IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.878 & 2741 of 2014

C.M.A.No.878 of 2014

1.Latha

2.Suvedha (Minor)

3.Babistree (Minor)
(Minor appellants 2 and 3 are represented
by their mother/next friend, 1st appellant)

4.Ranjitham .. Appellants/Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram, Tamil nadu. .. Respondent/Respondent

C.M.A.No.2741 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram, Tamil nadu. .. Appellant/Respondent

Vs.

1.Latha

2.Suvedha (Minor)

3.Babistree (Minor)
(Minor appellants 2 and 3 are represented
by their mother/next friend, 1st appellant)

4.Ranjitham .. Respondents/Petitioners

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 23.08.2013, made in M.C.O.P. No.177 of 2010, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Puducherry.

(In C.M.A.No.878/2014)

For Appellants : Mr. K. Prasanna
for Mr. Mukund R. Pandiyan

For Respondent : Mr. C.S.K. Sathish

(In C.M.A.No.2741/2014)

For Appellant : Mr. C.S.K. Sathish

For Respondents : Mr. K. Prasanna
for Mr. Mukund R. Pandiyan

C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing".

C.M.A. No.878 of 2014 is filed for enhancement of the compensation and C.M.A. No.2741 of 2014 is filed against the award dated 23.08.2013, made in M.C.O.P. No.177 of 2010, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Puducherry.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition, for the sake of convenience.

4.The claimants filed M.C.O.P. No.177 of 2010, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Puducherry, claiming a sum of Rs.35,00,000/- as compensation for the death of one Gajapathy, who died in the accident that took place on 12.12.2009.

5.According to the claimants, on the date of accident viz., 12.12.2009, while the deceased was riding his TVS Suzuki Motorcyle bearing Registration No. PY-01-Q-4270 along Lawspet road, Karuvadikuppam, Puducherry, a Bus bearing Registration No.TN-21-N-1101 belonging to the respondent-Transport Corporation coming in the opposite direction driven by its driver in a rash and negligent manner dashed against the Motorcycle driven by the deceased and caused the accident. In the accident, the deceased succumbed to grievous injuries and took treatment in Hospital. Inspite of the treatment taken, the said Gajapathy died on 17.12.2009. The accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation and hence, the claimants filed the claim petition, claiming compensation against the respondent.

6.The respondent-Transport Corporation filed counter statement and denied all the averments of the claimants in the claim petition. According to the respondent, the accident occurred due to rash and negligent riding of Motorcycle by the deceased. In any event, the claimants have to prove the age, avocation and income, injuries sustained and treatment taken by the deceased to claim compensation. In any event, the total compensation claimed by the claimants are excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st claimant examined herself as P.W.1, Baskar, eye-witness was examined as P.W.2 and marked 10 documents as Exs.P1 to P10. The respondent examined the Conductor of the Bus as R.W.1, but did not mark any document.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Bus and directed the respondent-Transport Corporation to pay a sum of Rs.18,01,600/- as compensation to the claimants.

9.Against the said award dated 23.08.2013, made in M.C.O.P. No.177 of 2010, the respondent-Transport Corporation filed C.M.A. No.2841 of 2014 and not being satisfied with the amounts awarded by the Tribunal, the claimants have filed C.M.A.No.878 of 2014, for enhancement of compensation.

10.The learned counsel appearing for the respondent-Transport Corporation submitted that accident occurred only due to negligence of the deceased. The Tribunal erroneously relied on the eye witness and held that the driver of the Bus belonging to the Transport Corporation was responsible for the accident. The claimants have not examined the Police Officer to prove the negligence on the part of the driver of the Bus. The Tribunal failed to apply the principle of contributory negligence since two vehicles were involved in the accident. The deceased was aged 34 years at the time of accident. The Tribunal erroneously applied multiplier '17'. The correct multiplier applicable is only '16'. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal and dismissal of C.M.A.No.878 of 2014, filed by the claimants.

11.The learned counsel appearing for the claimants contended that while the deceased was riding on the left hand side of the road, the driver of the Bus who was coming in the opposite direction in a rash and negligent manner, dashed on the two wheeler driven by the deceased and caused the accident. In the accident, the deceased sustained injuries and has taken treatment as in-patient in three Hospitals. Inspite of treatment given by the claimants, the deceased died on 17.12.2009. The claimants examined P.W.2 - eye witness and marked FIR filed against the driver of the Bus and Final Report as Exs.P1 and P4 and proved that the accident occurred only due to rash and negligent driving by the driver of the Bus. R.W.1 has admitted in the cross examination that accident would have been averted had the driver of the Bus driven the same slowly. The Tribunal considering the oral and documentary evidence let in by the claimants and respondent-Transport Corporation, held that the accident has occurred only due to rash and negligent driving by the driver of the Bus. There is no error in the said finding of the Tribunal warranting interference by this Court.

11 (a). As far as the quantum of compensation is concerned, the claimants contended that the deceased was working as a Gram Sevak at B.D.O. Office, Karikalampakkan, Puducherry and was earning a sum of Rs.12,000/- per month. The Tribunal erroneously fixed the monthly income of the deceased at Rs.11,900/-. The deceased was aged 34 years at the time of accident. The Tribunal failed to grant any enhancement towards future prospects. There are 4 dependents of the deceased but the Tribunal erroneously deducted 1/3rd instead of 1/4th towards personal expenses. The compensation awarded by the Tribunal towards loss of love and affection, loss of consortium, funeral expenses and loss of estate are meagre and prayed for enhancement of the compensation and dismissal of the appeal filed by the Transport Corporation.

12.Heard learned counsel appearing for the claimants as well as the respondent-Transport Corporation and perused the materials available on record.

13.From the materials on record, it is seen that it is the contention of the claimants that while the deceased was riding his two wheeler, the driver of the Bus who was coming in the opposite direction, dashed on the two wheeler driven by the deceased and caused accident. In the accident, the deceased sustained injuries and after 7 days of the accident, inspite of treatment, he died. To substantiate the said contention, the 1st claimant examined herself as P.W.1 and examined P.W.2-eye witness who deposed as stated by the claimants in the claim petition. The claimants also marked FIR as Ex.P1, which was registered against the driver of the Bus and Ex.P4 - Final Report, laid against the driver of the Bus. On the other hand, it is the contention of the respondent-Transport Corporation that the accident occurred only due to negligence on the part of the deceased. The respondent examined conductor of the Bus as R.W.1 who deposed that the accident occurred only due to the negligence on the part of the deceased. But, in the cross examination, he admitted that the accident could have been averted had the driver of the Bus driven the Bus slowly. The

Tribunal considering the above materials, held that the accident occurred only due to negligence on the part of the driver of the Bus and directed the respondent-Transport Corporation to pay compensation to the claimants. There is no error in the said finding of the Tribunal, warranting interference by this Court.

14.As far as the quantum of compensation is concerned, it is the contention of the claimants that the deceased was working as a Gram Sevak at B.D.O. Office, Karikalampakkan, Puducherry and was earning a sum of Rs.12,000/- per month. The claimants filed Ex.A8 - salary certificate to show that the deceased was receiving a sum of Rs.11,914/- per month as salary. The Tribunal accepting Ex.P8, rounded off the same and fixed a sum of Rs.11,900/- as monthly income. The deceased was aged 34 years at the time of accident. The Tribunal failed to grant any enhancement towards future prospects. The claimants are entitled to 40% enhancement towards future prospects. After adding 40% enhancement, the yearly income comes to Rs.1,99,920/- {Rs.16,660/- [Rs.11,900/- + Rs.4,760/- (40% of Rs.11,900/-)] x 12}. The Tribunal did not deduct any amount towards Income Tax to be paid by the deceased. The accident occurred on 12.12.2009. For the assessment year, 2010-2011, upto Rs.1,60,000/- there is nil tax. Thus, the calculation for arriving annual income is as follows :-

Monthly salary of the deceased	...	Rs.11,900/-
40% enhancement towards future prospects	...	Rs.4,760/-
		Rs.16,660/-
Annual income (16,660 x 12)	...	Rs.1,99,920/-

Income Tax Slab for Assessment Year 2010-2011

Upto Rs.1,60,000/-	...	Nil
Rs.1,60,001 to Rs.3,00,000	...	10%
Rs.3,00,001 to Rs.5,00,000	...	20%
Above Rs.5,00,000	...	30%
Taxable Income is (Rs.1,99,920 - Rs.1,60,000/-)	...	Rs.39,920/-
10% on Rs.39,920/-	...	Rs. 3,992/-
Annual Income after deducting income tax (Rs.1,99,920 - 3,992)	...	Rs..1,95,928/-

There are 4 dependents of the deceased. The Tribunal erroneously deducted 1/3rd, instead of deducting 1/4th towards personal expenses of the deceased and applied multiplier '17'. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another], the correct multiplier applicable is '16'. By applying multiplier 16 and deducting 1/4th towards personal expenses, the compensation awarded by the Tribunal is modified to Rs.23,51,136/- [Rs.1,94,928/- x 16 x 3/4] towards loss of dependency. The Tribunal has awarded a meagre sum of Rs.30,000/- towards loss of consortium to the 1st claimant, who is the wife of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the 1st claimant is entitled to a sum of Rs.40,000/- towards loss of consortium. The amounts awarded by the Tribunal towards funeral expenses and loss of estate are meagre. The claimants are entitled to a sum of Rs.15,000/- each towards loss of estate and funeral expenses. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	16,18,400/-	23,51,136/-	Enhanced
2.	Loss of consortium to the 1st claimant	30,000/-	40,000/-	Enhanced
3.	Loss of love and affection to the claimants 2 to 4	50,000/-	50,000/-	Confirmed
4.	Loss of estate	7,500/-	15,000/-	Enhanced
5.	Funeral expenses	7,500/-	15,000/-	Enhanced
6.	Medical expenses	88,292/-	88,292/-	Confirmed

	Total	18,01,692/- rounded off to 18,01,600/-	25,59,428/- rounded off to 25,59,400/-	Enhanced by Rs.7,57,800 /-

15.In the result, C.M.A.No.2741 of 2014 is dismissed and C.M.A.No.878 of 2014 is partly allowed and the amount awarded by the Tribunal at Rs.18,01,600/- is enhanced to Rs.25,59,400/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.177 of 2010. On such deposit, the claimants 1 and 4 are permitted to withdraw their share of the award amount together with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor claimants 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st claimant, mother of the minor claimants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor claimants 2 and 3. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

gsa

To

1.The Principal District Judge,
(Motor Accident Claims Tribunal),
Puducherry.

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

+1cc to Mr.Mukund R. Pandiyan, Advocate SR.No.37712

C.M.A. Nos.878 & 2741 of 2014

EV(CO)
GMY(26/08/2021)