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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2020

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1493 of 2013

1.Thanaramalingam

2.T.Muthuraman *

... Appellants / Petitioners

* 2nd appellant is brought on record
as legal representative of the deceased
1st appellant vide order of this Court
dated 23.07.2020

..Vs..

Tamilnadu State Transport Corporation Limited,
(Madurai Division - V),
No.6/377,Madurai Road,
Virudhunagar - 626 001.

... Respondent / Respondent

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree in O.P.No.3374 of 2010 dated 16.07.2012 on the file of the XVI Additional Judge, Additional City Civil Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.Ravindran
for A.Shanmugaraj

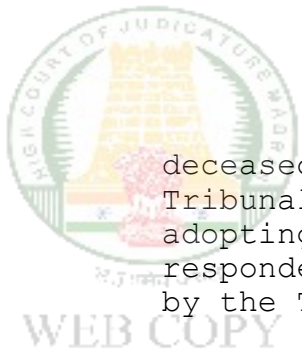
For Respondent : Mr.S.V.Vasanthan kumar

JUDGMENT

(This Appeal has been taken up for hearing through Video Conferencing)

This Appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 16.07.2012 passed by the Motor Accident Claims Tribunal (XVI Additional Judge, Additional City Civil Court, Chennai) in 3374 of 2010.

2. The contention of the Appellants is that the Tribunal has arbitrarily fixed the monthly income of the deceased at Rs.3,000/-. According to them, the deceased being a labourer (coolie), the Tribunal ought to have fixed the monthly income at Rs.5,100/- based on the evidence of PW2, the co- worker of the



deceased. It is also the contention of the appellant that the Tribunal has erroneously adopted 13 multiplier instead of adopting 12 multiplier. However, it is the contention of the respondent Transport Corporation that the compensation awarded by the Tribunal is a just compensation.

3. The findings regarding the cause of the accident has now become final, since no appeal has been filed by the respondent Transport Corporation.

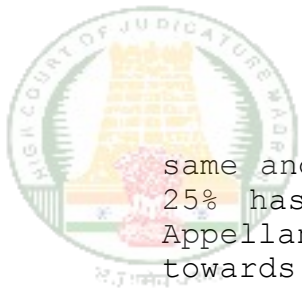
4. The only question which has to be decided by this Court is whether the compensation assessed by the Tribunal is a just compensation or not.

5. Admittedly, the accident happened in the year 2009. The age and avocation of the deceased who was a labourer (coolie) at the time of the accident has also not been disputed by the respondent Transport Corporation as seen from the evidence available on record.

6. Before the Tribunal, the Appellants filed ten documents which were marked as Ex.P1 to Ex.P10 and two witnesses were examined on their side namely, Thanaramalingam, the husband of the deceased as PW1 and Arasi, the co-worker of the deceased as PW2.

7. The Appellants had claimed in their claim petition that the deceased as a labourer (coolie) was earning Rs.5,100/- per month. The said statement has also been reiterated by Mrs.Arasi (PW2) a co-worker who had deposed that the deceased was earning Rs.5,100/- per month. However, the Appellants have not filed any documentary evidence before the Tribunal to establish that the deceased was earning Rs.5,100/- per month. In view of the said fact, the Tribunal was constrained to fix the monthly income of the deceased on notional basis. The Tribunal has fixed the notional monthly income of the deceased at the time of the accident as Rs.3,000/- per month which in the considered view of this Court is too low. In the year 2009, a normal labourer (coolie) would have earned a minimum of Rs.150 per day and the monthly income will be Rs.4,500/- per month. Accordingly, the monthly income of the deceased is enhanced from Rs.3,000/- to Rs.4,500/- by this Court.

8. The Tribunal has also not awarded any compensation towards loss of future prospects to the Appellants/claimants which they are entitled to as per settled law laid down by the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & others reported in 2017 (2) TN MAC 609 (SC). The deceased was aged 47 years at the time of the accident and considering the



same and in accordance with the said Judgment referred to supra, 25% has to be added towards loss of future prospects to the Appellants/claimants. Accordingly 25% is awarded as compensation towards loss of future prospects to the Appellants/ claimants.

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9. The Tribunal has rightly deducted $1/3^{\text{rd}}$ towards personal expenses of the deceased in view of the fact that the deceased left behind the Appellants who are her husband and son respectively as her only dependents.

10. Considering the age of the deceased and as per the judgment of the Hon'ble Supreme Court in the case of Sarla Verma vs. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 SC Supreme Court, the Tribunal ought to have applied 13 multiplier. However, the Tribunal erroneously adopted 12 multiplier for calculating the loss of dependency. Accordingly, the multiplier to be adopted is modified as 13 multiplier instead of 12 multiplier.

11. Accordingly, the loss of dependency is enhanced from Rs.2,88,000/- ($3000 \times 2/3 \times 12 \times 12$) to 5,85,000/- ($4,500 + 25\% \times 12 \times 13 \times 2/3$)

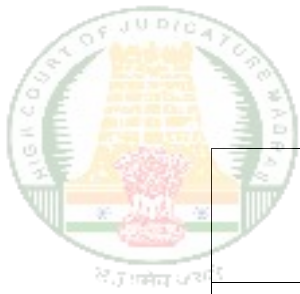
12. The Tribunal under the impugned award has awarded Rs.30,000/- towards loss of love and affection which in the considered view of this Court is too low. Accordingly, the same is enhanced to Rs.1,00,000/- by this Court.

13. The Tribunal has also awarded only a sum of Rs.25,000/- as compensation towards loss of consortium to the Appellants which in the considered view of this Court is also low. In accordance with Pranay Sethi's Judgment referred to supra, the same is enhanced to Rs.40,000/-.

14. The Tribunal has awarded Rs.7,000/- as compensation towards Funeral Expenses which is not in accordance with Pranay Sethi's Judgment referred to supra. Accordingly, the same is enhanced to Rs.15,000/- by this Court.

15. The Tribunal has also failed to grant any compensation towards loss of estate which they are legally entitled to as per Pranay Sethi's Judgment referred to supra. Accordingly, a sum of Rs.15,000/- is awarded by this Court towards loss of estate.

16. For the foregoing reasons, the amount awarded by the Tribunal is enhanced from Rs.3,50,000/- to Rs.7,55,000/- in the following manner:



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Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of dependency	2,88,000/- (3000 x 2/3 x 12 x 12)	5,85,000/- (4,500 + 25% x 12 x 13 x 2/3)
Loss of love and affection	30,000/-	1,00,000/-
Loss of consortium	25,000/-	40,000/-
Towards Funeral and Transportation	7,000/-	15,000/-
Loss of estate	Nil	15,000/-
Total	3,50,000/-	7,55,000/-

17. In the result, this Appeal is partly allowed.

18. A memo has been filed by the learned counsel for the Appellants stating that the first Appellant died on 23.08.2014 and his death certificate has also been enclosed along with the memo. The same is recorded by this Court and the second Appellant who is the son of the deceased is recorded as legal heir of the first Appellant in this Appeal.

19. The respondent Transport Corporation is directed to deposit the modified award amount after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs to the credit of MCOP.No.3374 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the second Appellant is permitted to withdraw the award amount along with accrued interest lying to the credit of MCOP.No.3374 of 2010 by filing an appropriate application. The second Appellant is directed to pay the court fee for the enhanced award amount. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(Lok Adalat)

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Sub Assistant Registrar

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To

1. The XVI Additional Judge,
City Civil Court,
Motor Accidents Claims Tribunal,
Chennai.

2. The Section Officer
V.R. Section, High Court of Madras.

C.M.A.No.1493 of 2013

RSI (CO)
SB(17/08/2021)