

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.12.2017	Delivered on: 27.06.2018
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THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.1137 of 2008

1.A.Missiamma
2.S.Angamuthu

.. Appellants/Petitioner

-Vs-

Tamil Nadu State Express Transport
Corporation Ltd., (Divison-I)
Pallavan Salai,
Chennai 600 002.

.. Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the order dated 19.02.2007 in M.C.O.P.No.3937 of 2003 on the file of VI Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai and pass an award for a sum of Rs.4,00,000/- as compensation with interest from the date of the accident.

For Appellants .. Mr.A.Shanmugaraj

For Respondent .. Mr.S.V.Vasantha Kumar

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the judgment and decree passed in MCOP.No.3937 of 2003 dated 19.02.2007 on the file of the VI Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

2. The brief facts of the claim application is that on 06.09.2002 at about 2.45 a.m., petitioners Udayakumar and Alocias and the deceased Vijayakumar were travelling as passengers in TNSETC bus bearing registration No.TN-01-N-6364 in Cuddalore to Chidambaram Road and at that time, the driver of the said bus drove the vehicle in a rash and negligent manner at a high speed and dashed against a tree. As a result, the petitioners Udhayakumar and Alocias sustained grievous injuries,

while Vijayakumar sustained fatal injuries and died. Regarding the accident, FIR in Cr.No.623/2002 was registered at Cuddalore Police Station and hence, petitioners have filed the claim application claiming compensation.

3. The Tribunal after considering the evidence and documents produced before it, fixed the liability on the driver of the bus, who was responsible for the accident, after considering the age of the deceased, the dependency of the parents and the loss to the family of the deceased has passed an award of Rs.2,28,000/- under the following heads viz., loss of dependency to the family as Rs.2,08,000/- by fixing the monthly income at Rs.2,000/- and considering the dependency of the parents, the multiplier 13 has been applied and by deducting 1/3rd share as personal expenses of Rs.1,04,000/-, contribution to the family has been determined as Rs.2,08,000/-, Rs.5,000/- towards funeral expenses, for loss of expectation of life Rs.5,000/- and for loss of happy life Rs.10,000/-. Aggrieved against the award, the parents of the deceased have preferred this Appeal.

4. On a perusal of the records, it is observed that the occupation of the deceased was mentioned as "Periyal" and he was earning Rs.150 per day. The age of the deceased is also very much proved by naming Ex.P3, the Post mortem certificate. It is also observed by the tribunal that the age of the first claimant/mother is 45 years and age of the second claimant/father is 50 years. Hence, the Tribunal has taken the multiplier considering the age of the mother. On the side of the appellants, it is argued that the deceased was only 18 years old at the time of accident and he was doing Construction work and the income of the deceased has to be taken as Rs.3,000/- per month, which is quite a reasonable amount that any person could earn for his lively hood and running a family. Further, it is also the argument of the appellants that even for other than permanent employment, future prospects has to be considered and considering the age of the deceased person, in this appeal, hereby 18 years, his future prospect at 40% has to be taken was the vehement argument advanced by the appellants counsel which is found to be acceptable. In the light of the judgment of Hon'ble Supreme Court in National Insurance Co. Ltd., Vs. Pranay Seti and others reported in 2017 (2) TN MAC 609 (SC).

5. Taking the monthly income at Rs.3,000/- adding 40% towards "future prospects", the total monthly income of the deceased comes to,

Total monthly income	:: Rs.3,000/- (+) 40% (Rs.3,000/-)
	:: Rs.3,000/- (+) Rs.1200/-
	:: Rs.4,200/-

6. Since the deceased was an earning person and he was the only hope of their parents who were depending upon his income, as argued by the appellants counsel, after deducting 50% for personal expenses, by fixing the monthly income at Rs.3,000/-, the loss of contribution to the family is calculated as follows:-

Total Monthly Income:: Rs.4,200/-

Less: 50% towards

"Personal Expenses" :: Rs.4,200/- (-) 50% (Rs.4,200/-)

:: Rs.4,200(-) Rs.2,100/-

:: Rs.2,100/-

Annual contribution :: Rs.2100 x 12

Since the deceased was aged about 18 years, the appropriate multiplier would be 18. Therefore, applying multiplier 18, "Loss of Income" is calculated as hereunder:

Loss of Income :: Rs.2100 x 12 x 18

:: Rs.4,53,700/-

7. For the loss of estate a sum of Rs.15,000/- is awarded and for the care and affection of the deceased person towards his parents who have lost the same, a sum of Rs.40,000/- is awarded and Rs.5,000/- for funeral expenses is modified as Rs.15,000/-. Hence, the compensation payable to the appellants are as hereunder:-

Loss of Income :: Rs.4,53,700/-

Loss of Estate :: Rs. 15,000/-

Care and Affection :: Rs. 40,000/-

Funeral Expenses :: Rs. 15,000/-

Rs.5,23,700/-

8. The rate of interest awarded by the Tribunal @ 7.5% per annum is confirmed.

9. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is enhanced from Rs.2,28,000/- to Rs.5,23,700/-.

(ii) The award amount will carry interest at the rate of 7.5%

per annum from the date of claim petition till the date of deposit.

- (iii) In view of the above enhanced award amount, the respondent/Transport Corporation is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.
- (iv) On such deposit, the appellants are permitted to withdraw their respective shares, as per the ratio fixed by the Tribunal by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.
- (v) Appellants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1) The Motor Accidents Claims Tribunal - VI Judge, Small Causes Court, Chennai.
- 2) The Section Officer, V.R.Section
High Court, Madras - 104. (2 Copies)

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.41123

C.M.A. No.1137 of 2008

GMR(CO)
CS/27/08/18