

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :04.09.2020

Pronounced on :08.09.2020

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No713 of 2016

1.Banu

2.Lokeshwaran

..Appellants/Petitioners

/versus/

1.A.Shanmugam

2.The Managing Director,
TNSTC,

Having its Registrar Office at
TNSTC Corporation Ltd.,
Thirunelveli 627 003.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and award of the Motor Accident Claims Tribunal (Special District Court), Erode in M.C.O.P.No.590 of 2014, dated 21.12.2015.

For Appellants :Mr.S.Kaithamalai Kumaran

For Respondents :Mr.K.S.Suresh for R2
R1-No appearance

JUDGMENT

(This case has been heard through Video Conference)

The claimants are the appellants. For enhancement of compensation the present appeal is filed. Vadivel a retired Court staff while travelling in his TVS XL Super motorcycle on 16.09.2014 was dashed from behind by the transport Corporation bus bearing Reg.No.TN-72-N-1519. Due to the impact, Vadivel fell down and struck beneath the bus and got crushed. He sustained a severe head injury and injuries all over his body. He was taken to the hospital and treated. However, he succumbed to the injuries on 20/09/2014 (3 days after the accident). His wife and son made a claim petition for Rs.10,00,000/- on the ground that Vedivel was earning a sum of Rs.10,000/- as an Advocate Clerk and another Rs.10,000/- as Real Estate Broker besides he had pension income. Due to the sudden death of Vadivel, the claimants have lost the income of the deceased to the tune of Rs.4,00,000/-, besides for other loss a sum of Rs.6,00,000/- sought.

2.The Transport Corporation filed counter denying the negligence of its driver and earning capacity of the deceased. The Motor Accident Claims Tribunal, Erode, on considering the evidence let in by the claimants, had fixed the negligence on the part of the bus driver relying upon the First Information Report(Ex.P1), sketch and observation mahazar prepared by the police, besides the evidence of the eye witness (PW-2). On the part of the respondents, one Shanmugam was examined as RW-1, who deposed that the deceased negligently over took the bus on his left side and got hit. However, the Tribunal accepted the evidence of the appellants/claimants in this connection and has fixed negligence on the part of the bus driver.

3.Relying upon the pension payment order marked as Ex.P14, the Tribunal has fixed the age of the deceased as 68 years old since Ex.P14 his date of birth is noted as 13/06/1947. The deceased who was a retired Amina from the District Court, Erode, was drawing a sum of Rs.12,338/- per month towards his pension. This could be seen from the pension pay order. Though there was no evidence for proof of income other than the pension, the Tribunal has fixed the additional income as Rs.2,325/-. The family pension drawn by the first claimant after the demise of Vadivel, was taken into account. The difference between the pension and the family pension being Rs.4,175/-. The Tribunal had fixed the monthly income of the deceased Vadivel as tentatively Rs.6,500/-. After deducting 1/3rd towards his personal expenditure, applied multiplier '5' and arrived at the loss of dependency as Rs.2,59,980/-. The deceased was in the hospital for 3 days taking treatment for which he has incurred medical expenses of Rs.48,950/-. These expenses were supported by medical bills, which are marked as Exs.P6,P7 and)15(series). Therefore, a sum of Rs.3,88,930/- was awarded as compensation payable by the 1st and the 2nd respondents jointly and severally with 7.5% interest and costs.

4.The award amount was apportioned among the claimants as below:-

1 st claimant (wife)	Rs.2,88,930/-
2 nd claimant (son)	Rs.1,00,000/-

5.Learned counsel appearing for the appellants would submit that the deceased Vadivel, after his retirement was working as an Advocate Clerk and earning more than Rs.10,000/- per month besides he was also engaged in Real Estate Brokerage and was earning an additional sum of Rs.10,000/-. In total, apart from Rs.12,768/- as gross pension, he was earning additional sum of Rs.20,000/-. The Tribunal failed to take into account the said income. The learned counsel would also submit that for 3 days the deceased was in the hospital before he lost his breath. The

compensation under the heads pain and suffering, loss of love and affection and mental agony were not taken note by the Tribunal.

6.Per contra, the learned counsel appearing for the respondent Corporation would submit that the claimants had not placed any document to prove that the deceased had other income, apart from his pension. The bank pass book marked as Ex.P13 does not indicate any other income to the deceased, except his pension. Being 68 years old retired person, his post retirement income has been liberally construed as Rs.2,325/-. The accident took place in the year 2014 and the award was passed in the end of 2015. Taking note of the ruling prevailing at the point of time, the subsequent standardisation laid down by the Constitutional Bench of the Hon'ble Supreme Court in National Insurance Company v. Pranay Sethi and others reported in (2017 (2) TNMAC 609 (SC)) can only be taken as guidance for the accident occurred several years ago.

7.It is an admitted case that the deceased is a retired Amina from Erode District Court. He was around 68 years old at the time of the accident. He was drawing pension of Rs.12,768/- (gross). After his demise, the 1st claimant is receiving Rs.8,593/- as family pension. Hence, the real monetary loss is Rs.4,175/-. Though the claimants have not produced any document to show the deceased had other income, the Tribunal on its own has added Rs.2,325/- tentatively to ascertain the loss of dependency.

8.The learned counsel appearing for the appellant would submit that even a coolly would earn not less than Rs.200/- per day. Therefore, the deceased being a retired Court Amina and well versed in the Court proceedings was earning substantially.

9.This argument has no basis. A young and energetic coolly cannot be equated with a 68 years old man leading his retired life. The claim of income as an Advocate Clerk should be supported by some evidence. When there is no evidence in any form, the fixation of additional income of Rs.2,325/- by the Tribunal itself is without basis. Ex.P13 bank passbook on perusal indicates that except pension payment order, the claimant had no other income from any source. Therefore, this Court finds no error in the way in which the earning capacity of the deceased (accident victim) been fixed. If the principle of Pranay Sethi judgment rendered, 2 years after the impugned award is to be applied, additional sum of Rs.15,000/- towards loss of consortium should be awarded. At the same time, for funeral expenditure, the Tribunal has awarded Rs.25,000/- whereas in Pranay Sethi case it restricted to Rs.15,000/- and there will be a reduction under this head. On the whole, the quantum of

compensation will not vary much. Hence, this Court finds that there is no reason to interfere with the award of the Tribunal.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No order as to costs.

s/d-
Assistant Registrar=

True Copy

Sub-Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Special District Court), Erode

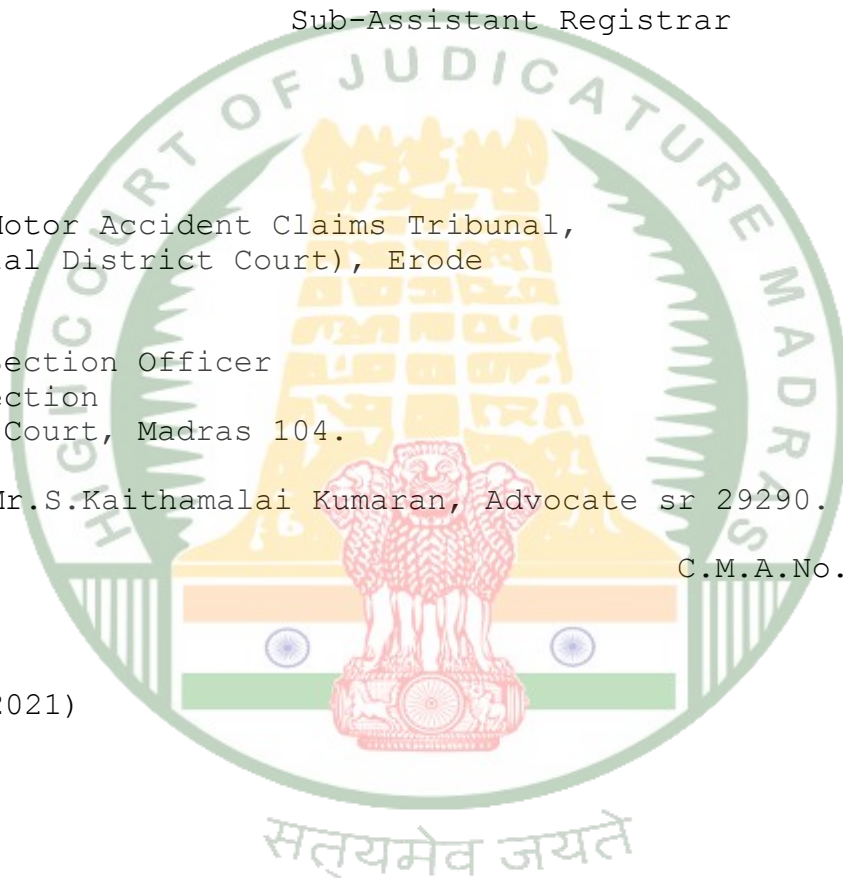
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The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.S.Kaithamalai Kumaran, Advocate sr 29290.

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