IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.08.2020
CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.296 of 2015
and
M.P.No.1 of 2015

Metropolitan Transport Corporation Ltd.,
Represented by its Managing Director,
No.2, Pallavan Salai,
Chennai-600 002. ...Appellant/ Respondent

/versus/

1.Vijayalakshmi
2.Minor.Oviya
Rep.By her mother Natureal Guardian Vijayalakshmi
3.Kanthamani
4.Krishnan ...Respondents/ Petitioners

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 23.04.2014 passed in M.C.O.P.No.3415 of 2012 by the learned III Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai.

For Appellant : Dr.S.S.Swaminathan

For Respondents1 to 3 : No appearance
R4 : Died

J U D G M E N T
(The case has been heard through video conference)

The State Transport Corporation who is the respondent in the claim petition is the appellant herein. Aggrieved by the award passed by the Motor Accident Claims Tribunal, Chennai, appeal is filed challenging the quantum.

2. The accident victim was a 32 years old Diploma Holder in Information Technology, earning Rs.20,000/- pm in a private IT company at Chennai. On 11/11/2011, while he was proceeding along with his wife in the motor bike, at about 6.55 hrs near Lalitha Stores, Arcot Road, Valasaravakkam, the passenger bus owned by the appellant Transport Corporation run over him. His wife, minor daughter, mother and father has made a claim of Rs.35,00,000/- before the Motor Accident Claims Tribunal.

3. The Transport Corporation denied the involvement of their bus in the accident. The branch of the Corporation was never informed about the accident. The bus mentioned in the claim petition completed all its schedule trips in time. The exact vehicle involved in the accident is not ascertained. It is a hit and run case for which the claim petition under 166 Motor Vehicles Act against the Transport Corporation is not maintainable. Without prejudice to the denial of liability, on quantum the income and the foundation for the loss sought to be compensated also denied as excessive.

4. Four witnesses were examined in support of the claim petition. 9 exhibits were marked. The driver of the appellant corporation bus was examined on behalf of the appellant.

5. The Tribunal awarded a sum of Rs.34,47,000/- with 7.5% interest to be apportioned between the claimants as below:

1st claimant (wife) : Rs. 22,47,000/-

2nd claimant (minor daughter) : Rs 10,00,000/-

3rd claimant (mother) : Rs. 2,00,000/-

6. The learned counsel for the Appellant contend that the above compensation is excessive . The accident occurred due to the rash and negligence of the victim and not due to the driver of the Corporation bus. The FIR content does not implicate the driver of the bus. Neither the bus which involved in the accident was identified. The Tribunal erroneously fixed the income of victim at Rs.16,000/- pm without properly considering the document and oral evidence. Award of 50% additional compensation under the head loss of income is excessive and contrary to the principle laid down by the Hon'ble Supreme Court. The quantum of compensation awarded under the non conventional head like loss of consortium, loss of love and affection, funeral expenses are excessive and disproportionate.

7. The learned counsel for the appellant while questioning the compensation granted under the head loss of income would submit that, the pay slip Ex.P-8 shows the gross income as Rs.17,000/-. The net income after deduction is shown as Rs.16,105/-. The pay slip Ex.P-8 is given in the letter pad of the PW-3 company is without any corroboration. No bank detail or proof for payment filed. Further, the Tribunal has taken the income without taking into account the other statutory deductions like income tax. The Tribunal has awarded 50% towards

future prospects. The employment of the deceased was not a permanent job and scope for prospects in future not spoken by any witness.

8. In respect of consortium, loss of income and funeral expenses, the learned counsel would point out that, the amount awarded is in excess. For the first claimant the Tribunal has awarded Rs.one lakh for consortium and another one lakh for loss of love and affection.

9. This court finds that, there is force in the submission of the learned counsel for the appellant in view of the judgement rendered by the Apex court in Pranay's Sethi (2017 (2) TN MAC 609 SC . In case of deceased self employed or getting fixed salary, an addition of 40% of the established income has to be added towards future prospect, if the deceased is below the age of 40 years. In this case, the deceased was employed in a private firm for fixed salary. He was 32 years old at the time of accident. Hence only 40% should have been added. Instead, the Tribunal has awarded 50%. Likewise, the award under consortium, loss of love and affection and funeral expenses also to be refixed as per the Pranay's judgment. Hence the award of the tribunal is modified as below:-

Head of compensation	Tribunal award in MCOP	Modified in CMA
Pecuniary Loss:	(16000+ 8000) x 2/3 x 12 x 16 = Rs. 30,72,000/-	(16000 + 6400) x 2/3 x 12x16 = Rs,28,67,200/-
Loss of consortium (1st claimant)	Rs. 1,00,000/-	Rs.40,000/-
Loss of love and affection	Rs.2,00,000/- (for the 1st and 2nd claimants -one lakh each)	Rs .15,000/- for the second claimant)
Loss of love and affection for 3rd claimant	Rs.50,000/-	Rs.15,000/- for the third claimant)
Funeral expenses	Rs.25,000/-	Rs.15,000/-
Loss of estate	------------	Rs.15,000/-
Total	Rs. 34,47,000/-	Rs.29,67,200/-

10. In the result, the compensation of Rs.34,47,000/-

awarded to the claimants is modified and reduced to Rs.29,67,200/- .The said amount shall be apportioned by the claimants as below:-

1st claimant (wife)	:	Rs. 19,67,200/-
2nd claimant (minor daughter)	:	Rs 8,00,000/-
3rd claimant (mother)	:	Rs. 2,00,000/-

The appellant corporation is directed to deposit the award amount as modified by this order with interest at the rate of 7.5% within 8 weeks from today. On such deposit, except Rs 8,00,000/- and the interest accrued to that amount payable to the 2nd claimant who is a minor, the remaining amount is permitted to withdraw by the claimants 1 and 3 as per their share. The minor claimant's share shall be invested in a nationalised bank till she attains majority. The first claimant who is mother and natural guardian is permitted to withdraw the interest every half-yearly rest and spend for the welfare of the minor child.

11. With the above modification and direction, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS II)
//True Copy//

Sub Assistant Registrar

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To

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

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.S.Swaminathan , Advocate SR.No. 27224

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A.SK(19.01.2021)