IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 15.03.2019

CORAM:
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.480 of 2013

1.Ambiga
2.Minor.Harani
3.Krishnan
4.Lakshmi ... Appellants/Claimants

vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Tiruvanamalai. ...Respondent/Respondent

PRYAER:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 19.10.2009, in M.C.O.P.No. 946 of 2008, passed by the District Judge, Motor Accidents Claims Tribunal (District Judge), Tiruvananamalai.

For Appellants : Mr.F.Terry Chellaraja

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, cum District Judge, Tiruvannamalai, in and by its award dated 19.10.2009, in M.C.O.P.No. 946 of 2008, the claimants have filed the present appeal, seeking enhancement of the compensation.

2. On 07.09.2008, at about 01.00 a.m., when the deceased Thirunavukkarasu was standing opposite to his residence at Edapalayam Village, Tiruvanamalai - Tirukovilur Road, on the left side of the road, a bus bearing Registration No. TN 23 N 1155, belonging to the respondent/Transport Corporation, was driven by its driver in a rash and negligent manner, and dashed against the deceased Thirunavukkarasu and six other persons, as a result of which, the deceased sustained injuries all over his body. Immediately, he was taken to Triuvannamalai Government Hospital, and thereafter, for further treatment shifted to Christian Medical College, Vellore, where, he underwent treatment from 07.09.2008 to 12.09.2008 for 6 days and despite intensive treatment, the deceased died on 12.09.2008. Hence, the

legal representatives of the deceased, viz., wife, daughter and parents of the deceased, made a claim in a sum of Rs.10,00,000/- as compensation.

3. The Transport Corporation contested the claim by filing a counter statement, inter alia stating that they are not liable to pay the compensation and the claim has to be made before the Electricity Board for the reason that, since it was raining on the date of the accident, the electricity service connection got short circuited, followed by sudden power cut, resulting in complete darkness, in such circumstances, the people got panic and started to run here and there, and at such point of time, they dashed against each other, due to the same, the deceased sustained injuries and died. Therefore, the Transport Corporation prayed for dismissal of the claim petition.

4. Before the Tribunal, PW1 was examined and Ex.P1 to Ex.P14 were marked. Ex.P1 - FIR, Ex.P2 - M.V.Inspector's Report, Ex.P3-Post Mortem Certificate, Ex.P4- Death summary of the deceased Thirunavukkarsu, Ex.P5- Death Certificate of the deceased Thirunavukkarsu, Ex.P6-Medical Bills, and Ex.P7-Charge sheet. On behalf of the Transport Corporation, one witness was examined as R.W.1, but no document was marked.

5. The Tribunal, after analyzing the entire evidence both oral and documentary, has come to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the bus, belonging to the respondent/Transport Corporation and held that Transport Corporation is liable to pay the compensation. By coming to such conclusion, the Tribunal has made calculation under different heads and passed an award for a total compensation amount of Rs.3,91,195/-. The breakup details of the compensation are as follows:-

S.No	Head	Amount granted
1.	Loss of dependency	Rs.3,26,400/-
2.	Loss of consortium	Rs.5,000/-
3.	Love and affection	Rs.6,000/-
4.	Medical expenses	Rs.51,795/-
5.	Funeral expenses	Rs.2,000/-
	Total	Rs.3,91,195/-

6. Not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 seeking for enhancement of compensation.

7. Mr.F.Terry Chellaraja, the learned counsel appearing for the appellants/claimants would firstly contend that the age of the deceased Thirunavukkarasu was 25 years at the time of the accident, and the same was confirmed in the Post Mortem Certificate (Ex.P3). The deceased was a vessel merchant, earning a sum of Rs.6,000/- per month. The learned counsel further submitted that, the Tribunal, while determining the compensation towards 'Loss of Dependency', fixed a sum of Rs.2,400/- per month as notional income of the deceased, which is too low. In this connection, the learned counsel placed reliance on the decision rendered by the Honourable Supreme Court in the case of Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, wherein, the Honourable Supreme Court even for a vegetable vendor, who sustained injuries in the accident occurred in the year 2008, fixed the notional monthly income at Rs.6,500/- Therefore, he submitted that the Tribunal, without applying its mind, fixed a sum of Rs.2,400/- per month as notional income of the deceased, who died due to the accident in the year 2008. He further submitted that the Hon'ble Supreme Court fixed a sum of Rs.4,500/- for the accident occurred in the year 1998. Thus, he submitted that the compensation awarded by the Tribunal towards 'Loss of Dependency' may be enhanced by fixing the monthly income of the deceased at Rs.6,500/- per month. The learned counsel further submitted that the Tribunal has failed to award any compensation towards i) Transportation, ii) Attender charges, iii) Extra nourishment and iv) Pain and sufferings/mental agony.

8. Mr.K.J.Sivakumar, learned counsel appearing for the respondent/Transport Corporation fairly submitted that the deceased was a vessel merchant, earning a sum of Rs.6,000/- per month. However, he submitted that since there was no proof produced by the appellants/claimants before the Tribunal to prove the monthly income of the deceased, the compensation awarded by the Tribunal under the head 'Loss of Dependency' is just and fair and he strongly opposed to the contention made by the learned counsel for the petitioner that the Hon'ble Supreme Court fixed a sum of Rs.4,500/- per month as the notional income of the deceased even in respect of the claim made for the accident occurred in the year 1998.

9. Heard learned counsel appearing for the appellants/claimants and as well as learned counsel appearing for the respondent/Transport Corporation.

10. Considering the facts and circumstances of the case, this Court is of the view that the findings of the Tribunal needs modification in the manner stated below. Insofar as the compensation awarded by the Tribunal towards 'Loss of Dependency' is concerned, as rightly pointed out by the learned

counsel appearing for the appellants/claimants the monthly notional income of the deceased fixed by the Tribunal at Rs.2,400/- is too low. Thus, taking into consideration of the decision of the Honourable Supreme Court in Syed Sadiq case (supra) that even for a vegetable vendor, who sustained injuries in the accident occurred in the year 2008, fixed the monthly income at Rs.6,500/- and though the learned counsel for the claimants sought for fixation of Rs.6,500/- as monthly notional income of the deceased, this Court re-fix the amount of Rs.6,000/- per month as notional income of the deceased.

11. A perusal of the records shows that the deceased had one minor child, wife and parents as his dependents. However, the Tribunal has deducted 1/3 towards the personal expenses of the deceased and the same is set aside and this Court is inclined to deduct 1/4 towards personal expenses of the deceased.

12. Further, from the award impugned herein, it is seen that the Tribunal has not awarded any amounts towards future prospects, especially, when the deceased was aged just 25 years on the date of accident. As held by the Hon'ble Supreme Court in the decision rendered in the case of National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC) for the age group of 25 years, 40% should be added towards future prospects. The Tribunal has applied the multiplier as 17, for the age group of 25 years. The Post Mortem Report (Ex.P.3) is also confirmed the age of the deceased as 25 years. However, this court is inclined to adopt the multiplier as '18', as per the ratio laid down by the Hon'ble Apex Court in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Thus, by fixing monthly notional income of the deceased at Rs.6000/-; adding 40% towards future prospects and deducting 1/4th towards the personal expenses of the deceased, the Loss of dependency of the deceased works out to Rs.13,60,800/- in the following manner:

Calculation:

Notional Income = Rs.6,000/-
40% Future Prospects = Rs.2,400/-
Total = Rs.6,000/- + Rs.2,400/-
= Rs.8,400/-

Loss of dependency
= Rs.8,400/- x 18 x 12 x ¾
= Rs.13,60,800/-

13. As held by the Hon'ble Apex Court in Pranay sethi's case (supra), the wife is entitled to a consortium, but the Tribunal has awarded a sum of Rs.5,000/- towards 'loss of consortium' which is meager ,and the same is modified and enhanced to a sum of Rs.40,000/-. Similarly, the Tribunal has

awarded only a sum of Rs.6,000/- towards love and affection to the claimants 2 to 4 and this court is inclined to enhance the same to Rs.90,000/-, and insofar as the second claimant, minor daughter is concerned, she is entitled to a sum of Rs.70,000/- and so far as the claimants 3 and 4, viz., parents are concerned, they are entitled to Rs.10,000/- each. Further, it is seen that the Tribunal has failed to award any compensation towards loss of estate. Therefore, this Court is inclined to award a sum of Rs.15,000/- towards loss of estate. The Tribunal has awarded a meager sum of Rs.2,000/- towards Funeral Expenses. In view of the settled law by the Hon'ble Apex in Pranay sethi's case (supra), the Funeral Expenses awarded by the Tribunal is increased from Rs.2,000/- to Rs.15,000/-.

14. As rightly pointed out by the learned counsel appearing for the appellants/claimants, the Tribunal has failed to award any amount towards Transportation, Attender charges, Extra nourishment and Pain and sufferings and mental agony. Therefore, this Court is inclined to award a sum of Rs.10,000/- each towards 'Transportation', 'Attender charges', 'Extra nourishment' and 'Pain and sufferings and mental agony'. So far the compensation awarded by the Tribunal towards 'Medical expenses' at Rs.51,795/- is concerned, the same appears to be just and reasonable and hence, it stands confirmed. Thus, the revised compensation awarded by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.13,60,800 /-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
5.	Loss of Love and affection to the claimants 2 to 4	Rs.90,000/-
6.	Transportation	Rs.10,000/-
7.	Medical expenses	Rs.51,795
8.	Attender's charges	Rs.10,000/-
9.	Extra Nourishment	Rs.10,000/-
10.	Pain and suffering and Mental agony	Rs.10,000/-
Total		Rs.16,12,595/-

Thus, the claimants are entitled to a sum of Rs.16,12,595/- together with interest at the rate of 7.5% per annum.

15. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.3,91,195/- to Rs.16,42,595/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The Tamil Nadu State Transport Corporation is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any falling which, they shall appear before this Court on 31.07.2019. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimants' bank account through RTGS within a period of two weeks thereon.

(v) On such deposit being made, the claimants are at liberty to withdraw the same as per the apportionment given below after following due process of law.

(a) The 1st claimant is entitled to a sum of Rs.8,00,000/- together with accrued interests and costs.

(b) The 2nd claimant is entitled to a sum of Rs.6,00,000/-.

(c) The 3rd claimant is entitled to a sum ofRs.1,00,000/- and 4th claimant is entitled to a sum of Rs.1,12,595/-.

(d) So far the share in respect of the minor claimant is concerned, the same shall be deposited by the Tribunal in any of the Nationalized Bank, in an interest bearing FD Account till the minor attains majority and the first claimant/mother is permitted to withdraw accrued interest once in three months.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//
Sub Assistant Registrar

vkr

To

The Motor Accidents Claims Tribunal,
The District Court,
Tiruvannamalai.

Copy To:

The Section Officer,
V.R.Section,
High Court,
Madras - 104.

+1cc to M/s.F.Terry Chellaraja, Advocate, S.R.No.24905
+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.25302

PPA(CO)

RRS(08/08/2019)