BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.06.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.463 of 2017
and
C.M.P.(MD).Nos.4982 of 2017 and 9104 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation
Kumbakonam, having Office at
New Railway Station Road,
Kumbakonam Town and Munsifi. ... Appellant/ Respondent

Vs.

1.Muthu

2.Chellammal (died)

3.Srinivasan

4.Jeyalakshmi

5.Murugesan

6.Susila ... Respondents/ Claimants

(Respondents 3 and 4 are not necessary parties and hence, they are given up)

(The 1st respondent, who is already on record and the respondents 5 and 6 are brought on record as LRs of the deceased 2nd respondent, as per the order of this Court dated 03.09.2018 made in C.M.P.(MD). No.7117 of 2018)

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 09.06.2016, passed in M.C.O.P.No.137 of 2013 by the Motor Accident Claims Tribunal / Special District Judge, Thanjavur.

For appellant : Mr.P.Prabhakaran

For respondents : M/s.Vijayakumari Natarajan

JUDGMENT

This appeal has been filed by the appellant / Transport Corporation challenging the award, dated 09.06.2016, passed in M.C.O.P.No.137 of 2013.

2. It is a case of fatal. The manner of the accident is not in dispute. The claimants 1 to 4 are father, mother, father-in-law and mother-in-law of the deceased by name Rajivgandhi. Though the claimants claimed Rs.50 lakhs as compensation, the Tribunal has awarded a sum of Rs.16,60,270/- as compensation with interest at the rate of 9% per annum in favour of the claimants 1 and 2 / respondents 1 and 2 herein. The Tribunal has dismissed the claim petition in respect of the respondents 3 and 4. Aggrieved by the award passed by the Tribunal, the appellant / Transport Corporation has filed this appeal only questioning the quantum.

3. The learned counsel appearing for the appellant / Transport Corporation would submit that since the claimants have not produced any document to prove the income of the deceased, the Tribunal has taken Rs.6,500/- as notional income of the deceased and in addition to that, the Tribunal has added 50% towards future prospects. Since the deceased was not in permanent job, as per the decision in **National Insurance Company Limited Vs. Pranay Sethi and others, reported in 2017(2) TN MAC 609 (SC)**, the Tribunal ought to have added 40% as future prospects. He would further submit that the Tribunal has excessively awarded Rs.25,000/- towards funeral expenses, instead Rs.15,000/- as per Pranay Sethi case cited supra. He would further submit that the Tribunal has awarded interest at 9% p.a. for the compensation amount, which is too high and therefore, the same may be reduced to 7.5% p.a. Thus, he prayed to reduce the award amount.

4. The learned counsel appearing for the respondents/claimants submitted that before the accident, the deceased was working as Lecturer at Periyar Maniammai University, Thanjavur and earning a sum of Rs.30,000/- per month and considering the said aspect, the Tribunal could have fixed a reasonable amount as notional income, but the Tribunal has fixed only a lesser amount of Rs.6,500/- as notional income of the deceased and awarded the compensation. The first claimant is now aged about 63 years and he had been depending upon the deceased as the deceased was the sole breadwinner of the family. Considering the same, this Court may not interfere with the award passed by the Tribunal. Thus, he prayed to dismiss the appeal.

5. Heard the learned counsel appearing for both sides and perused the materials available on record carefully.

6. A perusal of record shows that the claimants have stated in their claim petition that the deceased was working as Lecturer in

Periyar Maniammai University, Thanjavur and earning a sum of Rs.30,000/- per month. But, the claimants have failed to prove the income of the deceased by producing any oral and documentary evidence. The Tribunal has taken Rs.6,500/- p.m. as notional income of the deceased. According to the claimants, the Tribunal has erroneously added 50% of income as future prospects, instead 40% of income. It is not known as to whether the deceased was doing a permanent job or not. The Tribunal added 50% of income as future prospects based on the decision of the Hon'ble Supreme Court in **Rajesh and others Vs. Rajbirsing and others** reported in **2013(1) TN MAC 55 (SC)** and a decision of a Division Bench of this Court in **New Indian Assurance Company Limited Vs. J.Sakunthala and others,** reported in **2015 (2) TN MAC 289 (DB).**

7. Though the appellant stated that the Tribunal has awarded Rs.25,000/- towards funeral expenses, it is seen that the Tribunal has awarded only Rs.10,000/- towards loss of estate, which is very less. Even as per the decision of the Pranay Sethi case, cited supra, the loss of estate can be awarded Rs.15,000/-. More over, the Tribunal has awarded only lesser amount of Rs.50,000/- towards loss of love and affection. The pain and sufferings undergone by the claimants cannot be compensated in terms of money. In view of the above and considering the age of the deceased, the age of the claimants and escalation of prices, this Court is of the view that the quantum arrived by the Tribunal need not be interfered with.

8. So far as the rate of interest ie., 9% p.a. awarded by the Tribunal is concerned, as rightly stated by the appellant/Transport Corporation, it is higher than the interest which is usually being awarded by the Tribunal and hence, the same is reduced to 7.5% p.a.

9. In view of the above, the quantum of award ie., Rs.16,60,270/- awarded by the Tribunal is confirmed, but the interest alone is reduced from 9% to 7.5% p.a. The appellant / Transport Corporation is directed to deposit the entire award amount, less the amount already deposited, with accrued interest at the rate of 7.5% p.a. from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this judgment. It is seen that the Tribunal has awarded Rs.8,30,135/- each in favour of the first and second claimants. During the pendency of this appeal, the second claimant died and the first respondent / first claimant and the respondents 5 and 6 herein were brought on record as LRs of the deceased second claimant. Therefore, the first respondent/first claimant is permitted to withdraw his share of Rs.8,30,135/- and 1/3rd share of the deceased second claimant with accrued interest and costs. The respondent Nos.5 and 6 are also entitled to withdraw their respective 1/3rd share of the deceased second claimant with accrued interest and costs. The appellant / Transport Corporation is also permitted to withdraw the excess amount, if any, already deposited before the Tribunal.

10. This Civil Miscellaneous Appeal is, accordingly, partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

/ True Copy /

Sub Assistant Registrar(CS-)

To

The Special District Judge,
The Motor Accident Claims Tribunal/
Special District Court,
Thanjavur.

Copy To:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai(2 Copies).

+1 CC to M/s.P.PRABHAKARAN, Advocate
(SR-66819[F] dated 04/06/2019)

+1 CC to M/s.VIJAYAKUMARI NATARAJAN, Advocate
(SR-66895[F] dated 04/06/2019)

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ES/24.07.2019/4P/6C