

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2424 of 2014

1.Rajalakshmi
2.Kumar
3.Uma
4.Sathish ... Appellants
Vs

The Managing Director,
Tamil Nadu Transport Corporation Ltd,
Kumbakonam Division,
Kumbakonam. ... Respondent

[Amended the respondent name in cause title
vide order dated 12.09.2018 in
C.M.P.No.10780 of 2016 in CMA.No.2424/2014]

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Award dated 01.02.2014 of the Motor Accidents Claims Tribunal, Principal District Judge, Ariyalur in M.C.O.P.No.142 of 2013.

For Appellant : Mr.S.Kaithamalai Kumaran
For Respondent : Mr.Venkatachalam

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, (Principal District Judge), Ariyalur in M.C.O.P.No.142 of 2013 dated 01.02.2014.

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

- (i) One Karthik @ Karthikeyan died on 21.01.2013 as a result of an accident caused by a Bus bearing Registration No.TN.68-N-0225 owned by the respondent/Transport Corporation. The appellants are the dependents of the deceased Karthik @ Karthikeyan. They preferred a claim before the Motor Accidents Claims Tribunal in M.C.O.P.No.142 of 2013 seeking a compensation of Rs.20,00,000/-.
 - (ii) The Motor Accidents Claims Tribunal, by its Award dated 21.01.2014 in M.C.O.P.No.142 of 2013, directed the respondent/ Transport Corporation to pay the appellants a sum of Rs.6,06,000/- together with interest at the rate of 6% per annum from the date of claim till the date of realisation.
 - (iii) Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the claimants seeking enhancement of compensation.
- 3.Heard Mr.S.Kaithamalai Kumaran, learned counsel for the appellants and Mr.D.Venkatachalam,

learned counsel for the respondent.

4. According to the learned counsel for the appellants, the compensation awarded by the Tribunal to the appellants under the impugned Award is an inadequate compensation. According to him, the Tribunal has erroneously assessed the monthly income of the deceased at the time of the accident at Rs.5,000/- without any basis. According to him, the deceased was earning Rs.9,000/- per month at the time of the accident. He would draw the attention of this Court to the deposition of P.W.3, the Employer of the deceased, wherein he has deposed that the deceased was his driver and was paid a monthly salary of Rs.6,000/- and in addition to that, other allowances were also paid. According to the learned counsel, no contra evidence has been produced by the respondent to disprove the claim of the appellants that the deceased was earning monthly income of Rs.9,000/- at the time of the accident. He would also draw the attention of this Court to a Judgment of the Hon'ble Supreme Court in Kala Devi and others V. Bhagwan Das Chauhan and others reported in 2014 (2) TN MAC 680 (SC), and submitted that the Hon'ble Supreme Court has fixed the monthly income of a driver at Rs.9,000/- for an accident that took place on 15.12.2003. According to him, in the instant case, the accident having taken place on 21.01.2013, the Tribunal ought to have fixed the monthly income of the deceased at Rs.9,000/-. Further, he would contend that the Tribunal has erroneously applied the '17' multiplier, instead of '18' multiplier, while assessing the compensation payable to the appellants for the death of Karthik @ Karthikeyan. Further, he would contend that the Tribunal has also not awarded any compensation towards loss of future prospects.

5. Per contra, the learned counsel for the respondent/Transport Corporation would submit that even the Employer of the deceased has deposed before the Tribunal that only Rs.6,000/- per month was paid to the deceased at the time of the accident and therefore, the appellants cannot claim that the deceased was earning a monthly income of Rs.9,000/- at the time of the accident. Further, he would contend that the Judgment relied upon the learned counsel for the appellants reported in 2014 (2) TN MAC 680 (SC) (cited supra) is not applicable for the facts of the instant case. Since in that case the driver was holding a Heavy Motor Vehicle Licence whereas in the instant case, the deceased was possessing only a Light Motor Vehicle Licence.

6. 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) It is an undisputed fact that no appeal has been filed by the respondent against the findings of the Tribunal under the impugned Award.
- (b) The appellants have produced the driving licence of the deceased before the Tribunal, which was marked as Ex.P7. No contra evidence has been produced by the respondent/Transport Corporation to disprove the avocation of the deceased who was a driver. The Employer of the deceased was also examined as P.W.3 and he has deposed before the Tribunal that he was paying a monthly salary of Rs.6,000/- together with other allowances to the deceased at the time of accident. The respondent has also not been able to establish by letting in contra evidence or in cross examination of the appellants witness that the deceased was not a driver and not an Employee of P.W.3. Therefore, it is well established that P.W.3 is the Employer of the deceased at the time of the accident.
- (c) Even though P.W.3 has deposed before the Tribunal that he was paying a monthly salary of Rs.6,000/- and other allowances to the deceased at the time of the accident, the Tribunal, without any basis, has assessed the monthly income of the deceased only at Rs.5,000/-. In the considered view of this Court, the Tribunal ought to have assessed the monthly income, considering the fact that the Employer of the deceased P.W.3, in his oral evidence, has stated that he was paying the monthly income of Rs.6,000/- along with other allowances to the deceased and also the Tribunal ought to have considered the fact that the accident happened in the year 2013 and for that year, no driver would have been paid a paltry sum of Rs.5,000/- as monthly salary. The Tribunal ought to have taken

judicial notice and ought to have considered the deposition of P.W.3 before assessing the monthly income of the deceased at the time of the accident.

(d) In the judgment cited by the learned counsel for the appellants reported in 2014 (2)TN MAC 680 (SC) referred to supra, the Hon'ble Supreme Court has assessed the monthly income of a driver for an accident that took place in the year 2003 whereas in the instant case, the accident took place in the year 2013. Even though the driver involved in the reported case of the Hon'ble Supreme Court was possessing a Heavy Vehicle Licence, considering the year of the accident, the Tribunal ought not have assessed the monthly income of the deceased at the time of the accident at a paltry sum of Rs.5,000/-. Therefore, in the considered view of this Court, the monthly income of the deceased at the time of the accident is assessed at Rs.6,500/-.

(e) Under the impugned Award, the Tribunal has also not awarded any compensation towards loss of future prospects. As held by the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited V. Pranay Sethi and others reported in (2017) 16 SCC 680 : 2017(2) TN MAC 609(SC), 40% loss of future prospects will have to be awarded as compensation to the appellants. Further, the Tribunal under the impugned Award has applied the wrong multiplier. Instead of applying '18' multiplier, the Tribunal has applied the '17' multiplier.

(f) At the time of the accident, the deceased was 23 years and he left behind his father, mother, brother and one sister, who are the appellants herein as his legal heirs. Under the impugned Award, only a sum of Rs.40,000/- was granted as compensation towards loss of love and affection. In the considered view of this Court, a sum of Rs.80,000/- will have to be awarded as compensation towards loss of love and affection to the appellants.

(g) Under the impugned Award, the compensation awarded towards funeral, medical expenses, Transportation and loss of estate is an adequate compensation.

7. In the light of the above observations, this Court is of the considered view that the compensation awarded by the Tribunal under the impugned Award has to be enhanced from Rs.6,06,000/- to Rs.11,52,187/- (Rupees Eleven Lakhs Fifty Two Thousand One Hundred Eighty Seven Only). However, the interest fixed by the Tribunal at 6% per annum from the date of petition till the date of realisation is enhanced to 7.5% per annum. The Break-up details of the revised Award are as under:

Heads

Amount awarded by Tribunal

Enhanced Award passed by this Court

Loss of dependency

$(6500 \times 12 \times 18 \times == 7,02,000)$

$[7,02,000 + 2,80,800 (40\%)]$

Rs.5,10,000/-

Rs. 9,82,800/-

Love and Affection

Rs. 40,000/-

Rs. 80,000/-

Medical Expenses

Rs. 44,387/-

Rs. 44,387/-

Funeral Expenses

Rs. 15,000/-

Rs. 15,000/-

Transportation Expenses

Rs. 15,000/-

Rs. 15,000/-
Loss of Estate
Rs. 15,000/-
Rs. 15,000/-
Total
Rs.6,06,000/-
Rs.11,52,187/-

8.In fine, the respondent/Transport Corporation are directed to deposit the entire amount awarded by this Court, less the amount already deposited, along with interest at the rate of 7.5% per annum to the credit of M.C.O.P.No.142 of 2013 on the file of the Motor Accidents Claims Tribunal, (Principal District Judge), Ariyalur, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellants are permitted to withdraw the amount, by filing an appropriate application before the Tribunal.

9.The Civil Miscellaneous Appeal is partly allowed with the above observations. No costs. 10.10.2018

Index : Yes/No
Internet : Yes/No
Speaking /Non-speaking Judgment

Sgl

To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Ariyalur.

/

2.The Section Officer,
V.R Section,
High Court, Madras.
ABDUL QUDDHOSE, J.

Sgl

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