IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 04.01.2019

DELIVERED ON 22.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3184 of 2010

1. Bagiyam @ Bhagiyalakshmi
2. Jeyanthi
3. Jayamala
4. Anandharaj ... Appellants/ claimants

Vs.

The Managing Director,
Tamilnadu State Transport Corporation,
Villupuram Division, Villupuram ... Respondent/respondent

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against award dated 29.06.2010 in M.C.O.P.No.64 of 2008 by the Sub Judge, Motor Vehicle Accidents Claims Tribunal, Gingee.

For Appellants : Mr.Sai Bharath Ilan

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

The appellants are the claimants in MCOP No.64 of 2008 on the file of the Sub Judge, Motor Vehicle Accident Claims Tribunal, Gingee and they filed the said claim petition under Section 166(1) of the Motor Vehicles Act, seeking compensation of Rs.25,00,000/- for the death of one Ramachandran, husband of the first claimant and father of the claimants 2 to 4 in a road accident that took place on 26.02.2008.

2. The brief case of the appellants/claimants is as follows. The deceased was working as Head Master in a Government School at Anangoor, Gingee. On 26.02.2008, at about 7.20 a.m., the deceased Ramachandran was riding his two wheeler TVS Super XLT bearing registration No.32-V-6384 on Ammakulam-Aniyur Road. At that time, a speeding bus bearing registration

No. TN-32-N-2203 belonging to the respondent hit the two wheeler ridden by the deceased Ramachandran, as a result of which, he fell down from his two wheeler and sustained injury on his head. Immediately, he was rushed to the Government Hospital at Tindivanam, from where, he was referred to Jipmer Hospital at Pondicherry. However, he succumbed to injuries on the same day. According to the claimants, the rash and negligent driving of the driver of the bus bearing registration No. TN-32-N-2203 was the cause of the accident and hence, the Tamil Nadu State Transport Corporation, Villupuram is liable to pay compensation of Rs.25,00,000 to the claimants.

3. The respondent contested the claim petition before the tribunal and the tribunal, after analysing the evidence on record, awarded a compensation of Rs.2,66,840/- together with interest at the rate of 7.5% per annum to the claimants. Aggrieved over the quantum of compensation awarded by the tribunal, the appellants/claimants have filed the present appeal.

4. Mr. Sai Bharath, learned counsel appearing for the appellant would contend that though the deceased Ramachandran was working as a Head Master in a Government Primary School, Anangoor, earning a sum of Rs.19,920/- per month, as evidenced by the pay certificate Ex.P4, the tribunal had wrongly fixed the monthly income of the deceased as Rs.2,000/-, by observing that since the family members of the deceased Ramachandran would be entitled to pensionary benefits, even after the death of the deceased Ramachandran, the actual income of the deceased on the date of accident cannot be taken up for calculating loss of dependency. He relied on the following decisions, in

i) Helen c.Rebellor (Mrs) and others Vs. Maharashtra State Road Transport corporation and another reported in 1999(1) Supreme ourt Cases 90.

ii) Vimal Kanwar and others Vs. Kishore Dan and others reported in (2013)7 Supreme Court Cases 476.

and contended that compensation under the Motor Vehicles Act is on account of the pecuniary loss to the claimants by accidental injury or death and the pecuniary advantage income (in all forms) would include all assets, movables, immovables, shares, bank account cash and any amount returnable under any contract. His specific contention is that since the Pay Certificate (Ex.P4) clearly shows that the deceased Ramachandran was earning a sum of Rs.19,920/- per month on the date of accident, the tribunal should have taken this amount, as monthly income of the deceased.

5. A perusal of the orders passed by the tribunal shows that merely because the deceased was aged 58 years on the date of accident and was about to retire within a period of 2 months, the tribunal had fixed monthly income of the deceased as Rs.2,000/- per month. It is further observed by the tribunal

that the family members would be entitled to pensionary benefits. This is totally wrong, since the income of the deceased should be taken to be the income, which he was receiving on the date of accident.

6. As far as the present case is concerned, since the deceased was drawing a salary of Rs.19,920/- on the date of accident, the monthly income of the deceased is fixed at Rs.19,920/-. 10% of the income should be deducted towards income tax, as per the provisions prevailing in the year 2008. Thus his annual income is fixed at Rs.2,15,136/-.

Calculation for annual income

19,920 x 12	-	Rs.2,39,040
2,39,040 (-) 10%	=	Rs. 23,904
Annual income	=	Rs.2,15,136

To this sum, as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, 15% should be added towards future prospects. i.e. Rs.2,15,136 + 32270 = 2,47,406. After deducting 1/4th towards the personal expenses of the deceased, a sum of Rs.1,85,554 (247,406 - 61852 = 1,85,554) is fixed as annual income of the deceased. The age of the deceased was 58 years on the date of accident and the proper multiplier to be adopted in the instant case is 9, as per the decision in Sarala Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Calculation for loss of dependency is worked out hereunder.

Calculation for Loss of dependency

2,15,136 + 32,270	=	Rs.2,47,406
2,47,406 - 61,852	=	Rs.1,85,554
1,85,554 x 9	=	Rs.16,69,986

In addition to that, as per the decision rendered by the Constitution Bench of the Honourable Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, the claimants are entitled to Rs.40,000/- Rs.15,000, Rs.15,000/- towards "Loss of consortium", "Loss of Estate" and "Funeral Expenses" respectively. Thus, the claimants are entitled to a total compensation of Rs.17,39,986/- (16,69,986 + 40,000 + 15000 + 15000= 17,39,986) which is extracted here under.

Sl.No	Heads	Amount
1	Loss of dependency (1,85,554 x 9)	16,69,986
2	Loss of consortium	40,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000
	Total	17,39,986

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

7. In the result,

i) The appeal is allowed. No costs. The quantum of compensation awarded by the tribunal is enhanced to Rs.17,39,986 from Rs.2,66,840.

ii) The appellants/ claimants are entitled to the compensation of Rs.17,39,986/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

iii) The appellants/claimants are directed to pay necessary court fee for the enhanced compensation amount.

iv) The State Transport Corporation is directed to deposit the enhanced compensation of Rs 17,39,986/- along with interest at the rate of 7.5% per annum, less the amount already deposited, within a period of 4 weeks from the date of receipt of a copy of this order.

v) On such deposit being made, the appellants/claimants are entitled to withdraw the same, as per the apportionment made by the tribunal and after following due process of law.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mst

To

1. The Sub Judge,
Motor Accident Claims Tribunal,
Gingee.

2. The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.KJ.Sivakumar, Advocate SR.No.4640

+1cc to Mr.Sai Bharth, Advocate SR.No.4450

CMA.No.3184 of 2010

BS(CO)
GMY(21/05/2019)