IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

CORAM :
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
C.M.A.No.962 of 2018
and
C.M.P.No.7844 of 2018

The Managing Director,
Andhra Pradesh State Road APSRTC,
Andhra. ... Appellant/1st Respondent

Vs

1.J.Anitha

2.Minor S.Aravindkumar

3.Minor K.S.Rohithsaran
(Respondents 2 & 3 reb.by their
next Friend Mother J.Anitha

4.Vasanthakumari

5.Kuppusamy ... 1 to 5 Respondents/Petitioners

6.The Divisional Manager,
National Insurance Co. Ltd., Vellore

...6th Respondent/2nd Respondent

PRAYER : Civil Miscellaneous Appeal filed against the award and decree dated 30.01.2017 passed by the III Additional District Judge, Motor Accidents Claims Tribunal, Vellore at Tirupattur in M.C.O.P.No.459 of 2016.

For Appellant : Mr.G.V.Shoba

For Respondents : Mr.F.Terry Chellaraja (for R1 to R4)

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 fixing of liability on the driver of the appellant/Transport Corporation and awarding a sum of

Rs.40,93,612/- as compensation for the death of one K.Sasikumar, aged about 34 years, working in Military service, allegedly earning about Rs.30,000/- per month, in the accident occurred on 16.07.2011, when he was driving his car from Chithoor to Thirupathi along with his family members and hit by the appellant/transport corporation's bus, coming in the opposite direction from Thirupathi to Chithoor.

2.Heard Ms.G.V.Shoba, learned counsel appearing for the appellant and Mr.Terry Chellaraja, learned counsel appearing for the claimants.

3.Ms.G.V.Shoba, learned counsel appearing for the appellant would submit that as per Ex.R.1 - sketch, the deceased drove the car rash and negligently in the opposite direction and therefore, negligence is on the part of the deceased and not on the part of the driver of the Transport Corporation. Further she would submit that the pension part of the deceased has not been deducted and therefore, the quantum of compensation is also in dispute.

4.However, Mr.Terry Chellaraja, learned counsel for the claimants would support the Tribunal's award.

5.Before the Tribunal, PW1, PW2 viz., widow of the deceased and the brother of the deceased, who travelled along with deceased were examined. The driver of the appellant bus was examined as RW1. Though Rw1 deposed that he was going in the right direction, one car was driven rash and negligently and hit the bus, it is seen from the records, especially from Ex.P.30, rough sketch prepared by the House Officer, Chandragiri Police Station, Thirupathi that the accident occurred on the western side of the road, beyond yellow mark. The Tribunal very elaborately and appreciably explained the manner of the accident, based on Ex.P.30. As per Ex.P.30, the car, which was proceeding from Chithoor to Thirupathi was going in western side, whereas the appellant Transport Corporation's bus, which was coming from opposite direction from Thirupathi to Chithoor, which was supposed to keep left and to go in the eastern side of the road, crossed the yellow line and came on the western side of the road and hit the car, which was coming in the opposite direction. Therefore, the finding of the Tribunal that the car was coming in the right direction on the western side and the Transport Corporation bus crossed the yellow line and went in the wrong side and hit and therefore, the deceased cannot be found fault with is well founded. Further, the Tribunal found that Ex.R1 marked by the appellant Transport Corporation was prepared by the official of the transport corporation and further, the said official was also not examined, whereas Ex.P.30 - rough sketch was prepared by the Station Master, Chandragiri police station. Therefore, the Tribunal was right in rejecting Ex.R1 - sketch filed by the transport corporation and relied upon Ex.P30 - rough sketch, prepared by the police and the evidence of PW1 and PW2 eyewitnesses and rightly found that the driver of the Transport Corporation was alone responsible for the accident. Therefore, the said finding is confirmed.

6.It is the contention of Ms.G.V.Shoba that the deceased was an Army Officer and after retirement he would have earned pension and therefore, the pension amount has to be deducted. Such contention is not sustainable in law, when the officer was still in service and the earning at the time of service alone should be taken into consideration.

7.It is evident from the pay slip Ex.P.9, that the deceased was paid a sum of Rs.27,112/- for the month of June 2011. After deducting Rs.299/- towards income tax, he was paid Rs.26,813/- and therefore, the Tribunal determined yearly income at Rs.3,21,756/-. Further it deducted 1/4th towards personal expenses and adopted multiplier "16" and arrived at loss of income at Rs.38,61,072/-.

8.Though the Tribunal was right in adopting correct multiplier, it did not add future prospects. Since the deceased was aged about 34 years as proved by Ex.P.3, Post mortem certificate, 50% has to be added towards future prospects as he was working in Army, as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). If 50% is added along with full pay, the monthly income comes at Rs.40,668/- (27,112 + 50% of 27112), and the annual income comes to Rs.4,88,016/- (Rs.40,668/- x 12). In the year 2011, Rs.2,00,000/- is exempted from income tax, therefore, after exemption the taxable annual income comes to Rs.2,88,016/- (Rs.4,88,016/- (-) Rs.2,00,000/-), from which, 10 % has to be deducted towards income tax deduction. After deducting 10% towards income tax, the annual income comes to Rs.4,59,215/- (Rs.4,88,016/- - 10% of Rs.2,88,016/-).

9.The size of the family is five and as per the judgment of the Honourable Supreme Court in Sarala Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), 1/4th has to be deducted towards personal expenses of the deceased. After deducting 1/4th towards personal expenses of the deceased, the annual income comes to Rs.3,44,411/- (Rs.4,59,215/- (-) ¼ of Rs.4,59,215/-). The right multiplier of "16" was applied by the Tribunal, based on the age of the deceased at 34, as proved by Ex.P.3 - Post mortem certificate. Therefore, the loss of income of the family of the deceased will arrive at Rs.55,10,580/- (Rs.3,44,411/- x 16).

10.Loss of consortium:

The Tribunal has awarded a sum of Rs.50,000/- towards loss of consortium to the wife of the deceased/1st respondent, which is not in consonance with the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Hence the same is reduced to Rs.40,000/-.

11.Love and affection:

The Tribunal has awarded a sum of Rs.80,000/- towards loss of love and affection to the respondents 2 to 5. The same has to be enhanced as the respondents 2 and 3 were minors, aged about 7 and 2 years. The minors have lost the love and affection and guidance of their father. Loss of father is very painful and unbearable and the absence of father would affect the children throughout the life. The amount awarded towards loss of love and affection for the death of the father is akin to amount awarded towards loss of consortium to the widow. Therefore, each minor viz., respondents 2 and 3 is awarded a sum of Rs.50,000/- and respondents 4 and 5, who are the parents are awarded Rs.25,000/- each. Therefore, award of Rs.80,000/- towards love and affection to the respondents 2 to 5 is enhanced to Rs.1,50,000/-.

12.Medical Expenses:

As per Ex.P.8, Medical bills, Rs.72,540/- was rightly awarded by the Tribunal towards medical expenses and the same is confirmed.

13.Loss of Estate:

No amount has been awarded by the Tribunal towards loss of estate. As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), Rs.15,000/- is awarded towards loss of estate.

14.Funeral Expenses:

The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, which is not in consonance with the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Hence the same is reduced to Rs.15,000/-.

15.Transport charges:

The Tribunal has awarded a sum of Rs.5,000/- towards transportation and the same is enhanced to Rs.10,000/-, as the victim was first taken to Thirupathi Government Hospital, thereafter, shifted to Chennai Government Hosptial and finally to Vellore C.M.C.Hospital, where he succumbed to injuries.

16.Hence, the total compensation payable in this case is Rs.58,13,120/- rounded off to Rs.58,00,000/-.

Head	Amount (Rs.)
Loss of Income	5510580
Loss of consortium	40000
Loss of love and affection	150000
Medical expenses	72540
Loss of estate	15000
Funeral expenses	15000
Transport charges	10000
	5813120

17.The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. Though the Tranport Corporation has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.40,93,612/- is enhanced to Rs.58,00,000/-, invoking Order 41 Rule 33 of CPC, and Section 151 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).

18.Out of the award amount, the 1st respondent is entitled to Rs.25,00,000/-; the 2nd and 3rd respondents are entitled to get Rs.12,50,000/- each and the 4th and 5th respondents are entitled to get Rs.4,00,000/- each.

19.The claimants are directed to pay the additional court fee, if any, within a period of one week from the date of receipt of a copy of this order.

20.Since the appellant's buses have been attached pursuant to the attachment warrant, the same is directed to be released immediately. The appellant/Transport Corporation is directed to deposit the entire award amount, as per the modified award passed by this Court, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, The Tribunal is directed to transfer the respective shares of respondents 1, 4 and 5 to their bank accounts. As far as 2nd and 3rd respondents/minors' shares are concerned, the same shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

21.If the appellant does not deposit the award amount within a period of eight weeks from the date of receipt of a copy of this order, the raising of attachment of the buses shall stand recalled and the buses shall be attached.

22.If the appellant failed to pay the amount, apart from recalling of the raising of attachment warrant, the Chairman, and Managing Director of Andhra Pradesh State Road Transport Corporation, Hyderabad, shall appear before this Court on 21.06.2018.

23.With the above directions, this Appeal is dismissed. Award of Rs.40,93,612/- is enhanced to Rs.58,00,000/- with proportionate interest. Consequently connected miscellaneous petition is closed. No costs.

24.For reporting compliance, call the matter on 21.06.2018.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

The III Additional District Judge,
Motor Accidents Claims Tribunal,
Vellore at Tirupattur

copy to:

1.The Chairman, and Managing Director of Andhra Pradesh State Road Transport Corporation, Hyderabad.

2.The Section Officer,
Judicial Section,
High court, madras(To list the court on 21.06.2018 for reporting compliance)

+ 1 cc to M/s.M.Malar, Advocate,SR.29492
+ 1 cc to M/s.G.V.Shoba Advocate,SR.29257

C.M.A.No.962 of 2018

nr 26/04/2018