BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.(MD)Nos.939 of 2010

1.D.Selva
2.D.Dinesh Kumar
3.D.Ragunath
4.Minor Janarthanan

... Appellants / Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Trichirapalli District.

... Respondent / Respondent

PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 17.09.2009 made in M.C.O.P.No.145 of 2000 on the file of the I Additional Sub Court, Trichirapalli / Motor Accident Claims Tribunal, Trichy.

For Appellants : Mr.R.P.Karuppasamy
For Respondent : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellants / claimants challenging the award dated 17.09.2009 in M.C.O.P.No.145 of 2000 passed by the I Additional Sub Court, Trichirapalli / Motor Accident Claims Tribunal, Trichy.

2.The appellants are the claimants before the Tribunal. The deceased viz., Dhanapal, died in a road accident and his legal heirs filed a claim petition before the Tribunal claiming a sum of Rs.24,00,000/-.

3.The facts of the case are as follows: -
It is the case of the appellants / claimants before the Tribunal that on 10.04.2004 at about 5.00 p.m., the deceased viz., Dhanapal was riding two wheeler viz., Hero Honda Splender bearing registration No.TN 45 B 4980 on Tiruchirapalli to Salem National Highways road. At that time, a bus bearing registration No.TN 45 N 1429 belonging to the respondent / Corporation came on the opposite direction in a rash and negligent manner and dashed against the two wheeler. Due to the impact, the deceased died on the spot due to the injury sustained on his head. His father viz., Arumugam, who was travelling as pillion rider in the very same two wheeler, sustained multiple injuries. A criminal case in Crime No.162 of

2004 was registered under Section 304(A) IPC against the driver of the bus.

4.According to the appellants, the accident took place only due to rash and negligent driving by the driver of the bus and hence, the respondent is liable to pay the compensation to the claimants.

5.The respondent / Transport Corporation has filed a counter statement. According to the respondent, due to rash and negligent act of the deceased, the accident had occurred and hence, driver of the bus is not liable for the accident. It is also stated that the claim amount is highly excessive without any basis and due to the contributory negligence on the part of the rider of the motor cycle, the accident had occurred and hence, the respondent prayed that the claim petition has to be dismissed.

6.Before the Tribunal, on the side of the claimants, seven witnesses were examined as P.Ws.1 to P.W.7 and 11 documents were marked as Exs.P1 to P11. On the side of the respondent / Transport Corporation, one witness was examined as D.W.1 and no document was marked.

7.After considering the oral and documentary evidence, the Tribunal has awarded a sum of Rs.7,90,000/- as compensation with 7.5% interest per annum to the appellants / claimants and directed respondent / Transport Corporation to pay the said award amount. Aggrieved by the said award with regard to enhancement of quantum of compensation, the present appeal is filed by the appellants / claimants.

8.The learned counsel for the appellants / claimants submitted that the present appeal is filed by questioning the finding rendered by the Tribunal with regard to quantum for enhancement of compensation. The learned counsel for the appellants has submitted that as the deceased was working as Technical Grade-II Diesel Shop at Southern Railway and as per Ex.P.10 salary certificate, the monthly salary of the deceased has to be fixed at Rs.9425/- and hence, the award amount in respect of loss of income has to be enhanced. He further submitted that in respect of the award amount towards future prospectus, loss consortium, loss of estate, transportation and funeral expenses, the same should be enhanced.

9.Heard the learned counsel for the appellant and there is no representation for the respondent / Transport Corporation and perused the entire materials on record.

10.As per Ex.P.10, the salary certificate on 01.07.2004, the deceased was earning a sum of Rs.9,425/- per month. However, the Tribunal fixed the monthly income of the deceased at Rs.6,000/- per month, which is arbitrary and incorrect. The accident was occurred on 10.04.2010 and the deceased in the road accident died on the spot. When the deceased was working as Technical Grade-II Diesel Shop at Southern Railway earning a sum of Rs.9,425/- (Ex.P.10), the Tribunal ought to have fixed the monthly salary of the deceased at Rs.9,425/-. Therefore, this Court is inclined to refix the monthly salary of the deceased at Rs.9,425/- instead of Rs.6,000/- in terms of Ex.P.10. Accordingly, the monthly salary of the deceased is fixed at Rs.9,425/-.

11.In terms of a decision of the Hon'ble Apex Court reported in ***2009 ACJ 1298 in Sarala Verma and others Vs. Delhi Transport Corporation and another,*** the Tribunal failed to award any amount towards future prospectus. Therefore, this Court is of the view that the claimants are entitled for future prospectus at 30%. As the deceased was earning a sum of Rs.9,425/- at the time of accident, 30% towards future prospectus is awarded at Rs.2,827/-. The total income of the deceased would be Rs.12,252/-.

12.When there are four dependents ie., wife and three children, the Tribunal ought to have deducted one third towards personal expenses of the deceased, whereas, in terms of ***Sarala Verma*** case, one fourth deduction towards personal expenses is reasonable. Accordingly, the monthly contribution to the family is Rs.9,189/- (ie., 1/4 x 12,252 = Rs.9,189/-).

13.Considering the age of the deceased at the time of accident at 45 years, as per the principles laid down in **Sarala Verma's** case, the correct multiplier is 14, whereas the Tribunal applied the multiplier as 15. Therefore, the loss of income of the deceased would be (Rs.9,189 x 14 x 12) = 15,43,752/-.

14.Insofar as the above said conventional heads viz., consortium, funeral expenses, loss of estate and transportation are concerned, the same are on lower side and hence, the same have to be enhanced in view of the judgment reported in ***2017(16) SCC 680 (National Insurance Co.Ltd., Vs. Pranay Sethi and others).***

15.Accordingly, a sum of Rs.40,000/- towards loss of consortium is awarded in stead of Rs.25,000/- as awarded by the Tribunal. Further, the Tribunal awarded a sum of Rs.15,000/- towards loss of estate. This Court is of the view that the same is confirmed. A sum of Rs.15,000/- towards funeral expenses is awarded instead of Rs.5,000/- as awarded by the Tribunal. Further, a sum of Rs.10,000/- is awarded towards transportation whereas the Tribunal has not awarded any amount under this head.

16.The Tribunal awarded a sum of Rs.40,000/- towards loss of love and affection for the claimants 1 to 4. Since this Court awarded a sum of Rs.40,000/- towards loss of consortium to the first claimant / wife, there is no need to award any amount towards loss of love and affection to the wife. Further, the Tribunal awarded a sum of Rs.10,000/- to the claimants 2 to 4 each. This Court refixed the award in respect of loss of love and affection to the claimants 2 to 4 at Rs.30,000/- each. Accordingly, a sum of Rs.90,000/- is awarded towards loss of love and affection to the claimants 2 to 4.

17.Accordingly, the claimants are entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	This Court	
1.	Loss of income	7,20,000	15,43,752	Enhanced
2.	Loss of consortium	25,000	40,000	Enhanced
3.	Loss of estate	-	15,000	Awarded
3.	Funeral expenses	5,000	15,000	Enhanced
4.	Transportation	-	10,000	Awarded
5.	Loss of love and affection	40,000	90,000	Enhanced
	Total	**7,90,000**	**17,13,752**	**Enhanced**

The claimants are entitled for a sum of Rs.17,13,752/- with interest at 7.5% per annum as compensation. The respondent / Transport Corporation is directed to deposit the enhanced award amount with accrued interest and costs before the Tribunal, within a period of 8 weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants / claimants are entitled to withdraw the compensation.

18.In the result, the award of the Tribunal is hereby modified as above and the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

To
The I Additional Sub Court, Trichirapalli
/ Motor Accident Claims Tribunal, Trichy.

+1CC TO MR.M.SUBASH BABU, Advocate Sr. No. 86851

C.M.A.(MD)No.939 of 2010
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