THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.863 of 2013

1. Muniammal
2. Murthy ... Appellants/ Petitioners

Vs

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Bharathipuram
Dharmapuri - 5 ... Respondent/ Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and decree dated 28.07.2011 made in MCOP.No.361 of 2010 on the file of the learned Principal District and Sessions Judge, Motor Accidents Claims Tribunal Dharmapuri.

For Appellants : M/s.M.Selvam
For Respondent : Mr.D.Venkatachalam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation against the order dated 28.07.2011 made in MCOP.No.361 of 2010 on the file of the learned Principal District and Sessions Judge, Motor Accident Claims Tribunal, Dharmapuri.

2. The appellants are the claimants in M.C.O.P.No.361 of 2010, on the file of learned Principal District and Sessions Judge, (Motor Accidents Claims Tribunal), Dharmapuri. They filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Muthamizhan @ Muthu. The first appellant is the mother of the deceased and the second appellant is the brother of the deceased. The accident took place on 12.04.2010.

3. On 12.04.2010 the deceased Muthamizhan @ Muthu was travelling in Motor Cycle bearing Registration No.TN 29 AA 5227 as a pillion rider. The said Motor Cycle was drived by one Vinoth kumar. When he was reaching the occurrence place

at that time one bus bearing Registration No.TN 29 N 1774 was driven by its driver in a rash and negligent manner and dashed on the motor cycle. Due to the sudden act of the respondent vehicle driver the pillion rider deceased Muthamizhan @ Muthu thrown out from the two wheeler and fell down infront of the bus. The bus front tyre ran over on the deceased.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus bearing Registration No.TN 29 N 1774 and the respondent is liable to pay compensation to the appellants. The Tribunal awarded a sum of Rs.1,80,000/- as compensation to the appellants and directed the respondents to pay the same.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come out with the present appeal, seeking enhancement of the same.

6. The learned counsel appearing for the appellants submitted that the Tribunal fixed a meager sum of Rs.15,000/- per annum as notional income of the deceased and he relied upon the decision rendered in Kishan Gopal and another Vs Lala reported in 2013(2) TN MAC 358 (SC) wherein, it is held that in the case of road accident that had happened on 19.07.1992 where a student aged 10 years died the Hon'ble Supreme Court has taken the Notional Income of the deceased at Rs.30,000/- p.a. It is opposite to mention the relevant portion of the judgment herein below:-

> " In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all force is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years old, who was assisting the Appellants in their Agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the Notional Income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his Notional Income at Rs.30,000/- and further taking the young age

> of the parents, namely the mother, who was about 36 years old, at the time of accident by applying the legal principles laid down in the case of Sarla Varma Vs. Delhi Transport Corporation the Multiplier of 15 can be applied to the multiplicand. Applying the ratio laid down by the Hon'ble Supreme Court this Court takes the Notional Income of the deceased at Rs.60,000/- p.a. The consideration of increase on account of future prospective increase in income would remain offset by deduction towards personal expenses of the deceased. Adopting the multiplier of 13 as per the age of the mother of the deceased the pecuniary loss is quantified at Rs.7,80,000/-"

Thus considering the increase in cost of living and the year of accident the learned counsel pleaded atleast Rs.60,000/-p.a. may be fixed as notional income of the deceased. The Tribunal has not awarded any amount for future prospects and the amounts awarded by the Tribunal under different heads are very meager and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the respondent- Transport Corporation contended that the amount fixed by the Tribunal as notional income is not meager. The Tribunal considering the relationship of the appellants, has awarded amounts under different heads which are just and proper compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellants as well as the learned counsel for the respondent and perused the materials on record.

8. The deceased was aged about ''16'' years old at the time of accident. Since the deceased was a school going student and no documentary evidence was produced to prove the income of the deceased and therefore the Tribunal fixed the annual income at Rs.15,000/-p.a. and applied multiplier "16" as per Second schedule to the Motor Vehicle Act and deducted 1/3rd towards the deceased personal expenses. The Tribunal arrived the loss of income at Rs.1,60,000/-. A further sum of Rs.10,000/- towards "loss of love and affection" and a sum of Rs.5,000/- towards "funeral expenses" and Rs.5,000/- towards transportation were awarded to the claimants. In total the Tribunal awarded a sum of Rs.1,80,000/- as compensation to the appellants and directed the respondent to pay the same to the claimants with interest at 7.5% p.a.

9. The Tribunal has considered the annual income of the deceased at Rs.15,000/- which is very meagre and adopted the multiplier as "16" based on the schedule II of the Motor Vehicles Act. Considering the facts of the case and the dictum laid down in the Kishan Gopal case (cited supra) this Court is inclined to fix the notional income of the deceased at Rs.3,000/- p.m. The Tribunal applied the multiplier '16' whereas the correct multiplier applicable for the age group between 15 to 25 years is '18' as per decision rendered in Sarlavarma and others Vs.Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The Tribunal has not granted any amount towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi and others] the appellants are entitled to 40% enhancement towards future prospects. Further, in order to calculate the personal expenses the Hon'ble Apex Court in the case of Sarla Varma (cited supra) has observed that if the deceased is a bachelor 50% of the total income to be deducted towards the personal expenses of the deceased. In case of widowed mother 1/3rd of personal expenses has to be deducted. In the present case the mother of the deceased is a widow therefore the Tribunal has rightly deducted 1/3rd towards the personal expenses of the deceased.

Calculation

Notional income = Rs.4,000/- p.m.

40% Future Prospects = Rs.1600/-

Annual Income = Rs.5,600/- x 12 = Rs.67200/-

Deducting 1/3rd of personal expenses = Rs.22,400/-

Income of the 1/3rd deduction = Rs.67,200 - Rs.22,400 = Rs.44,800/-

Loss of dependency = Rs.44,800 x 18 = 8,06,400/-

Thus, the loss of dependency is enhanced to Rs.8,06,400/- from Rs.1,60,000/-

10. The Tribunal awarded a sum of Rs.10,000/- towards loss of love and affection, since the awarded amount is very low and the same is enhanced to Rs.25,000/-. (Rs.12,500/- each for 1st and 2nd claimants). Under the head "Funeral expenses" this Court is inclined to enhance the amount from Rs.5,000/- to Rs.15,000/- as fixed in Pranay Sethi's case (cited supra) by the Hon'ble Supreme Court of India. As no amount was awarded under the head "loss of estate" this Court is inclined to award a sum of Rs.15,000/- as per the Constitution Bench's judgment in

National Insurance Company Limited Vs. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). The Tribunal awarded a sum of Rs.5,000/- under the head "Transportation" and the same is enhanced to Rs.10,000/-.

11. Hence the total compensation payable to the claimants are as hereunder.

Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Dependency	Rs.1,60,000/-	Rs.8,06,400/-
Funeral Expenses	Rs.5,000/-	Rs.15,000/-
Loss of love and affection	Rs.10,000/-	Rs.12,500/- to first claimant/mother Rs.12,500/- to second claimant/brother
Transportation	Rs.5,000/-	Rs.10,000/-
Loss of Estate	Nil	Rs.15,000/-
Total	Rs.1,80,000/-	Rs.8,71,400/-

12. The total amount of compensation shall be shared by the claimants 1 & 2 herein, in the following manner:-

The mother of the deceased who is the first appellant herein shall receive a sum of Rs.6,71,400/-,the brother of the deceased who is the second appellant herein shall receive a sum of Rs.2,00,000/-

13. The Transport Corporation / respondent is directed to deposit the entire amount awarded by this Court, along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through NEFT or RTGS within a period of one week thereon. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court. The claimants are directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

14. Accordingly, the Civil Miscellaneous Appeal is partly allowed by enhancing the award of the Tribunal from Rs.1,80,000/- to Rs.8,71,400/- with interest and costs. Consequently, connected miscellaneous petition is also closed, if any. No costs.

Sd/-
Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Principal District and Sessions Judge,
   Motor Accidents Claims Tribunal Dharmapuri.

2. The section officer,
VR Section,
High court
Madras

+1cc to M/s.M.Selvam, Advocate SR.No. 15220
+1cc to Mr.D.Venkatachalam , Advocate SR.No. 15269

C.M.A.No.863 of 2013

A.SK(30/04/2019)