IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.2012 of 2018

1.Sivanandam
2.Navaneetham ... Appellants

Vs

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Limited,
No.3/137, Salamedu,
Vazhudhareedy Post - 605 602. ... Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 26.03.2012 passed in M.C.O.P.No.2123 of 2005 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

For Appellants : Mr.J.Ramkumar

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.5,55,000/- awarded by the Tribunal for the death of the deceased Senthil @ Senthilkumar in the accident, the appellants, who are father and mother, have preferred the Civil Miscellaneous Appeal seeking enhancement of compensation.

2. I heard Mr.J.Ramkumar, learned counsel for the appellants and Mr.K.J.Sivakumar, learned counsel for the respondent and perused the entire materials available on record.

3. It is not necessary for this Court to narrate entire facts in detail qua negligence and liability. It is for the reasons that these things are recorded by the Tribunal that the respondent Transport Corporation is liable to pay the compensation to the appellants. Since the aforesaid finding of

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the Tribunal is based on evidence and also none of these findings are under challenge, this Court is of the considered view that the finding of the Tribunal that the respondent Transport Corporation to pay the compensation is confirmed.

4. The only point that arises for consideration in this appeal is whether the appellants are entitled to get enhanced compensation and if so, to what extent.

5. According to the appellants, at the time of accident the deceased was aged 21 years and was working as Car Mechanic in Venkateswara Automobiles, Washermenpet, Chennai and was getting salary of Rs.6,000/- per month. Finding that it is possible for the deceased to earn Rs.6,000/- per month, the Tribunal has taken Rs.6,000/- as the monthly income of the deceased.

6. Admittedly, no proof has been produced by the appellants to prove the avocation and monthly income of the deceased. In the absence of proof, this Court finds that Rs.6,000/- fixed by the Tribunal as monthly income is slightly on the higher side. Therefore, it would be appropriate to fix the monthly income of the deceased at Rs.5,000/- per month. The Tribunal has not given any addition towards future prospects. As stated supra, at the time of accident the deceased was aged 21 years. Had he been alive, he would have earned more. Therefore, it would be appropriate to give 40% addition towards future prospects. Adding 40% towards future prospects, the monthly income of the deceased is fixed at Rs.7,000/-. Since the deceased was a bachelor, as per the ratio laid down by the Hon'ble Supreme Court, 50% deduction has to be made. Deducting 50%, the contribution to the family would comes to Rs.3,500/- per month i.e., Rs.42,000/- per annum.

7. While determining the compensation, the Tribunal has taken age of the mother for adopting multiplier. In Shyam Singh, reported in 2011 (7) SCC 65 = 2011 ACJ 1990 (SC), it has been held that Multiplier in the case of death of unmarried son/daughter, proper multiplier should be arrived at by assessing average age of parents of the deceased. But different views are taken by Hon'ble Apex Court in the cases of P. S. Somnathan vs. Dist. Insurance Officer, reported in 2011 ACJ 737 (SC), Amrit Bhanu Shali vs. NI Com., reported in 2012 ACJ 2002 (SC), Saktidevi vs. NI Com, reported in 2010 (14) SCC 575 and Reshma Kumari vs. Madan Mohan, reported in 2013 ACJ 1253 (SC) and lastly Hon'ble Constitutional Bench, in the case of N.I.Com Ltd vs. Pranay Sethi, reported in 2017 (3) GLH 536 = AIR 2017 SC 5157. In the above referred cases it has been held that in the case of death of unmarried son/daughter, multiplier should be applied on the basis of age of the deceased and not on the basis of average age of the parents of the deceased.

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8. Following the decision of the Constitutional Bench of the Hon'ble Supreme Court in the case of Pranay Sethi, supra, this Court is inclined to adopt multiplier "18" considering the age of the deceased. Adopting multiplier "18", the loss of dependency is calculated at Rs.7,56,000/- as against Rs.5,40,000/- awarded by the Tribunal.

9. The Tribunal awarded Rs.5,000/- towards funeral expenses and another Rs.5,000/- towards loss of love and affection. The Tribunal has not awarded any amount towards loss of estate. With respect to conventional heads, Hon'ble Supreme Court in the case of Pranay Sethi (supra), para No.61 (viii) has held that, reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/, Rs. 40,000/- and Rs.15,000/- respectively. Following the decision of the Hon'ble Supreme Court, Rs.5,000/- awarded by the Tribunal is enhanced to Rs.15,000/-. In addition Rs.15,000/- is awarded towards loss of estate. Considering the age of the appellants, Rs.5,000/- awarded by the Tribunal towards loss of love and affection is very low and the same is enhanced to Rs.50,000/-.

10. In view of the above discussion, the total compensation of Rs.5,55,000/- awarded by the Tribunal is enhanced to Rs.8,36,000/- as under:

Loss of dependency	:	Rs.7,56,000.00
Loss of love and affection	:	Rs. 50,000.00
Funeral expenses	:	Rs. 15,000.00
Loss of estate	:	Rs. 15,000.00
Total	:	Rs.8,36,000.00

11. Though the appellants have claimed enhancement of Rs.1,45,000/- in this appeal, in Nagappa v. Gurudayal Singh and others, reported in 2003 ACJ 12 (SC), the Hon'ble Supreme Court held that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if the Tribunal considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such as award. The Hon'ble Supreme Court said that the only embargo was that it should be just compensation, that is to say, it should be neither arbitrary or fanciful nor unjustifiable. Therefore, this Court feels that it would be fair to award the amounts so arrived by this Court as compensation payable to the appellants.

12. In the result, the Civil Miscellaneous Appeal is allowed with proportionate costs. The compensation of Rs.5,55,000/-

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awarded by the Tribunal is enhanced to Rs.8,36,000/- payable with interest at the rate of 7.5% per annum from the date of numbering of the claim petition i.e., 14.06.2005 till the date of deposit. The respondent Transport Corporation is directed to deposit the modified compensation with interest as aforesaid before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the entire compensation amount on equal proportion with accrued interest on filing proper application before the Tribunal. The appellants are directed to pay the deficit court fee within a period of four weeks from the date of receipt of the copy of this judgment.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accidents Claims Tribunal,
III Small Causes Court, Chennai.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.66221
+1cc to Mr.J.Ramkumar, Advocate, S.R.No.66064

C.M.A.No.2012 of 2018

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