

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.901 of 2020
and
C.M.P.Nos.9416 & 5699 of 2020

The Managing Director,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
Railway Station New Road,
Kumbakonam Circle,
Thanjavur District.

... Appellant/Respondent

vs.

1.Indhumathi
2.Minor.Rohit
(Minor rep.by her next friend/
guardian/mother Indhumathi)
3.Seenuvasan
4.Vasantha

... Respondents/Petitioners

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 12.09.2019 made in M.C.O.P.No.113 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Judge, Villupuram.

For Appellant : Mr.D.Venkatachalam

For Respondents : M/s.N.R.Jasmine Padma

J U D G M E N T

The present Civil Miscellaneous Appeal on hand is preferred against the Judgment and decree dated 12.09.2019 made in M.C.O.P.No.113 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Judge, Villupuram.

2. The Tamil Nadu State Transport Corporation (Kumbakonam) Limited is the appellant, filed the appeal, challenging the judgment and decree dated 12.09.2019 passed in M.C.O.P.No.113 of 2017.

3. The appeal is filed mainly on the ground that the Tribunal has passed the award solely based on the F.I.R and there is no proof regarding the age and occupation of the deceased person. The respondents/claimants have not established the income of the deceased. Therefore, the fixation of monthly income of the deceased as Rs.16,000/- is on the higher side. The compensation granted under the other heads are also exorbitant and therefore, the award is liable to be set aside.

4. The learned counsel appearing on behalf of the respondents/claimants disputed the contentions by stating that the deceased was working as a Lecturer and he was a Ph.D holder. He was working in an Engineering College and was drawing a salary of Rs.50,000/- per month. The Tribunal has taken the salary of Rs.16,000/- and awarded compensation. Thus, the award itself is on the lesser side and the appeal is to be dismissed.

5. The accident occurred on 20.03.017 at about 13.00 Hours on Trichy to Chennai-NH-45 Road, Near Palipattalian. Edakkal Police Station registered a case in Crime No.47/2017 under Sections 279, 304(A) IPC. The appellant /Transport Corporation Bus hit against the deceased person and he died. The Claim Petition was filed by the wife, minor son aged about 8 years and the parents of the deceased. The Tribunal adjudicated the issues with reference to the documents and evidences produced. As far as the negligence is concerned, the Tribunal considered the evidence of P.W.2 and the Ex.P1 / FIR. The appellant/Transport Corporation had not produced any contra evidence to rebut the facts stated in the FIR. Thus, the Tribunal arrived a conclusion that the Driver of the Bus bearing Registration No.TN-45-N-3352 had driven in a rash and negligent manner and caused the accident. Thus, the appellant/Transport Corporation is liable to pay compensation to the claimants. As far as the quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.28,10,000/- as total compensation. The Tribunal fixed the monthly income of the deceased as Rs.16,000/-. Accordingly, Multiplier-14 was adopted. A sum of Rs.40,000/- was awarded towards Consortium and Rs.80,000/- was awarded towards Filial Consortium. A sum of Rs.15,000/- was awarded for Funeral Expenses and for Loss of Estate, another sum of Rs.15,000/- was

awarded. For children as well as for the parents, a sum of Rs.1,00,000/- was awarded towards Love and Affection. The Tribunal has mistakenly granted a compensation of Rs.1,00,000/- for Love and Affection. In fact, the Consortium was granted to the wife. Thereafter, as per "Pranay Sethi" case [[National Insurance Co. Ltd vs Pranay Sethi and Others, reported in 2017 (2) TNMAC 609(SC)], Parental Consortium need not be granted. This apart, a sum of Rs.1,00,000/- was granted towards Love and Affection, which is also not contemplated in "Pranay Sethi Case"(cited supra) in the Apex Court.

6. However, this Court is of the considered opinion that the monthly income fixed by the Tribunal is inadequate, in view of the fact that the deceased was the Senior Lecturer and he has completed his Doctorate in Chemistry. Further, it is stated that he was working as Chemistry Lecturer from the year 2005 onwards. He is having the Teaching Experience of more than 12 years and being a Doctorate person in Chemistry, certainly, the monthly salary of Rs.16,000/- fixed by the Tribunal is on the lower side. The Tribunal in its findings, arrived a conclusion that during December 2014, when the deceased was working as Assistant Lecturer in V.R.S Engineering College and Technology, he had received a sum of Rs.24,000/- as monthly salary. Thereafter, he was working in some other college. The Tribunal, though made a clear finding that in December 2014, the deceased was drawing the salary of Rs.24,000/- from the Engineering College, had erroneously fixed the monthly income of the deceased as Rs.16,000/- without any basis. Undoubtedly, he left the V.R.S Engineering College after few months. However, one cannot presume that he would have joined in any other college for the lower salary, which was paid by the V.R.S Engineering College and Technology. This apart, he was a Doctorate in Chemistry and even in December 2014, he was drawing a salary of Rs.24,000/- per month. The said factum was established by the P.W.3 witness Mr. Joseph Ignatius. Mr. Joseph Ignatius is a reliable witness, in view of the fact that he was the witness produced from V.R.S Engineering College and Technology. Therefore, the Tribunal ought to have taken the monthly salary of Rs.24,000/- instead of Rs.16,000/-. However, Rs.16,000/- fixed by the Tribunal is baseless. There is no evidence to arrive a conclusion that the deceased was drawing the monthly salary of Rs.16,000/- per month. Contrarily, the P.W.3 witness categorically deposed that in December 2014, the deceased was drawing the salary of Rs.24,000/- from V.R.S Engineering College and Technology. The accident occurred in the year 2017. The deceased would have joined in some other college for a higher salary. Thus, the Tribunal has committed an error in fixing the salary as Rs.16,000/- and the monthly income of the deceased is to be enhanced.

7. The respondents/claimants had established before the Tribunal that the deceased was receiving the salary of Rs.24,000/- per month and V.R.S Engineering College and Technology paid a salary of Rs.24,000/- in December 2014.

8. Though the appeal is filed by the Tamil Nadu State Transport Corporation, this Court is inclined to enhance the compensation, in view of the fact that the Tribunal has not granted 'just compensation' as per the principles laid down by the Apex Court as well as by the Hon'ble High Court. Under Order 44, Rule 33 of the Code of Civil Procedure, this Court is empowered to enhance the compensation, if the Tribunal fails to grant 'just compensation'.

9. In the present case, admittedly, the deceased was a Professor and Ph.D in Chemistry. He was working as Professor in an Engineering College. The independent witness of the college deposed before the Tribunal that they had paid a sum of Rs.24,000/- as monthly salary. Thereafter, the deceased person was working in some other organization. However, the Tribunal without any basis, fixed the monthly salary of the deceased as Rs.16,000/- and such a fixation is not based on any evidence or record. Presumptive fixation of monthly income is impermissible. Even in case of no proof of income has been produced by the claimants, then the nature of occupation and the place, in which, the deceased was working and the prevailing wages in that locality for the particular job are to be taken into account, while fixing the monthly income for quantifying the compensation. However, no such effort had been taken by the Tribunal. Contrarily, a sum of Rs.16,000/- is fixed as a monthly salary without any basis and therefore, this Court invoked the powers under Order 44 Rule 33 of the Code of Civil Procedure and enhance the compensation in order to ensure just compensation is awarded to the claimants.

10. Accordingly, this Court is inclined to fix the income of the deceased as Rs.24,000/- per month and 30% Future Prospects is to be added as the deceased was aged about 41 years at the time of accident. The deceased died, leaving behind his wife, one minor son and aged father and mother. Thus, 4 dependents and accordingly, 1/4th deduction is to be made. Thus, the loss of income is to be calculated by adopting Multiplier-14. Accordingly, the award passed by the Motor Accident Claims Tribunal stands modified as detailed hereunder:

1. Loss of Income

(24,000/-+30%=7,200/-

24,000/-+7,200/-=31,200/-

1/4th deduction=31,200-1/4=7,800

31,200-7800=23,400/-

23,400x12x14=39,31,200/-) : 39,31,200/-

2. Consortium to Wife : 40,000/-

3. Filial Consortium to three dependents : 75,000/-

4. Funeral Expenses : 15,000/-

5. Loss of Estate : 15,000/-

TOTAL : 40,76,200/-

11. Thus, the respondents/claimants are entitled for a total compensation of Rs.40,76,200/- (Rupees Forty Lakh Seventy Six Thousand and Two Hundred only) along with the interest at the rate of 7.5% per annum. The appellant/Tamil Nadu Transport Corporation is directed to deposit the entire award amount with accrued interest within a period of twelve (12) weeks from the date of receipt of a copy of this judgment and on such deposit, the major claimants are permitted to withdraw their respective portion of compensation as apportioned by the Tribunal in its judgment by filing an appropriate application before the Tribunal. As far as the minor share is concerned, the said portion is to be deposited in any one of the Nationalized Bank under the interest bearing cumulative deposit scheme and the fixed deposit is to be renewed periodically till the minor attains the age of majority and the payments are to be made through RTGS.

12. Accordingly, the judgment and the decree dated 12.09.2019 passed in M.C.O.P.No.113 of 2017 stands modified and consequently, the Civil Miscellaneous Appeal in C.M.A.No.901 of 2020 is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Special District Judge, Villupuram.

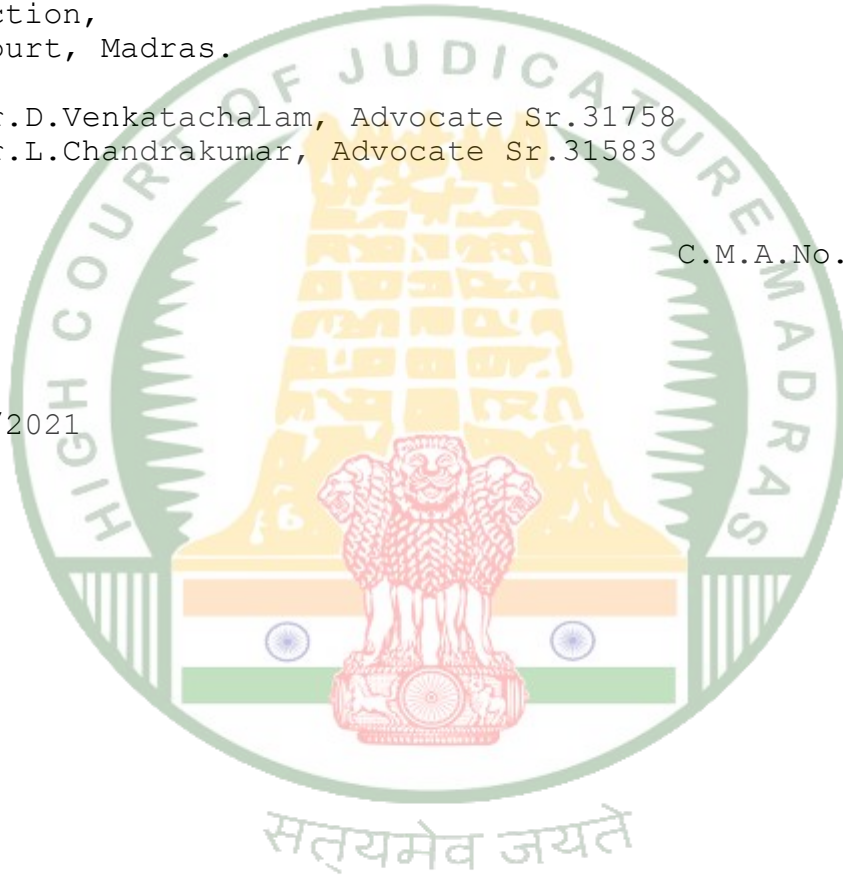
Copy to

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

+1cc to Mr.D.Venkatachalam, Advocate Sr.31758
+1cc to Mr.L.Chandrakumar, Advocate Sr.31583

C.M.A.No.901 of 2020

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