IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 3230 of 2019

1.Veerammal
2.Veerasamy ... Appellants/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
No.12, Ramakrishna Road,
Salem - 636 007. ... Respondent/Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in MCOP No. 1630 of 2016, dated 04.10.2017 on the file of the Motor Accident Claims Tribunal/ Principal District Judge at Namakkal.

For Appellants : Mr.MA.P. Thangavel

For Respondent : Mr.D.Venkatachalam

JUDGMENT
(Delivered by KRISHNAN RAMASAMY,J.)

The appellants, who are the claimants before the Tribunal, have come forward to file this appeal challenging against the quantum alone.

2. The compensation awarded by the Tribunal under various heads, is extracted hereunder:-

S.No	Monthly Income	Future Prospects @ 50%	Income after deductions	Total Monthly Income	Multiplier	Loss of Dependency
1	6000/-	NIL	6000 * ½ i.e., Rs.6000-3000 = Rs.3000/-	Rs.3000/-	18	Rs.3000*12*18 = Rs.6,48,000/-
2	Loss of Estate					Rs.2,500/-
3	Funeral Expenses					Rs.5,000/-
4	Love and Affection					Rs.5,000/-
5	Transportation					Rs.2,000/-
	Grand Total					Rs.6,62,500/-

3. The brief facts of the case are that the accident occurred on 25.07.2016 at about 10.45 a.m. near Kunnimarathan Koil in Namakkal to Mohanur Road, while the deceased was travelling as pillion rider on the two-wheeler bearing Registration No.TN 28 AA 3153. At that point of time, the bus belonging to the respondent Corporation bearing Registration No.TN 30 N 1231, driven by its driver in a rash and negligent manner without indicator and without observing traffic rules, came from the opposite direction and dashed against the two wheeler and caused the accident. The post-mortem was conducted by the duty Doctor, Government Hospital, Namakkal. At the time of death, the deceased was aged 23 years. According to the appellants/claimants, the deceased was earning about Rs.15,000/- per month at the time of accident. The police lodged criminal case against the Driver of the offending vehicle in Cr.No. 654 of 2016 under Sections 279, 304(A) of the IPC.

4. On behalf of the claimants, P.Ws.1 and 2 have been examined. P.W.2 is an eye witness to the occurrence. Exs.P1 to P11 have been marked through P.W.1 and on behalf of the respondent/Transport Corporation, only R.W.1 was examined and no document was marked.

5. After considering the oral and documentary evidence adduced by both the parties, the Tribunal awarded a sum of Rs.6,62,500/- as compensation, as mentioned above.

6. The learned counsel for the appellants would contend that even though the appellants claimed that the monthly income of the deceased was Rs.15,000/-, the Tribunal had fixed the monthly income of the deceased at Rs.6,000/- in the absence of any proof of income, which is on the lower side, as the accident occurred in the year 2016.

7. The learned counsel for the appellants has placed reliance upon the decision of the Apex Court in the case of Syed Sadiq v. United India Insurance Company Limited, reported in (2014) 2 SCC 735, wherein, while considering the income of the injured vegetable vendor, in the absence of any proof of income, the Hon'ble Supreme Court fixed a sum of Rs.6,500/- as monthly income in respect of an accident that occurred in the year 2008. Therefore, the learned counsel would contend that appropriate addition should be provided considering the increase in cost of living.

8. The learned counsel contended that the Tribunal awarded meagre sum of Rs.2,500/- towards loss of estate; Rs.5,000/- each towards funeral expenses and loss of love and affection, and Rs.2,000/- towards transportation and submitted that in view of the decision of the Supreme Court in National Insurance Company Limited v. Pranay Sethi, reported in (2017) 16 SCC 680, the Tribunal ought to have awarded higher compensation, i.e., Rs.5000/-, Rs.15,000/- and Rs.10,000/- towards funeral expenses, loss of estate and for transportation respectively.

9. The learned counsel for the appellants further contended that in the light of the law enunciated in the decision of the Supreme Court in the case of Magma General Insurance Company Ltd. vs. Nanu Ram, 2018 SCC OnLine (SC) 1546, the parents of the deceased are entitled to filial consortium, whereas no such amount was awarded by the Tribunal. He, therefore, submitted that by virtue of the decisions in Pranay Sethi and Magma General Insurance Company Limited, supra, the appellants are entitled to filial consortium i.e., sum of Rs. 40,000/- each.

10. The learned counsel appearing for the respondent/Corporation would fairly submit that certainly the notional income fixed by the Tribunal is on the lower side and requires some addition.

11. After considering the submissions made by the learned counsel appearing for the appellants and the respondent/Corporation, we are of the considered view that it would be appropriate to fix a sum of Rs.9,000/- as notional monthly income of the deceased.

12. The Tribunal considering the age of the deceased deducted 50% towards the personal expenses. In the present case, the age of the deceased was 23 years and, therefore, as held by the Pranay Sethi (supra), in the present case, the age of the deceased was below 40, therefore future prospects would have to be added. The Tribunal awarded only 25% addition towards the future prospects. The learned counsel appearing for the respondent/Corporation also fairly submitted that as held by the Pranay Sethi (supra), the Court below should have ordered 40% towards future prospects instead of 25%. Hence, we award future prospects at 40%. As per the decision of the Apex Court in Sarla Verma (Smt) & Ors. vs Delhi Transport Corporation & Anr., (2009) 6 SCC 121, the Tribunal rightly adopted multiplier '18' for the loss of income.

13. In view of the foregoing discussion, the amount of compensation is arrived at as follows.

Monthly Income of the deceased	.. Rs.9,000/-
Deduction towards personal expenses (50% - deceased being bachelor)	.. Rs.4,500/-
ADD: Future Prospects of 40% (Rs.4500 * 40%)	.. Rs.1,800/-

Now, by applying multiplier of 18, the amount of compensation payable to the appellants is Rs.13,60,800/- [(Rs.4500 + Rs.1800)*12*18]. In addition to the above, this Court awards the following amounts:

Loss of Estate	: Rs. 15,000/-
Funeral Expenses	: Rs. 15,000/-
Filial consortium	: Rs. 80,000/- (Rs.40,000 each)
Transportation	: Rs. 10,000/-

Thus, in all, the appellants are entitled to Rs.14,80,800/-.

14. We direct the respondent Corporation to deposit the entire award amount as ordered by this Court after deducting the amount already paid along with 7.5% interest from the date of accident till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment. This Court directs the Tribunal to transfer the entire amount by way of RTGS to the claimants in equal proportion to their Bank Accounts within a period of three months from the date of deposit along with 7.5% interest. If the amount was already deposited and not withdrawn, the Tribunal shall transfer the same in the same manner as stated above within a period of three weeks from the date of receipt of a copy of this judgment.

15.In the result, the Civil Miscellaneous Appeal stands partly allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

The Principal District Judge,
Motor Accident Claims Tribunal,
Salem.

Copy to

The Record Keeper,
V.R. Section, High Court, Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate Sr.100648
+1cc to Mr.D.Venkatachalam, Advocate Sr.100861

C.M.A.No. 3230 of 2019

mp[co]
srg 06/08/2020