



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.436 of 2018

and

C.M.P(MD) No.5352 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
having Office at No.2, Trivandrum Road,
Vannarpettai,
Tirunelveli.

.. Appellant/Respondent

Vs.

1. Esakkiammal

2. Petchiammal

3.Subbulakshmi

4.Malai @ Malathy

5.Subbiah

.. Respondents/Petitioners

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 25.07.2017, passed in M.C.O.P.No.1730 of 2016 on the file of the Motor Accidents Claims Tribunal/II-Additional District and Sessions Court, Tirunelveli.

For Appellant : Mr.P.Prabhakaran

For Respondents : Mr.S.P.Maharajan

JUDGMENT

This civil miscellaneous appeal has been filed challenging the award passed by the learned II-Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Tirunelveli in M.C.O.P.No.1730 of 2016, dated 25.07.2017.

2. Heard the learned Counsel appearing on either side and perused the records carefully.

3. It is a case of fatal and the tribunal has awarded a sum of Rs.13,65,672/- (Rupees Thirteen Lakhs Sixty Five Thousand Six Hundred Seventy Two only) as compensation, against which, the Appellant/Transport Corporation is on appeal before this Court.



4. It is the grievance of the appellant Corporation that the tribunal has awarded a sum of Rs.1,00,000/- (Rs.25,000/- each for respondents 2 to 5 herein) towards loss of love and affection; Rs.1,00,000/- towards loss of consortium; Rs.5,000/- towards travel expenses and Rs.20,000/- towards funeral expenses, totalling a sum of Rs.2,25,000/-. These are all nothing but compensation on conventional heads. The Hon'ble Supreme Court, in the case of *National Insurance Company Ltd., v. Pranay Sethi and others*, decided on 31.10.2017, has categorically held that the loss towards conventional heads should be Rs.70,000/- and therefore, the award of the tribunal towards conventional heads should be restricted to Rs.70,000/-.

5. The learned counsel for the respondent would also submit that the deceased was working as agricultural coolie at the time of accident. The Hon'ble Supreme Court, in this context, in the decision reported in 2014 (1) TN MAC 459 (SC) in the case of *Syed Sidiq etc., v. Divisional Manager, United India Insurance Company Ltd.*, has held that the reasonable monthly income of a labour in an unorganized sector doing his own business would be Rs.6,500/-. Hence, the tribunal ought to have taken Rs.6,500/- as monthly income of the deceased instead of Rs.7,500/-. However, in the present case on hand, considering the age of the deceased as well as the nature of job of the deceased and also considering the number of dependents, this Court does not find any error in fixing the notional income as Rs.7,500/- per month as fixed by the tribunal. Hence, this Court is inclined to take the notional monthly income as Rs.7,500/- for calculating loss of income.

6. Perusal of the records shows that the deceased was 49 years old and was working as agricultural coolie at the time of accident. Therefore, following the decision of the Hon'ble Apex Court in *National Insurance Company Ltd., v. Pranay Sethi and others*, decided on 31.10.2017 (cited supra), if the deceased was between the age of 40-50 years, 25% shall be taken towards future prospects. Hence, the Tribunal ought to have awarded 25% towards future prospects, instead of 30%.

7. In view of the above, this Court is inclined to modify the compensation awarded by the tribunal on two heads alone, i.e., future prospects and conventional heads. It is a simple math that by fixing the future prospects as 25% and reducing the compensation towards conventional heads, as discussed earlier, the overall compensation will be as follows:

- ((Income of the deceased + future prospects) - personal expenses) is ((Rs.7,500/- + Rs.1,875/- (25%)) - Rs.2,344/- (1/4)) amounts to Rs.7,031/-.
- By applying the multiplier method, it would be (Rs.7,031/- * 12 * 13) amounting to Rs.10,96,836/-.
- Therefore, the loss of income is reduced and the same is fixed at Rs.10,96,836/-, instead of Rs.11,40,672/-.



- Restricting the conventional heads to a sum of Rs.70,000/-, the total award amount would be Rs.11,66,836/- (Rs.10,96,836+Rs.70,000/-) rounded off to Rs.11,66,836/-.

8. In result, this civil miscellaneous appeal is partly allowed and

- the compensation awarded by the tribunal is reduced and fixed at Rs.11,66,836/- [Rupees Eleven Lakh Sixty Six Thousand Eight Hundred Thirty Six only];
- The appellant/transport corporation is directed to deposit the entire compensation amount fixed by this Court with interest at the rate of 7.5% per annum, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order;
- On such deposit being made, the claimants are permitted to withdraw the same as apportioned by the tribunal, without filing any formal application before the Tribunal;
- If the entire compensation awarded by the tribunal, has already been deposited, then the appellant/transport corporation is at liberty to withdraw the excess amount.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(Crl side)

/True copy/

Sub Assistant Registrar(CS-II)

To

1. The II-Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Tirunelveli.

2. The Record Keeper,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

+1cc to Mr.P.Prabhakaran, Advocate, SR.No.73712

+1cc to Mr.S.P.Maharajan, Advocate, SR.No.73695

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