BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 01.11.2019
CORAM:
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.(MD)No.427 of 2013
and
Cross Objection(MD)No.11 of 2013

C.M.A(MD)No.427 of 2013:
The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Railway Station Road,
Kumbakonam. ... Appellant/Respondent

Vs.

1.M.Kavitha

2.Minor M.Karthik

3.Minor M.Keerthika

4.M.Kamu

5.Mani
(Minors rep by their Mother/Guardian
1st respondent herein) ... Respondents/Petitioners

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 01.04.2011 made in M.C.O.P.No.731 of 2007 on the file of the Motor Accidents Claims Tribunal /Sub-Court, Trichy.

For Appellant :Mr.M.Prakash
For Respondents :Mr.N.Sudhagar Nagaraj

Cros.Obj(MD)No.11 of 2013:

1.M.Kavitha

2.Minor M.Karthik

3.Minor M.Keerthika

4.M.Kamu

5.Mani
(Minors rep by their Mother and
Natural guardian M.Kavitha) ... Cross Objectors / Petitioners

- **Vs** -

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Railway Station Road,
Kumbakonam. ...Respondent / Respondent

Prayer: This cross objection is filed under Order 41, Rule 22 of CPC, against the Judgment and decree dated 01.04.2011 made in M.C.O.P.No.731 of 2007 on the file of the Motor Accidents Claims Tribunal /Sub-Court, Trichy.

For cross objectors : Mr.N.Sudhagar Nagaraj

For Respondent :Mr.M.Prakash

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C O M M O N J U D G M E N T

Since both the Civil Miscellaneous Appeal and the Cross Objection are arising out of the same accident, both the Civil Miscellaneous Appeal and the Cross Objection are disposed of by this Common judgment.

2. Both the Civil Miscellaneous Appeal and the Cross Objection have been filed against the award dated dated 01.04.2011 made in M.C.O.P.No.731 of 2007 on the file of the Motor Accidents Claims Tribunal /Sub-Court, Trichy.

3. It is the case of the claimants before the Tribunal that on the date of accident, when the deceased was riding his motorcycle and proceeding from East to West on Kallani road, a bus beaing registration No.TN 49 N 0702, which came from the opposite direction in a rash and negligent manner dashed against the motorcycle and in the said accident, the injured sustained grievous injuries. Immediately after the accident, the deceased was taken to Government Hospital, Thirukattupalli for treatment, but he succumbed to injuries. Therefore, claimants filed an application in M.C.O.P.No.731 of 2007 on the file of the Motor Accidents Claims Tribunal /Sub-Court, Trichy, seeking compensation.

4.Before the Tribunal, the claimants examined three witnesses as P.Ws.1 to 3 and marked eleven documents as Exs.P1 to P11. On the side of the Insurance Company, one witness was examined as R.W.1 and no document was marked.

5.The Tribunal after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidences on record held that the accident occurred only due to the rash and negligent driving of the driver of the bus and therefore, directed the Insurance Company to pay a sum of Rs.14,83,624/- as total compensation along with 7.5%.

6.Against which, the appellant/Insurance Company has filed C.M.A(MD)No.427 of 2013 challenging the quantum of compensation and the claimant has filed Cros.Obj(MD)No.11 of 2013 seeking enhancement of compensation.

7.The learned counsel appearing for the appellant/Insurance Company submitted that as per Ex.A8-salary certificate, the deceased was drawing a sum of Rs.8,256/-, whereas the Court below based on Ex.A10 salary certificate has taken the salary as Rs.10,284/- and therefore, the award of the Tribunal requires interference.

8.Per contra, the learned counsel appearing for the claimants would contend that the Tribunal has awarded a just and reasonable compensation and therefore, the award of the Tribunal does not require any interference and hence, this appeal is to be dismissed.

9.Heard the learned counsel appearing for the appellant/Insurance; the learned counsel appearing for the claimants and perused the materials available on record.

10.A perusal of Ex.A10, it appears that the claimants have filed the revised last pay certificate and as per the said certificate, in terms of the 6^{th} pay Commission, the deceased was entitled for the salary of Rs.10,284/- p.m. This Court also perused Ex.A8-salary certificate of the deceased, for the determination of the income of the deceased and on perusal of the same, it appears that was the last pay drawn certificate issued by the Commissioner of Police, in the month of June, 2010. Ex.A10 was also issued by the Commissioner of Police by revising the last drawn pay certificate in terms of 6^{th} Pay Commission. Therefore, the Court below has taken the salary drawn by the deceased based on Ex.A10, which is a revised last drawn pay certificate issued by the Commissioner of Police. Therefore, this Court does not find any infirmities in the order passed by the Court below in fixing the income of the deceased for the purpose of computing the compensation for the claimants.

11.The learned counsel for the appellant/Insurance Company would submit that in the present case, the age of the deceased was 33 years and as per the decision of this Court in ***Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC)***, the correct multiplier is 16, whereas the Court below has wrongly applied the multiplier as 17. The learned counsel for the respondents/claimants also fairly submitted that in the present case, the correct multiplier is 16 and therefore, the multiplier 17 applied by the Tribunal is incorrect and hence, this Court fixed the multiplier as 16 instead of 17.

12.In the instant case, the Court below has erroneously deducted 1/3 towards personal expenses of the deceased and as per the Judgment of ***Smt.Sarla Verma,*** since there are five claimants, 1/4 has to be deducted and the Court below failed to add anything towards future prospects.

13.The learned counsel for the appellant / Insurance Company fairly submitted that as per the decision of the Hon'ble Supreme Court in ***NATIONAL INSURANCE CO. LTD., v. PRANAY SETHI***, reported in ***2017 (2) TN MAC 609 (SC),*** 50% is to be added for future prospects. However, he would contend that in the present case, the accident is of the year 2006 and the Hon'ble Supreme Court has decided the case by adding future prospects in the year 2017. Therefore, he contended that it need not be given retrospective effect. However, the said submission cannot be accepted, since the future prospects is not only for the subsequent to the Judgment of the Hon'ble Apex Court, but also considering the fact that a person who died by virtue of accident will get higher amount by virtue of increment or in other aspects. Therefore, taking into consideration of the same, the Hon'ble Apex Court awarded future prospects to the persons, who are having the fixed income. Therefore, the contention of the appellant/Insurance Company is not sustainable. Therefore, if 50% is added towards future prospects, the monthly income would be Rs.10,284/- + Rs.5142/- (Rs.10,284 X 50%) = Rs.15,426/-.

14.As stated above, since there are five dependants in this case, as per the judgement of ***Smt.Sarla Verma (cited supra),*** $1/4^{th}$ has to be deducted towards personal expenses of the deceased. Therefore, the loss of income after deduction would be Rs.10,284/- + Rs.5142/- (Rs.10,284 X 50%)= Rs.15,426 - $1/4^{th}$ = Rs.11,569/- p.m. and therefore, the loss of income would be Rs.11569 X 12 X 16 = **Rs.22,21,248/-.**

15.In the present case, the amount of Rs.75,000/- awarded by the Tribunal towards loss of love and affection for all the claimants is also too low. The Tribunal has not awarded any amount towards consortium. Therefore, this Court awarded a sum of ***Rs.40,000/-*** towards consortium; a sum of ***Rs.75,000***/- each towards loss of love and affection for the minor children; a sum of ***Rs.25,000/-*** each towards loss of love and affection for the father and mother of the deceased. The Tribunal has fixed a sum of

Rs.5,000/- towards funeral expenses and Rs.5,000/- towards transportation and no amount was awarded towards loss of estate. Therefore, as per ***PRANAY SETHI*** case, a sum of **Rs.15,000/-** is hereby awarded for funeral expenses; **Rs.15,000/-** is awarded towards loss of estate and **Rs.10,000/-** is hereby awarded for transportation.

16. In view of the above, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	13,98,624	22,21,248	enhanced
2.	For consortium	Nil	40,000	awarded
3.	For loss of estate	Nil	15,000	awarded
4.	For funeral expenses	5,000	15,000	enhanced
5.	For transportation	5,000	10,000	enhanced
6.	For loss of love and affection to the claimants 2 and 3	30,000	50,000	enhanced
7.	For loss of love and affection to the claimants 4 and 5	30,000	1,50,000	enhanced
8.	For loss of love and affection to the first claimant	15,000	Nil	deleted

	Total	Rs.14,83,624	Rs.25,01,248/- rounded off to Rs.25,00,000/-	By enhancing a sum of Rs.10,16,376/-

17. In the result,

(i).The Civil Miscellaneous Appeal in C.M.A(MD)No.427 of 2013 is dismissed. The Cross Objection (MD)No.11 of 2013 is allowed by enhancing the award of the Tribunal from ***Rs.14,83,624/-*** (Rupees Fourteen Lakhs Eighty Three Thousand Six Hundred and Twenty Four Only) to a sum of **Rs.25,00,000/-** (Rupees Twenty Five Lakhs Only).

(ii).It is represented that the appellant/Insurance Company has already deposited the entire award amount along with interest. This Court directs the appellant / Insurance Company to deposit the enhanced award amount along with 7.5% interest within eight weeks from the date of receipt of a copy of this order.

(iii).On such deposit being made, the first claimant/wife is entitled for a sum of **Rs.12,00,000/-**; the second claimant/minor child is entitled for a sum of **Rs.5,00,000/-**; the third claimant/minor child is entitled for a sum of **Rs.5,00,000/-**; the fourth claimant / mother is enttiled for a sum of **Rs.1,50,000/-** and the fifth claimant/father is entitled for a sum of **Rs.1,50,000/-**, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors.

(iv).The Claimants are directed to submit their Savings Bank Account Details along with the copies of their passbooks to the Tribunal **forthwith**;

(v).The claimants are directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment; and

(vi).On such payment of Additional Court fees, if any, by the claimants and upon the deposit made by the Insurance Company, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the respective Personal Savings Bank Account Numbers of the Claimants, through

RTGS/NEFT system, after getting their Account Details, within a period of **three weeks thereafter**; No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

1.The Subordinate Judge,
Motor Accidents Claims Tribunal, Trichy.

2.The Record Keeper,-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.N.SUDHAGAR NAGARAJ, Advocate (SR-95870[F] dated 04/11/2019)

+1 CC to Mr.M.PRAKASH, Advocate (SR-95701[F] dated 04/11/2019)

C.M.A.(MD)No.427 of 2013
and
Cross Objection(MD)No.11 of 2013
01.11.2019

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