

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

CMA.No.2448/2018 & CMP.No.18657/2018

The Managing Director
Tamilnadu State Transport Corporation
[VPM] Limited
Villupuram Division.

.. Appellant / Respondent

Vs

1.A.Kumari
2.Sangeetha
3.Ettiyappan
..

Respondents
/ Claimants / Petitioners

Prayer:- Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 01.11.2017 in MCOP No.6164/2014 on the file of the Motor Accident Claims Tribunal, the II Small Causes Court, Chennai.

For Appellant : Mr.K.J.Sivakumar

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.]

The respondent in MCOP No.6164/2014 is the appellant herein and the claimants are the respondents.

2 The respondents 1 to 3 are the wife, daughter and son of late Anbazhagan, who died in a road accident which took place at about 13.30 hours on 10.05.2012. The respondents/claimants claimed a compensation of Rs.20 lakhs with subsequent interest and cost by filing MCOP No.6164/2014 on the file of the Court of Motor Accident Claims Tribunal [II Small Causes Court], at Chennai. The Tribunal, vide Award and Decree dated 01.11.2017, has awarded a sum of Rs.11,92,000/- towards compensation with interest at the rate of 9% per annum from the date of petition

till the date of deposit of the entire compensation and challenging the quantum of compensation awarded, the present appeal is filed.

3 The facts leading to the filing of this appeal have been narrated in detail and in extenso in the impugned Award and therefore, it is unnecessary to re-state the facts once again except to narrate the relevant facts for the purpose of disposal of this appeal.

4 As per the claim petition, the husband of the 1st respondent herein was aged about 45 years and he was eking out his livelihood as a farmer and coolie and he was earning a monthly income of Rs.5000/-. According to the claimants, he was riding a bicycle on 10.05.2012 and at about 13.30 hours, the bus belonging to the Appellant Transport Corporation dashed against him and he was taken to Vandavasi Government Hospital for first aid and thereafter, got admitted in Chengalpattu Government Medical Hospital and again shifted to the Government General Hospital at Chennai and he was in-patient for 14 days and without responding to the treatment, he succumbed to the injuries.

5 The Transport Corporation had filed a counter affidavit denying the act of negligence and also took a stand as regards the age, occupation, income etc., of the deceased. The claimants are put to stigma.

6 Before the Tribunal, during the course of enquiry, respondents 1 to 3 herein had examined themselves as P.Ws.1 to 3 and one Dhanajayan, was examined as P.W.4 and Exs.P.1 to 34 were marked and on behalf of the Appellant/Transport Corporation, one Mr.Perumal was examined as R.W.1 and no documents were marked.

7 The Tribunal on consideration of the averments made in the claim petition, counter statement and oral and documentary evidence, found that the accident is attributable on account of the rash and negligent driving of the bus belonging to the appellant/Corporation and insofar as the quantum of compensation is concerned, it found that no documentary evidence has been filed as to the income and taking into consideration that the deceased was earning some income from agricultural operation and also by rearing cows, had fixed a sum of Rs.6,000/- as notional monthly income.

8 The Tribunal found that as per Ex.P.18-Postmortem Certificate, the deceased was aged about 45 years and therefore, adopted the multiplier '14'. The Tribunal has found that the respondents were wife and two minor children of the deceased and after applying the ratio laid down by the Hon'ble Supreme Court in Smt. Sarala Varma and others Vs. Delhi Transport Corporation

and Another reported in 2009 [2] TNMAC page 1 [SC], after deducting 30%, has fixed the income at the rate of Rs.5,460-. The Tribunal has also awarded a sum of Rs.25,000/- towards funeral expenses and taking into consideration that the 1st respondent herein/wife of the deceased was aged about 43 years, has awarded a sum of Rs.1,00,000/- towards Consortium. For love and affection, the Tribunal has awarded a sum of Rs.75,000/- each to the daughter and son and in all, aggregating to, has awarded a sum of Rs.11,92,000/- with interest at the rate of 9% per annum.

9 The learned counsel for the appellant/Corporation would submit that a sum of Rs.1,00,000/- awarded by way of consortium to the 1st respondent/wife and a sum of Rs.75,000/- each awarded to respondents 2 and 3-daughter and son of the deceased, were very much on the higher side and prays for reduction of the compensation under the said heads.

10 This Court has carefully considered the submission made by the learned counsel for the appellant/Corporation and also perused the materials placed on record in the form of typed set of documents.

11 No doubt, the daughter-2nd respondent herein, was married and the son-3rd respondent herein, was aged about 23 years and simply because the daughter got married and the son has also attained the age of majority, it did not mean that they have no love and affection towards their deceased father. It is to be pointed out at this juncture that the 1st respondent-wife of the deceased was aged about 41 years and she lost the support of her husband, who died in a tragic accident. It is also to be noted at this juncture that the deceased was eking out his livelihood by doing agricultural operation and it may not be possible for the 1st respondent-wife to carry out the said occupation without the help of somebody else.

12 In the considered opinion of the Court, the Tribunal has appreciated the oral and documentary evidences in proper perspective and applying the ratio laid down in Smt.Sarala Varma's case [cited supra], has awarded a just and fair compensation of Rs.11,92,280/- rounded off to Rs.11,92,000/- with interest at the rate of 9% per annum from the date of petition till the date of realisation.

13 This Court, on going through the impugned Award, is of the considered view that there is no perversity or error apparent on the face of the record and the findings rendered by the Tribunal cannot said to be on 'no evidence' and finds no merit in this appeal.

14 In the result, the Civil Miscellaneous Appeal is dismissed confirming the Award and Decree dated 01.11.2017 made in MCOP.No.6164/2015 on the file of the Court of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1.The Judge,
II Small Causes Court
Motor Accident Claims Tribunal,
Chennai.

2.The Section Officer,
VR Section, High Court, Chennai.(2 copies)

+lcc to Mr.K.J.Sivakumar, Advocate sr.no.77974

CMA.No.2448/2018

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