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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2018

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1313 of 2010 &

M.P.No.1 of 2010

&

Cross Objection No.6 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
37, Mettupalayam Road,
Coimbatore.

.. Appellant in CMA.No.1313 of 2010/
Respondent No.1 in Cross Objection
No.6 of 2018/2nd Respondent

..Vs..

1.Suseela
2.Minor.Yokannantham
Rep by Guardian Next friend Mother Suseela
3.Thangamuthu
4.Puspa

..Respondents 1 to 4 in CMA.No.1313 of 2010/
Cross Objectors in Cross Objection
No.6 of 2018/Petitioners

5.The Managing Director,
Tamil Nadu State Express Transport Corporation Ltd.,
Anna Salai, Chennai - 2.

..Respondent No.5 in CMA.No.1313 of 2010
and Respondent No.2 in Cross Objection
No.6 of 2018/1st Respondent

Prayer in C.M.A.No.1313 of 2010: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award made in MCOP.No.71 of 2008 dated 23.04.2009 on the file of the Motor Vehicles Accident Claims Tribunal Additional District Judge, Fast Track Court No.1, Erode.

Prayer in Cross Objection No.6 of 2018: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against Decree and Judgment in MCOP.No.71 of 2008 dated 23.04.2009 on the file of the MACT/Additional District Court, Fast Track Court No.1, Erode.



For Appellant in CMA No.1313 of 2010
and Respondent 1 in Cr.Obj.6 of 2018

: Mr.S.V.Vasantha Kumar

for Mr.B. Vijayakumar

For Respondents 1 to 4 in CMA.No.1313
of 2010 and Cross Objectors in
Cr.Obj.6 of 2018

: Mr.Ma.P.Thangavel

For Respondent 5 in CMA.No.1313 of 2010
and Respondent 2 in Cr.Obj.6 of 2018

: No appearance

J U D G M E N T

The instant appeal has been filed by the Transport Corporation challenging the Award dated 23.04.2009 passed by the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.1, Erode in MCOP.No.71 of 2008. On receipt of notice in the instant appeal, the respondents 1 to 4 who are the claimants have also filed a cross objection in Cr.Obj.No.6 of 2018 seeking enhancement of compensation.

The brief facts leading to the filing of the instant appeal are as follows:-

2. One Karthikeyan who was travelling on 11.07.2007 as a passenger in a bus bearing registration No. TN01-N-6683 owned by the Appellant in CMA.No1313 of 2010 and first respondent in Cr.Obj.No.6 of 2018. The said bus in which the deceased was travelling collided with a bus bearing registration No.TN38-N-1485 owned by the Tamil Nadu State Express Transport Corporation, fifth respondent in CMA.No1313 of 2010 and second respondent in Cr.Obj.No.6 of 2018. Due to the fatal accident, Karthikeyan died on 11.07.2007. The dependents of the deceased Karthikeyan preferred a compensation claim before the Motor Accident Claims Tribunal in MCOP.No.71 of 2008 seeking a compensation of Rs.9,00,000/-. The Tribunal by its Award dated 23.04.2009 in MCOP.No.71 of 2008 directed the Appellant as well as the fifth respondent in CMA.No.1313 of 2010 to pay the respondents 1 to 4 a sum of Rs.8,00,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

3. Aggrieved by the Award dated 23.04.2009 passed in MCOP.No.71 of 2008, the instant appeal has been filed by the Appellant Tamil Nadu State Transport Corporation and the Cross Objection has been filed by the respondents 1 to 4 seeking enhancement of compensation.

4. According to the learned counsel for the Appellant in



CMA.No.1313 of 2010, the primary ground for challenge in the instant appeal is that the Tribunal has erroneously fixed the monthly income of the deceased at Rs.6,000/- per month and has erroneously applied 16 multiplier without any documentary and oral evidence. Further the Tribunal has erroneously awarded a sum of Rs.20,000/- towards love and affection.

5. Per contra, learned counsel for the respondents 1 to 4 as well as the cross objector would submit that the Tribunal ought to have awarded a higher compensation, considering the fact that the deceased was running a Fancy and a Stationery Store as well as he was a carpenter. According to the learned counsel for the respondents 1 to 4, the respondents 1 to 4 have filed documentary evidence to establish that the deceased was running a fancy store and Exs.P13, P16 & P18 were marked as exhibits to prove the avocation of the deceased, before the Tribunal. Therefore, according to the learned counsel for the respondents 1 to 4, since the accident took place in the year 2007, the Tribunal instead of fixing the monthly income at Rs.6,000/- ought to have fixed the monthly income at Rs.9,000/-. Further, the learned counsel for the respondents 1 to 4 would contend that the proper multiplier to be applied is 15% and not 16%.

6. The learned counsel for the respondents 1 to 4 further contended that the Tribunal ought to have awarded Rs.25,000/- for transportation, whereas the Tribunal has not awarded any sum towards transportation under the impugned award. According to the learned counsel for the respondents 1 to 4, the Tribunal ought to have awarded at least 40,000/- towards loss of consortium instead of Rs.10,000/- awarded under the impugned Award. Further, the learned counsel for the respondents 1 to 4 contended that the compensation awarded under the heads Love and Affection and Funeral Expenses is not commensurate with the settled provisions of law as laid down by the various decisions of this Court as well as the Hon'ble Apex Court.

7. This Court after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:

a) The Tribunal under the impugned Award based on the oral and documentary evidence has given a clear finding that the bus owned by the Appellant as well as the bus owned by the 5th respondent in CMA.No.1313 of 2010 are at fault which resulted in the accident causing death to Karthikeyan.

b) The respondents 1 to 4 have filed documents namely Exs.P13, P16 and P18 to prove the fact that the deceased was running a fancy store and also doing carpentry work. No contra evidence has been produced by the Appellant Transport Corporation to disprove the avocation of the deceased at the time of the accident.



c) Considering the fact that the accident took place in the year 2007 and also considering the nature of avocation of the deceased, this Court is of the considered view that a sum of Rs.7,000/- ought to have been fixed as monthly income by the Tribunal instead Rs.6,000/- which was fixed under the impugned Award.

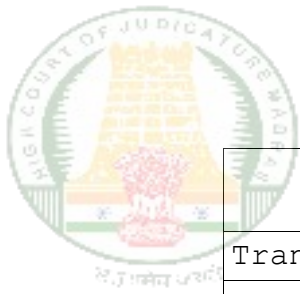
d) At the time of the accident, the deceased was aged about 40 years which is not disputed by the Appellant Transport Corporation. Having established before the Tribunal that the deceased was running a fancy store and also doing carpentry work, the Tribunal ought to have awarded compensation to the respondents 1 to 4 towards loss of future prospects whereas under the impugned award, no compensation was granted under this head.

e) The Tribunal has also erred in applying a wrong multiplier. Considering the age of the deceased who was aged 40 years at the time of accident, the correct multiplier to be applied is 15 and not 16.

f) This Court is of the considered view that considering the judgments of the Hon'ble Supreme Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC) as well as in the Constitutional Bench Judgment in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (6) SCC 680, the compensation awarded under the heads loss of consortium, love and affection, Funeral Expenses and loss of estate under the impugned award is not in accordance with the settled principles of law.

8. In the light of the above, this Court is of the considered view that the Award dated 23.04.2009 passed by the Tribunal in MCOP. No.71 of 2008 has to be enhanced in favour of the respondents 1 to 4 and the same is enhanced in the following manner:-

Heads	Amount Awarded by the Tribunal	Modified Amount
For Loss of Income	Rs.7,86,000/-	Rs.11,81,250/-
Loss of Consortium	Rs.10,000/-	Rs.40,000/-
Love and Affection (For minor Rs.1,00,000/- & for parents Rs.40,000/- each)	Rs.20,000/-	Rs.1,80,000/-
Funeral Expenses	Rs.2,000\-	Rs.15,000/-
Loss of estate	Nil	Rs.15,000/-



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Heads	Amount Awarded by the Tribunal	Modified Amount
Transportation	Nil	Rs.10,000/-
Total	Rs.8,00,000/-	Rs.14,41,250/-

9. In the result, CMA.No1313 of 2010 is dismissed and Cr.Obj.No.6 of 2018 is partly allowed. Consequently connected miscellaneous petition is closed.

10. The Appellant and the fifth respondent in CMA.No.1313 of 2010 are directed to deposit Jointly and severally the modified Award amount together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation, after deducting the amount that has already been deposited, to the credit of MCOP. No. 71 of 2008 on the file of the Motor Vehicles Accident Claims Tribunal Additional District Judge, Fast Track Court No.1, Erode within a period of four weeks from the date of receipt of a copy of this Order. On such deposit being made, the respondents 1 to 4 are permitted to withdraw the amount lying to the credit of MCOP. No.71 of 2008 on the file of the Motor Vehicles Accident Claims Tribunal Additional District Judge, Fast Track Court No.1, Erode with accrued interest by filing an appropriate application.

11. Even though the respondents 1 to 4 had made a claim for a sum of Rs.9,00,000/- before the Tribunal and sought for enhancement only for a sum of Rs.1,00,000/- before this Court, this Court has granted a sum of Rs.14,41,250/-. Therefore, the respondents 1 to 4 are directed to pay the Court fee for the enhanced amount and the Registry is directed to draw the decree only after the payment of the said Court fee.

s/d-
Assistant Registrar(CO)

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Sub-Assistant Registrar

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To

1. The Motor Vehicles Accident Claims Tribunal
Additional District Judge,
Fast Track Court No.1, Erode
2. The Record Clerk,
VR Section,
High Court, Madras.



+1 CC to Mr.S.V.Vasanthakumar, Advocate sr 60753.
+1 CC to Mr.Ma.P.Thangavel, Advocate sr 60980.

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C.M.A.No.1313 of 2010 &
M.P.No.1 of 2010

MP (CO)
SP (13/02/2019)