IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1403 of 2013 & M.P.No.1 of 2013
and Cross Objection No.58 of 2013

C.M.A.No.1403 of 2013

The Managing Director
Tamil Nadu State Transport Corporation
Villupuram Limited (Division-II)
Kanchipuram. .. Appellant

Vs.

1.C.Mathanlal Jain

2.Vimala Kumari Jain .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.06.2012 made in M.C.O.P.No.5883 of 2003 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.C.S.K.Sathish
For R1 and R2 : Mr.F.Terry Chellaraja
for M/s.M.Malar

Cross Objection No.58 of 2013

1.C.Mathanlal Jain

2.Vimala Kumari Jain .. Cross objectors

Vs.

The Managing Director
Tamil Nadu State Transport Corporation
Villupuram Limited (Division-II)
Kanchipuram. .. Respondent

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 29.06.2012 made in M.C.O.P.No.5883 of 2003 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Cross Appellants: Mr.F.Terry Chellaraja
for M/s.M.Malar
For Respondent : Mr.C.S.K.Sathish

J U D G M E N T

The matter is heard through "Video~conferencing".

The Civil Miscellaneous Appeal has been filed by the Transport Corporation against the award dated 29.06.2012 made in M.C.O.P.No.5883 of 2003 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

The Cross~Objection has been filed by the claimants seeking enhancement of compensation granted by the Tribunal in the award dated 29.06.2012 made in M.C.O.P.No.5883 of 2003 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.The respondents filed the claim petition in M.C.O.P.No.5883 of 2003 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai, claiming a sum of Rs.35,00,000/- as compensation for the death of one Arunkumar Nahatha, who died in the accident that took place on 15.10.2002.

3.According to the respondents, on the date of accident i.e., on 15.10.2002 at 2.00 a.m., while the deceased Arunkumar Nahatha was travelling as passenger in a car bearing Registration No.TN-01-S-9732 from Chennai towards Kovalam, on East Coast Road, near Kudumiyandi Garden, Rajiv Gandhi nagar, the driver of the bus belonging to the appellant, which came from the opposite direction, drove the same in a rash and negligent manner, hit the car and caused the accident. Due to the accident, the deceased Arunkumar Nahatha sustained fatal injuries and died on the spot. Therefore, the respondents filed the above claim petition claiming compensation against the appellant.

4.The appellant/Transport Corporation filed counter statement denying the averments made in the claim petition and contended that the driver of the bus was not responsible for the accident. The accident has occurred only due to rash and negligent driving by the driver of the car in which the deceased travelled. The owner and insurer of the car were not made as parties to the claim petition. Therefore, the claim petition is bad for non-joinder of necessary parties. The appellant has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondents is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, one Sakunthala Daga, (claimant in M.C.O.P.No.5882 of 2003 arising out of very same accident) examined herself as P.W.1, 2nd respondent, mother of the deceased examined herself as P.W.2, one Vijendra Kumar, eye-witness to the accident, was examined as P.W.3 and one P.C.Petala, was examined as P.W.4 and marked sixteen documents as Exs.P1 to P16. The appellant/Transport Corporation examined one Pargunam, driver of the bus as R.W.1 and did not mark any documentary evidence.

6.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the appellant and directed the appellant/Transport Corporation to pay a sum of Rs.8,03,000/- as compensation to the respondents.

7.Against the said award dated 29.06.2012 made in M.C.O.P.No.5883 of 2003, the appellant/Transport Corporation has come out with C.M.A.No.1403 of 2013. Not being satisfied with the amounts awarded by the Tribunal, the respondents have come out with Cros.Obj.No.58 of 2013 seeking enhancement of compensation awarded by the Tribunal.

8.The learned counsel appearing for the respondents contended that the appellant/Transport Corporation filed C.M.A.No.2171 of 2013 challenging the award of the Tribunal granting compensation to the respondents therein for the death caused in the very same accident. The Division Bench of this Court dismissed the appeal filed by the appellant/Transport Corporation by the judgment dated 29.11.2013 and allowed the Cross~appeal filed by the respondents therein. In the present case, the deceased was doing business by buying and selling computers, electronic goods and spare parts. He was an income tax assessee. The respondents filed Ex.P11/Income Tax returns to show that the deceased declared his income as Rs.1,81,210/- per annum. The Tribunal erroneously fixed meagre amount of Rs.10,000/- per month as notional income of the deceased. The Tribunal ought to have fixed monthly income of the deceased at Rs.15,000/- based on Ex.P11. The deceased was aged 31 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The Tribunal taking into consideration the age of the 2nd respondent, the mother of the deceased, erroneously applied multiplier 13 instead of multiplier 16 and prayed for enhancement of compensation and dismissal of C.M.A.No.1403 of 2013 filed by the appellant/Transport Corporation.

9.The learned counsel appearing for the appellant/Transport Corporation submitted that though he has raised various grounds with regard to negligence and liability fixed on the appellant in the grounds of appeal, at the time of arguments, he has restricted his arguments only with regard to quantum of compensation awarded by the Tribunal.

10.The learned counsel appearing for the appellant/Transport Corporation contended that the respondents have failed to prove the avocation and income of the deceased. The Tribunal erred in relying on the evidence of the respondents to fix the age and income of the deceased and awarded compensation excessively. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal and dismissal of Cross Objection filed by the respondents.

11.Heard the learned counsel appearing for the appellant/Transport Corporation as well as the learned counsel appearing for the respondents and perused the entire materials available on record.

12.It is the contention of the respondents that while the deceased was travelling in the car along with others, the driver of the bus drove the same in a rash and negligent manner, hit the car and caused the accident. The deceased died due to the injuries sustained in the accident. The deceased was doing business at the time of accident and was earning a sum of Rs.20,000/- per month. To substantiate the said contention, the respondents have filed Exs.P11 and P12/Income Tax returns for the year 2001-2002 and 2002~2003 respectively. In Ex.P11, the deceased declared his income as Rs.1,81,210/- per annum. The Tribunal on erroneous ground, fixed only a sum of Rs.10,000/- as monthly income of the deceased. The respondents are entitled to compensation towards loss of dependency by fixing Rs.1,80,000/- per annum as the income of the deceased. Therefore, the monthly income of the deceased is fixed at Rs.15,000/-. The deceased was aged 31 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The respondents are entitled to 40% enhancement towards future prospects. The Tribunal has applied multiplier 13 taking into consideration the age of the 2nd respondent, mother of the deceased, which is not proper. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), age of the deceased is basis for applying multiplier. The multiplier applicable is '16' based on the age of the deceased. The accident has occurred on 15.10.2002. During the financial year 2001~2002, upto Rs.50,000/-, there is nil tax. Thus, the calculation for arriving annual income is as follows :-

Monthly salary of the deceased	...	Rs.15,000/-
40% enhancement towards future prospects	...	Rs.6,000/-
		Rs.21,000/-
Annual income (21,000 x 12)	...	Rs.2,52,000/-

Income Tax Slab for financial year 2001-2002

Upto Rs.50,000/- - Nil

From Rs.50,001/- to Rs.60,000/- (10%)
[Rs.60,000/- -Rs.50,000/- = Rs.10,000/- X 10%] -Rs.1,000/-

From Rs.60,001/- to Rs.1,50,000/- (20%)
[Rs.1,50,000/- Rs.60,000/- = Rs.90,000/- X 20%] - Rs.18,000/-

Above Rs.1,50,001/- (30%)
(Rs.2,52,000/-- Rs.1,50,000/- = Rs.1,02,000/-)
Rs.1,02,000/- X 30% - Rs.30,600/-

Rs.49,600/-

Annual income after deducting income tax
(Rs.2,52,000 - Rs.49,600/-) - Rs.2,02,400/-

Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.16,19,200/- (Rs.2,02,400/- X 16 X 1/2). The Tribunal has awarded Rs.10,000/- each towards loss of love and affection to the respondents and Rs.3,000/-towards funeral expenses, which are meagre and hence, the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	7,80,000	16,19,200	Enhanced
2.	Loss of love and affection	20,000	40,000	Enhanced
3.	Funeral expenses	3,000	15,000	Enhanced
4.	Loss of estate	-	15,000	Granted
	Total	8,03,000	16,89,200	Enhanced by Rs. 8,86,200/-

13. In the result, C.M.A.No.1403 of 2013 filed by the appellant/Transport Corporation stands dismissed and Cros.obj.No.58 of 2013 filed by the respondents stands partly allowed. The compensation awarded by the Tribunal at Rs.8,03,000/- is hereby

enhanced to Rs.16,89,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are directed to pay the necessary Court fee if any, on the enhanced compensation. The appellant/Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents are permitted to withdraw the enhanced award amount now determined by this Court equally among themselves along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

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To

1.VI Judge
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

2.The Section Officer
V.R.Section, High Court
Chennai.

+1 cc to M/s.M.Malar Advocate sr35175/2020

C.M.A.No.1403 of 2013 & M.P.No.1 of 2013
and Cross Objection No.58 of 2013

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