



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.08.2020

Pronounced on: 13 .08.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

C.M.A.No.725 of 2016

1. Rani,
W/o.Late Krishnan,
2. Raja.
S/o. Late Krishnan,
3. Mariappan,
S/o. Late Krishnan,

All are residing at No.2/48, Pamman Koradu,
Vellakkalpatti, Omalur Taluk,
Salem District. ... Appellants/Petitioners

/versus/

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
No.11, Ramakrishna Road, Salem - 7. ... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree dated 29.06.2011 made in M.C.O.P.No.1521 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Judge and Special Judge for EC Act cases, Salem.

For Appellants : Mr.K.Kuppusamy

For Respondent : Mr.D.Venkatachalam

J U D G M E N T

(The case has been heard through video conference)

The appellants are mother and the brothers of the deceased Kumar. Not satisfied with the quantum of award granted by the Motor Accident Claims Tribunal, Salem, for the death of Kumar in the road accident, Appeal is preferred by them seeking enhancement of compensation.

2. On 27.07.2009, at 2.30 p.m, when Kumar was travelling as a pillion rider in the motorcycle driven by his friend, the bus bearing Registration No.TN 30 N 0153 owned by the respondent Transport Corporation hit the motorcycle from the opposite direction and caused fatal injury to the pillion rider Kumar,near Srinivasa Nagar bus stop on the Omulr to Chettichavadi road. The negligent was attributed to the driver of the Transport bus. A case was registered against the bus driver in Crime No.890/2009. At the time of death, Kumar was 28 years old, earning Rs.5,000/- per month. His mother and two brothers were his dependants. Hence, claim petition seeking compensation of Rs.10,00,000/- was filed before the MACTribunal at Salem.

3. The respondents denied their liability on the ground that, death of Kumar was not due to the accident involving their bus. The age and income of the deceased also denied. Further, it is also stated that the claim petitioners are not the dependants of the deceased.

4. Before the Tribunal, the claimants examined three witnesses P.W.1 is the 1st claimant who is the mother of the deceased. P.W.2 is the eye witness who was riding the two wheeler carrying Kumar on the pillion at the time oof accident. P.W.3 (Srinivasan) is the employer of the deceased Kumar. Five Exhibits were marked on behalf of the claimants. They are First Information Report about the accident, Post-mortem certificate of the deceased Kumar, Legal Heirs certificate, Driving License of driver of the motorcycle and the salary certificate of the deceased. On behalf of the respondent Thiru.Balakrishnan, the conductor of the bus was examined as R.W.1.

5. The Tribunal, on appreciating the evidence has held that the accident was caused by the temporary driver of the respondent/Transport Corporation, who rash and negligently hit the motorcycle, thereby causing the death of Kumar who was on the pillion. P.W.3 the contractor, has deposed that the deceased Kumar was working under him as mason for five year and he was paying Rs.250/- as daily wage and salary certificate issued by him was marked as Ex.P.5. The Tribunal noting that necessary particulars regarding the contractor is not found in the salary certificate and also there is no document to substantiate the deceased received Rs.250/- per day, taking note of the prevailing wage for a self employed labourer, fixed Rs.150/- per day as wage and notional monthly income as Rs.4,500/-

6. Relying upon the dictum of Sarala Verma case, 50% of the income has been deducted since the deceased was a bachelor.

Taking into account the age (28 years old) of the deceased and the age of the mother, who is the claimant, the Tribunal has applied multiplier 11 and fixed loss of dependency as Rs.2,97,000/-. Further, a sum of Rs.5,000/- for transport and funeral expenses was awarded to sum up the compensation as Rs.3,02,000/-.

7. The present Appeal is filed alleging that the compensation awarded is very low and the income of the deceased ought to have been fixed at the rate of Rs.7,000/- per month instead Rs.4,500/-.

8. The Learned Counsel for the respondent would fairly submit that, after the decision of the Full Bench of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi case, it has now been settled that in case of bachelors died in motor accident while applying the multiplier, the age of the deceased should be the basis and not the age of the claimant. In the instant case the deceased died when he was 28 years old. The multiplier between 26 to 30 years is 17. Similarly, the Full Bench has also held that even in case of self employed deceased, there is scope for future prospects and the claimant is entitle for an addition of 40% . In this case, the deceased claim to be a mason though income certificate Ex.P.5 is marked, the Tribunal has rightly rejected it for want of credential and had fixed notional income of Rs.4,500/-. However, applying the dictum of Pranay Sethi case, an addition of 40% to that income towards future prospective is permissible.

9. Before the Tribunal, the mother and elder brother of the deceased have preferred the claim petition. The Tribunal has found that only the mother was the dependant on the deceased and applying the multiplier awarded Rs.3,02,000/- as compensation to the mother, who is the 1st claimant. The march of law and the benevolent exercise of the statute, it is now settled by the Full bench of the Hon'ble Supreme Court that, even the self employed and fixed salary persons are entitled for future prospective and only the age of the deceased should be the basis for applying multiplier and not the age of the dependants. The appellant/claimant is entitle for the said benefits.

10. This Court is bound to apply the dictum laid by the Full Bench of the Hon'ble Supreme Court. If so applied, the mother of the deceased is entitled to get the compensation as fixed under:-

Notional Income at the time of death	Rs.4,500/- p.m
Future prospective 40%	Rs.1,800/-
Personal expenditure 50% (less)	Rs, 3,150/-

11. As per the table prescribed under the Sarala verma judgment, for a person between the age of 26 to 30, multiplier 17 has to be applied. Therefore, the loss of dependency is arrived at Rs.3,150/- x 12 x 17 = Rs.6,42,600/-. Under the conventional heads namely loss of estate, loss of love and affection and funeral expenses a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively is granted. Consequently, the compensation is fixed as Rs.7,12,600/-. (enhanced from Rs.3,02,000/- awarded by the MACT to Rs. 7,12,600/-).

12. The appellants shall pay the difference in Court fee before drafting the decree. The respondent herein shall deposit the enhanced compensation with interest at the rate of 7.5% from the date of petition till the date of deposit. On such deposit, the 1st appellant/Rani, shall withdraw the money by filing appropriate petition. In the result, the Civil Miscellaneous Appeal is partly Allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

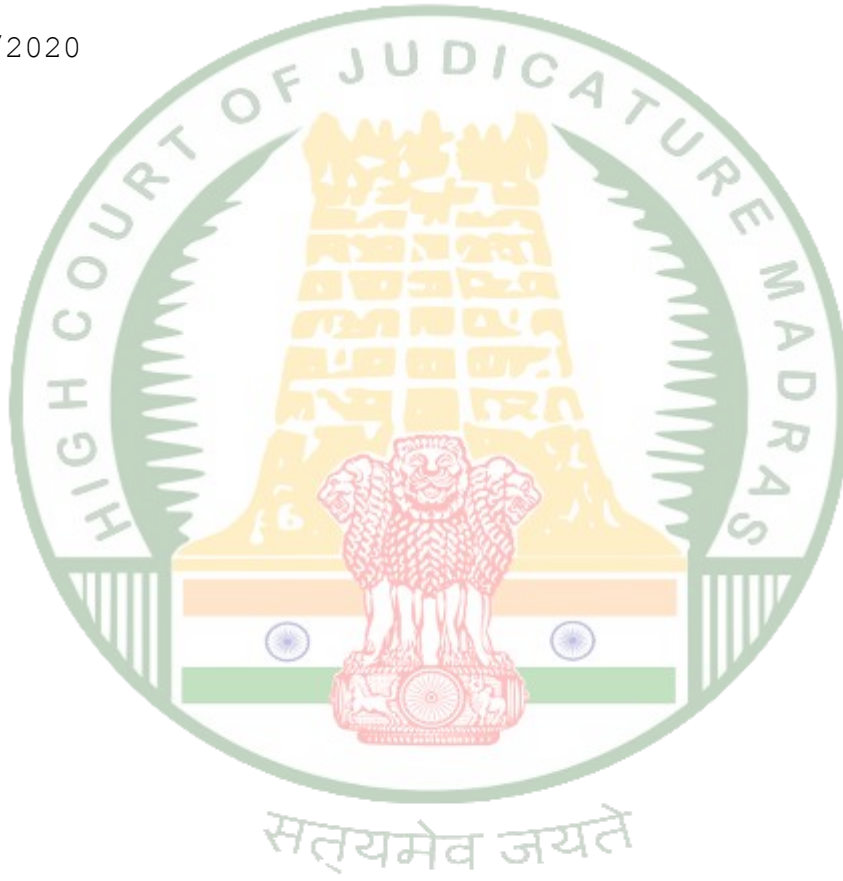
To,

- 1.The Motor Accident Claims Tribunal,
Additional District Judge and Special Judge for EC Act cases,
Salem.
2. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
No.11, Ramakrishna Road,
Salem - 7.

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

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