



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.10.2020

PRONOUNCED ON: 22.10.2020

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CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1190 of 2015

1. B.Kaleeswari,
2. N.Gurulakshmi,
3. B.Uthandaikalai,
4. N.Karpagavalli,
5. M.Rukmani,
6. B.Manjula,
7. Perumathammal,

All are residing at No.18/2,
North Street, Vallinickapuram,
Kovilpatti, Tuticorin District.

...Appellants/Petitioners

/versus/

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
(Tirunelveli Div.), Vannarpettai,
Tirunelveli - 627 003.

...Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree in M.C.O.P.No.182 of 2013, dated 11.10.2013, on the file of the IV Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.K.A.Ravindran,
for Mr.A.Shanmugaraj

For R1 : Mr.S.V.Vasanth Kumar

J U D G M E N T

(The case has been heard through video conference)

Heard the Learned Counsel for the Appellant and Learned Counsel for the respondent.

2. This Appeal is filed by the claimants seeking enhancement of compensation before the Tribunal for the accident death of Thiru.Boomibalan. The claimants sought a sum of Rs.12,00,000/- as compensation.



3. The Tribunal, on considering the evidence let in by the claimants and the objections raised by the Transport Corporation, fixed compensation of Rs.6,99,000/-.

4. The Tribunal, had taken note of the facts that at the time of accident, the deceased was 54 years six months old as per his Driving License. The salary certificate (Ex.P.4) issued by M/s.SR Traders, Kovilpatti, indicates he was earning Rs.9,000/- p.m., as supervisor-cum-Deliveryman. Since, no one examined to prove the Salary certificate (Ex.P.4), the Tribunal has fixed the income of the deceased notional at Rs.6,000/- and adopted multiplier 11 to compute the pecuniary loss, after deducting 1/4th towards the personal expenditure of the deceased.

5. In the Appeal, it is contended by the claimants that the Tribunal ought not to have reduced the income shown in the salary certificate (Ex.P.4) for computing the loss of income. Further, the deceased family consist of 7 members, who are the widow, son, three daughters and mother. Therefore, towards the personal expenditure, only 1/5th ought to have deducted. The Tribunal has not adequately compensated towards future prospects. Under loss of consortium they should have been paid more compensation.

6. The Learned Counsel appearing for the respondent would submit that the salary certificate (Ex.P.4) relied by the claimants not supported by wage register or salary register. The author of the salary certificate not been examined. The salary certificate does not disclose how long, he was working as supervisor in M/s.S.R Traders. The claimants are not the real dependants of the deceased, except his wife and mother, rest are adults married persons. Therefore, the Tribunal right in deducting 1/4th towards the personal expenditure.

7. Heard the Learned Counsels and records perused.

8. In the F.I.R marked as Ex.P.1, we find the information to the police regarding the accident was given by Appuraj son of Dhanushkodi Thevar, who is the young brother of the deceased. In the said complaint, he has stated that the deceased was working as Coolie in a Match Factor. Whereas, the Salary Certificate marked as Ex.P.4 issued by M/s.S.R Traders, indicates that the deceased was working as supervisor-cum-Deliveryman and earning a sum of Rs.9,000/- per month. Whether the M/s.S.R. Traders is a Match Factory and Whether there is any such commercial establishment by name M/s.S.R Traders, not been proved by the claimants.

9. In the said circumstances, the Tribunal has fixed the notional monthly income of the deceased at Rs.6,000/-, rejecting



the alleged salary certificate (Ex.P.4) issued in the name of M/s.S.R Traders, Kovilpatti.

10. Therefore, after weighing the rival claim and considering the age of the deceased, the notional income of the claimants in the absence of reliable document is fixed at Rs.7,000/- with 15% future prospects. As per the judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd -vs- Pranay's Sethi reported in 2017 (2) TN MAC 609 (SC) in case of unmarried son, the age of the deceased should be the basis for applying the multiplier and not the average age of the parents.

11. This Court finds that except his widow, unmarried daughter and mother, who are the claimants Nos.1, 6 & 7, others being adult and married persons, they are not dependants on the deceased. Therefore, reduction of 1/4th towards personal expenditure is correct. Hence, applying the dictum of the Constitution Bench of the Hon'ble Supreme Court in Prenay Sethi Case cited supra, the award of compensation granted by the Tribunal is modified as below:-

Compensation under various Heads	Award passed by this Court
Pecuniary Loss Rs.7,000 + 15% x 12 x 11 x 3/4	Rs.7,96,950/-
Loss of consortium to the 1 st Petitioner	Rs.40,000/-
Loss of love and affection to the Claimant Nos. 2 to 7	Rs.15,000 x 6 = Rs.90,000/-
Loss of estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Total	Rs.9,56,950/-

12. The Respondent shall deposit the award amount of Rs.9,56,950/- with 7.5% interest from the date of numbering the petition till the date of realisation, within a period of 12 weeks, from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the same on filing proper petition. The award amount with accrued interest shall be apportioned by the claimants as below:-

- (i). 1st Claimant/widow = Rs.6,06,950/-
- (ii). 7th claimant/mother = Rs.1,00,000/-
- (iii). Claimant Nos.2 to 6 =Rs.50,000 eachx 5 = Rs.2,50,000/-

13. In the result, the award of the Tribunal passed in M.C.O.P.No.182 of 2013, dated 11.10.2013 is modified. The award



passed by the Tribunal is enhanced from Rs.6,99,000/- to Rs.9,56,950/-. Accordingly, the Civil Miscellaneous Appeal is partly-allowed. No order as to costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To:-

- 1.The IV Judge,
Small Causes Court
(Motor Accidents Claims Tribunal),
Chennai.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A.No.1190 of 2015

RLD(CO)
RGA(12/08/2021)