IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.10.2019
CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.1459 of 2014
and
MP.No.1 of 2014

1.R.Gandhimathi
2.R.Suresh
3.R.Mahesh ... Appellants

vs.

1.T.Pradeep

2.The Managing Director,
Tamil Nadu State Transport Corp. Ltd.,
(Coimbatore Division),
Erode.

3.K.Gunasekaran

4.P.Manickam

5.United India Insurance Co. Ltd.,
Salem having office at
Oriental Theatre complex,
No.77, Arunachala Asari street,
Salem. ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 28.11.2013 in M.C.O.P.No.273 of 2012 on the file of the Motor Accidents Claims Tribunal / Special District Judge, Erode.

For Appellants : Mr.Parthi
for M/s.S.Kaithamalai Kumaran

For respondents : Mr.V.Udayakumar for R2
No appearance for R1, R3 to R5

JUDGMENT

The appellants are the claimants in MCOP.No.273 of 2012, on the file of the Motor Accident Claims Tribunal / Special District Judge, Erode. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.25,00,000/- for the death of one K.Rajan, husband of the first claimant and father of the claimants 2 and 3 in a road accident on 03.11.2011.

2. The case of the claimants in nutshell is as follows:
On 03.11.2011, the deceased was a conductor in a bus bearing Registration No. TN 74 N 1548 belonging to the Tamil Nadu State Transport Corporation which was proceeding towards Coimbatore from Salem. At about 04.45 am, the driver of the bus drove the vehicle rashly and negligently and hit a stationary lorry bearing Registration No. KA 01 AA 3947, as a result of which, the conductor fell down from the bus and died on the spot.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the bus bearing Registration No. TN 74 N 1548 belonging to the Tamil Nadu State Transport Corporation and therefore they are liable to pay compensation. The claimants also impleaded the owner and the insurer of the lorry bearing Registration No. KA 01 AA 3947 as parties in the claim petition.

4. The respondents 3 to 5 remained absent before the Tribunal and therefore, they were set ex-parte. The respondents 1 and 2 contested the claim petition. The learned Special District Judge / Motor Accident Claims Tribunal, Erode after analysing the evidence on record, awarded a compensation of Rs.7,41,364/- together with interest at the rate of 7.5% per annum to the claimants. The learned Judge further held that the driver of the bus bearing Registration No. TN 74 N 1548 was rash and negligent in driving his vehicle and thus directed the Tamil Nadu State Transport Corporation to pay the entire compensation amount. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.Parthi, learned counsel appearing for the appellants / claimants contended that though the deceased was working as a conductor and was earning a sum of Rs.26,843/- per month, the Tribunal adopted split multiplier on the ground that the deceased was due to retire on superannuation in two years and awarded a very meagre amount of Rs.7,41,364/- as compensation.

6. Per contra, Mr.V.Udayakumar, learned counsel appearing for the second respondent / Tamil Nadu State Transport Corporation contended that the Tribunal had awarded a just compensation of Rs.7,41,364/- after considering all the aspects of the case and therefore, the same need not be disturbed at this stage.

7. A perusal of the records shows that since the deceased had only two years of service, the Tribunal took the salary of the deceased for two years and awarded a sum of Rs.3,62,804/- towards loss of dependency and thereafter, took 50% of his

income and adopted multiplier 7 and awarded a sum of Rs.3,43,560/-. In the decision of the Supreme Court of India in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), it is laid down that certain percentage of income should be added to the salary of the deceased towards future prospects depending on the age of the deceased and nowhere it is stated that the income should be proportionately deducted, if a person is permanently employed. Therefore, the orders passed by the Tribunal is liable to be set aside.

8. In the instant case, the salary certificate shows that the deceased was earning a sum of Rs.26,843/- per month on the date of the accident. As per the decision of the Supreme Court of India in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), 15% should be added towards future prospects of the deceased, since the deceased was permanently employed and was aged 56 years on the date of the accident. Since there are three persons depending on the income of the deceased, 1/3rd of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 9 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The "loss of dependency" is calculated as follows:

Calculation
Notional Income = Rs.26,843/-
15% Future Prospects = Rs.4,027/-
Total = Rs.26,843/- + Rs.4,027/- = Rs.30,870/-
After 1/3 deduction = Rs.20,580/-
Loss of dependency
= Rs.20,580/- x 12 x 9
= Rs.22,22,640/-

9. Apart from the above said amount, the appellants / claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of love and affection" and "funeral expenses" respectively, as per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC). The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.22,22,640/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-

S.No.	Head	Amount granted by this court
Total		Rs.22,92,640/-

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.7,41,364/- to Rs.22,92,640/- which would carry interest at the rate of 7.5% per annum.

11. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.7,41,364/- to Rs.22,92,640/-.

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

(iv) The second respondent / Tamil Nadu State Transport Corporation is directed to deposit the enhanced compensation amount i.e., Rs.22,92,640/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.273 of 2012 on the file of the Motor Accident Claims Tribunal / Special District Judge, Erode within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment granted by the Tribunal shall be kept intact.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Special District Judge,
Erode.

Copy to: The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, SR.No.86938.
+1cc to Mr.V.Udayakumar, Advocate, SR.No.86826.

C.M.A.No.1459 of 2014

GP(CO)
CSR: 20.03.2020