IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.929 of 2018

Manonmani

M.Mangali (Died) (Amended as per order in I.A.No.172/11, dated 3.2.2011) ... Appellants / Petitioner

-Vs-

The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan Illam, Anna Salai,
Chennai-2. ... Respondent / Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and Judgment dated 24.02.2012 made in M.C.O.P.No.491 of 2008 on the file of the Motor Accidents Claims Tribunal, (Principal District Court), Tiruvallur.

For Appellants : Mr.K.Varadha Kamaraj

For Respondent : Mr.S.Sivakumar

JUDGMENT

Calling in question the judgment and decree dated 24.2.2012 passed in M.C.O.P.No.491 of 2008 by the Motor Accident Claims Tribunal, Principal District Court, Tiruvallur, the present appeal is filed.

2. The first appellant is the mother of the deceased and the second appellant is the father of the deceased, who died pending the claim petition. It is the case of the first appellant, who is the claimant, that on 27.6.2008, at about 1930 Hours, at Chennai Velacherry Main Road, Velacherry Flyover, when the deceased Suresh was proceeding in his motorcycle bearing registration No.TN 22 BZ 86 on the left hand side, slowly and cautiously, the bus bearing registration No.TN 01 N 3866, driven

by the driver of the respondent Transport Corporation rashly and negligently came from south to north direction and dashed against the deceased and the left back wheel of the bus ran over the deceased's head and as a consequence, he did on the spot. A case was registered against the driver of the bus in Crime No.316 of 2008. As the deceased, aged 23 years, was working as Network Engineer and was earning Rs.10,500/- per month, the appellants claimed Rs.15,00,000/- towards damages.

3. The appellants/claimants examined P.Ws.1 to 3 and marked Exs.P1 to P13. On the side of the respondent Corporation, one witness, being R.W.1 was examined, though no documents were marked.

4. The Court below, by judgment and decree dated 24.2.2012 passed in M.C.O.P.No.491 of 2008, held that the accident took place due to the rash and negligent driving of the driver of the bus belonging to the respondent Corporation. The Tribunal considering the age of the first appellant (mother) fixed the multiplier as '13' and arrived at the dependency of the family at Rs.6,39,600/-. To this, the Tribunal added Rs.5,000/- towards funeral and transportation expenses and in all the Tribunal awarded Rs.6,44,600/- towards compensation to the first appellant (mother) alone.

5. Seeking enhancement of the compensation awarded, the appellants have filed this appeal.

6. The contentions of the learned counsel for the appellant, inter alia, are as under:

(i) The learned Tribunal erred in fixing multiplier of '13', when the age of the deceased was 23 and the right multiplier is '18';

(ii) The Tribunal erred in fixing the income of the deceased at Rs.8,200/- per month, when his actual income was Rs.9,101/- per month as per the oral evidence of P.W.3, the employer of the deceased, and as per Ex.P13, pay slips.

(iii) The Tribunal had not awarded any amount towards future prospects and in any event, the Tribunal ought not to have deducted 50% of income for personal expenses of the deceased, when the survivor is a widow.

(iv) The Tribunal awarded only a meagre sum of Rs.5,000/- towards funeral expenses and transportation and the same is not commensurate with the present economic position.

7. Per contra, the learned counsel appearing for the respondent Corporation reiterated the reasons that weighed with the Tribunal in passing the award and prayed for dismissal of this appeal.

8. I heard Mr.K.Varadha Kamaraj, learned counsel for the appellants and Mr.S.Sivakumar, learned counsel for the respondent and perused the documents available on record.

9. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the appellants and secondly, none of those findings are under challenge by the respondent. Only the quantum alone is under challenge, that too by the appellants/claimants.

10. According to the appellants, the deceased was aged 23 years at the time of accident and was earning Rs.10,500/- by working as Network Engineer in Ceequence Technologies Private Limited, Anna Salai, Saidapet, Chennai-15. The employer of the deceased was examined as P.W.3. In his evidence, P.W.3 deposed that the deceased was working under him and was drawing salary of Rs.10,500/- per month. The pay slips of the deceased was marked as Ex.p13-series.

11. Holding that allowances meant for benefit of the family alone can be taken into account and the allowance meant for the deceased employee cannot be for the benefit of the family and also taking note of the basic pay plus house rent allowance i.e., Rs.5460/- plus Rs.2730/-, the Tribunal has fixed monthly income of the deceased at Rs.8,190/- rounded off to Rs.8,200/-. The aforesaid view taken by the Tribunal, in my considered opinion, is acceptable and therefore, Rs.8,200/- taken by the Tribunal as monthly salary of the deceased at the time of accident is maintained.

12. The learned counsel for the appellants argued that the Tribunal has not awarded any amount towards future prospects. Admittedly, the Tribunal has not awarded any amount towards future prospects. Considering the avocation of the deceased, it would be appropriate to give 40% addition towards future prospects. 40% of the monthly salary would comes to Rs.3,280/-. Adding Rs.3,280/- towards future prospects, the monthly income of the deceased would comes to Rs.11,480/-. Thus, the monthly income of the deceased is fixed at Rs.11,480/-, i.e., Rs.1,37,760/- per annum.

13. As far as deduction towards personal expenses is concerned, the learned counsel for the appellants submitted that the Tribunal ought not to have deducted 50% of income for personal expenses of the deceased, when the survivor is a widow.

14. In the case on hand, the deceased was a bachelor and the claimants are parents. Therefore, there is no force in the contention of the appellants that when the survivor is widow, 50% deduction need not be made. Where the deceased was a bachelor and the claimants are parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal expenses because it is assumed that a bachelor would tend to spend more on himself. Therefore, the Tribunal was right in deducting 50% towards personal expenses. The annual income of the deceased is fixed at Rs.1,37,760/-. Deducting 50%, the contribution to the family would comes to Rs.68,880/- per annum.

15. It appears that while determining the compensation, the Tribunal has taken the age of the mother for adopting multiplier and accordingly, the Tribunal has adopted multiplier "13".

16. In a catena of decisions, the Hon'ble Supreme Court 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. Therefore, this Court is of the view that the Tribunal erred in taking the age of the mother of the deceased for adopting multiplier. At the time of accident, the deceased was aged 23 years. For the age group 21 - 25, the multiplier to be adopted is "18". Adopting multiplier "18", the loss of dependency is calculated at Rs.12,39,840/- (Rs.68,880 x 18).

17. As far as conventional damages are concerned, the Tribunal awarded only a sum of Rs.5,000/- towards funeral expenses. With respect to conventional heads the Hon'ble Supreme Court, in National Insurance Company v. Pranay Sethi, reported in (2017) 16 SCC 680, held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. Since the deceased was a bachelor, awarding of compensation under the head loss of consortium does not arise. Following the decision of the Hon'ble Supreme Court in Pranay Sethi, supra, a sum of Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- towards funeral expenses as against Rs.5,000/- awarded by the Tribunal.

18. Thus, the total compensation of Rs.6,44,600/- awarded by the Tribunal is enhanced to Rs.12,69,840/- as under:

Loss of dependency	:	Rs.12,39,840.00
Loss of estate	:	Rs. 15,000.00
Funeral expenses	:	Rs. 15,000.00
Total	:	Rs.12,69,840.00

19. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The total compensation of Rs.6,44,600/- awarded by the Tribunal is enhanced to Rs.12,69,840/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The respondent is directed to deposit the enhanced compensation with interest as aforesaid within a period of eight weeks from the date of receipt of a copy of this judgment before the Tribunal. On such deposit, the first appellant Manonmani is permitted to withdraw the entire amount with accrued interest on filing necessary application before the Tribunal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

vs Sub Assistant Registrar

To

1.The Principal District Judge,
Tiruvallur.

2.The Section Officer,
V.R.Section, High Court,
Madras-104. (2 copies)

+1 cc to M/s.K.Varadhakamaraj, Advocate, SR No.71045 (25/3/2019)

C.M.A.No.929 of 2018

KK(CO)
SSM(18/03/2019)(25/03/2019).