary, the petitioner would have got appropriate compensation amount towards Pecuniary Loss, and failure to do so, has resulted in awarding an inadequate compensation of Rs.14,40,000/- towards Pecuniary Loss.

14.The learned counsel would further contend that the amount awarded by the Tribunal under other heads are also on the lower side. Thus, he prayed for proper enhancement of compensation under other heads also.

15.Keeping the submissions made by the learned counsel for both sides, we have carefully perused the materials available on record.

16.It is the contention of the learned counsel appearing for the Transport Corporation that the monthly income of Rs.12,000/- fixed by the Tribunal while determining compensation towards Pecuniary Loss is on the higher side. But, from a perusal of the materials available on record, We find that before the Tribunal, in order to prove the income earned by the deceased, on the side of the claimants, the co-worker of the

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deceased, viz., one G.Rajasekar was examined as P.W.3, through whom Exs.P.7 & P.8 viz., i)Salary Certificate and ii) Copy of the Salary Certificate were marked. On perusal of those Exhibits, it is seen that the deceased was employed as Electrician in Vijayalakshmi Constructions and was earning Rs.12,000/- per month. Thus, all these documents would palpably prove that the deceased was earning a sum of Rs.12,000/- as monthly income and the Tribunal, having taken note of the same, fixed the said sum of Rs.12,000/- as monthly income of the deceased. Further, even in the cross-examination of P.W.3, nothing was elicited contrary to the evidence of P.W.1 in regard to the monthly income of the deceased. Under such circumstances, we do not find any infirmity in fixing Rs.12,000/- as monthly income of the deceased.

17.However, insofar as the multiplier is concerned, We find that the deceased was aged 41 years at the time of death; hence, the correct multiplier that has to be applied in this case is 14. But, the Tribunal has applied the multiplier 15, which is incorrect.

18.Now coming to the point regarding the future aspects, as rightly pointed out by the learned counsel appearing for the claimants, the Tribunal has failed to add any amount towards future prospects and failure to do so has caused prejudice to the claimants/appellants. Since the deceased was an Electrician and aged 41 years, 25% of the monthly income has to be added towards the future prospects of the deceased. If the monthly is taken as Rs.12,000/-, 25% amount has to be added towards future prospects. If it is so added, then the total monthly income comes to Rs.15,000/- (12,000 + 3,000). 1/3rd amount has to be deducted towards personal expenses and if so deducted, the loss monthly contribution to the family works out to Rs.10,000/- (15,000-5,000). Then, the total loss of income works out to Rs.16,80,000/- (10,000 x 12 x 14). Consequently, the sum of Rs.14,40,000/- awarded by the Tribunal under the head of pecuniary loss is hereby modified and enhanced to Rs.16,80,000/-

19.That apart, considering the fact that the first claimant has lost her husband, the compensation of Rs.20,000/- awarded by the Tribunal for Loss of Consortium is low. As per the dictum laid down by the Hon'ble Supreme Court, in re National Insurance Co. Ltd. Vs. Pranay Sethi and others reported in 2017 2 TNMAC 609 (SC), the first claimant/wife of the deceased is entitled to a sum of Rs.40,000/- towards Loss of Consortium. Further, as the sum of Rs.10,000/- awarded by the Tribunal for funeral expenses appears to be on the lower side, the same is hereby enhanced to Rs.15,000/-. Further, it is seen that the Tribunal has not awarded any amount for loss of estate. Hence, a sum of Rs.15,000/- is hereby awarded for loss of estate. So far as the sum of Rs.30,000/- awarded by the Tribunal under the head of Loss of Love and Affection is concerned, the same is

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retained. Consequently, the total compensation amount of Rs.15,00,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.17,50,000/-. The break up details of the modified/enhanced compensation amount are as follows:-

i)	Pecuniary Loss	:	Rs.16,80,000
ii)	Loss of Consortium	:	Rs. 40,000
iii)	Funeral Expenses	:	Rs. 15,000
iv)	Love and Affection	:	Rs. 30,000
v)	Loss of Estate	:	Rs. 15,000/-
	Total	:	Rs.17,80,000/-

20.In the result, C.M.A.No.606 of 2014, filed by the Insurance Company is dismissed and C.M.A.No.117 of 2014, filed by the claimants is partly allowed. The total compensation amount of Rs.15,00,000/- awarded by the Tribunal is hereby enhanced to Rs.17,80,000/-. The Transport corporation is directed to deposit the amount determined by us in this appeal, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first claimant is entitled to withdraw a sum of Rs.8,00,000/- with proportionate interest accrued thereon by making necessary application before the Tribunal. Insofar as the minor claimants 2 and 3 are concerned, they are entitled to the balance amount of Rs.9,50,000/-, at the rate of Rs.4,75,000/- each with proportionate interest. The compensation amount payable to the minor claimants 2 and 3 is directed to be deposited in any one of the Nationalised Banks in fixed deposit, till the minors attain majority. Out of such deposit, the first claimant/mother of the minors is permitted to withdraw accrued interest once in three months. No costs. Consequently, connected Miscellaneous Petitions are closed.

सत्यमेव जयते

-s/d-
Assistant Registrar(CSIII)

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Sub-Assistant Registrar

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To
1.II Judge, Small Causes Court/
Motor Accident Claims Tribunal/ Chennai.
Copy to:

The Section Officer, VR Section,
High Court, Madras.

+1 cc to Mr.K.J.Sivakumar Advocate sr 12203
+1 cc to Mr.K.:Varadhakamaraj Advocate sr 11998

sv(co)
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