

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1786 of 2017

1.Mary Sornam
2.S.Arockia Emy Jesilin
(Minor aged 6 years rep by
mother and N.F. Mary Sornam
3.S.Roselin
4.A.Santhanaraj
5.S.Paul Shalini (Minor) aged 5 years
rep.by his guardian and next friend S.Mary Sornam
all are residing at
No.3, West Mada Church Street,
Royapuram, Chennai - 13 .. Appellants/ Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
No.3/137, Salamedu, Vazhuthareddy Post,
Villupuram. .. Respondent/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 10.01.2014 made in M.C.O.P.No.4792 of 2009 on the file of Motor Accident Claims Tribunal, (Chief Small Causes Court), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

The civil miscellaneous appeal is filed against the judgment and decree dated 10.01.2014 passed in M.C.O.P.No.4792 of 2009.

2. The claimants/appellants mainly questioned the quantum of compensation on the ground that the income arrived by the Tribunal is improper and inadequate. The total compensation of a sum of Rs.4,62,834/- awarded is not in commensuration with the fair compensation, which is to be granted.

3. The learned counsel for the appellant reiterated that the accident occurred on 07.04.2008 at about 1.15.A.M. at G.S.T.Road, near Thenbathur, Tindivanam Taluk, Villupuram District and on account of the accident, the one Mr.S.Stalin, aged about 30 years, died subsequently after three days. The legal heirs filed the claim petition under Section 163-A of the Motor Vehicles Act. The Tribunal, adjudicated the issues with reference to the accident and arrived a conclusion that the claimants have been established the factum regarding the accident. Further, the Tribunal arrived a conclusion that R.W.1 driver, drove the bus bearing Regn.No.TN-32-N-2672 in a rash and negligent manner and caused the accident. Thus, the respondent/Tamil Nadu Transport Corporation being owner of the bus, is liable to pay compensation to the claimants. The liability was fixed. The accident was established. Thus, the Tribunal calculated the quantum of compensation with reference to Section 163-A of the Motor Vehicles Act.

4. The learned counsel for the appellant mainly contended that though it is a structured formula as contemplated under Section 163-A of the Motor Vehicles Act, the present appeal is filed, seeking enhancement on the ground that the monthly income of the deceased was fixed in an inappropriate manner.

5. The learned counsel appearing on behalf of the respondent/Transport Corporation disputed the said contentions by stating that what is contemplated under Section 163-A of the Motor Vehicles Act is a structured formula and the Tribunal is right in calculating the quantum of compensation as per the schedule to the Motor Vehicles Act and therefore, the present appeal is liable to be dismissed.

6. Considering the contentions, this Court is of the considered opinion that the very purpose and object of Section 163-A is that even in case of negligence, the Tribunal has to grant the compensation without taking note of the grant of negligence. Under those circumstances, Section 163-A was inserted for grant of compensation under a structured formula.

7. The very spirit of Section 163-A is in the nature of special provision as to the payment of compensation on structured formula basis. Section 163-A of the Motor Vehicles Act, reads as under:

"163A. Special provisions as to payment of compensation on structured formula basis.-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement

due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

8. Reading of the entire provision reveals that it is a Special provision enacted to pay compensation in certain specific circumstances. Therefore, the conventional method of calculating the compensation would not arise, more specifically, when the claim petition is filed under Section 163A of the Motor Vehicles Act. Undoubtedly, if the claim petition is filed under Section 166 of the Motor Vehicles Act, then the Courts are empowered to ascertain the quantum of compensation in a conventional method and the enhancement also can be granted, taking note of all the facts and circumstances including the nature of injuries, assessment of disability etc., However, in a structured formula of granting compensation under Section 163-A of the Motor Vehicles Act, the Courts are bound to adopt the procedures as contemplated as well as the quantum already fixed in the schedule. The second schedule categorically enumerates Schedule for compensation for Third Party Fatal Accidents / Injury Cases Claims. Regarding the Fatal accidents, the age criteria and the compensation to be granted are also clearly stated.

9. When the statute prescribes a particular method of calculating the quantum of compensation, then the Courts are bound to follow the same and the exercise of discretionary power in enhancement of compensation in such circumstances would not arise at all.

10. The Motor Vehicles Act contemplates two ways of awarding the compensation. As far as the claim petitions filed under Section 166 of the Motor Vehicles Act is concerned, the conventional methods can be adopted and the Courts can enhance the compensation, considering various facts and circumstances

and other aspects of the matter. However, with reference to Section 163-A of the Motor Vehicles Act is concerned, it is a structured formula and the Courts are bound to follow the same in enhancement over and above the statute would lead to excess exercise of power and such a exercise of discretionary power is impermissible and not within the scope of the Motor Vehicles Act.

11. This Court is of the considered opinion that if the provisions are otherwise inappropriate or if the appellants are of the opinion that the compensation awarded under the structured formula is inadequate, then they are bound to challenge the provision and so long as the statute remains, the Courts are bound to follow the said statute and the deviation would create a wrong precedent and in the event of creating such a wrong precedent, it would be inconvenient for the Tribunals to grant award in a structured formula under Section 163-A of the Motor Vehicles Act.

12. The contention is raised that the Courts have held in some cases that the Multiplier method can be adopted for arriving the quantum of compensation. Even in such cases, when the Claim Petition is filed under Section 163-A of the Motor Vehicles Act, the quantum of compensation to be awarded cannot be equated with the conventional method of awarding compensation. Certain exemptions are granted for the purpose of weighing the negligence aspects. When such a concession has been extended in a Special provision, then the quantum of compensation is also fixed. Therefore, the method of calculating the quantum of compensation may be varied. However, the total amount of compensation cannot be excessive, so as to defeat the provisions of Section 163-A of the Motor Vehicles Act. Reiterating the same, this Court is of the opinion that the method of calculation of compensation is only for the purpose of arriving a just compensation. Thus, whatever method, the Court adopts may not be a criteria. However, the total amount of compensation arrived is of paramount importance to ensure that the said compensation awarded is in commensuration with the provisions of the Motor Vehicles Act and it should not be excessive. Therefore, some confusion in the second schedule are the calculation, the same should not defeat the very purpose and object of the Special provisions under Section 163-A of the Motor Vehicles Act.

13. Under these circumstances, this Court is of the considered opinion that recalculations of the compensation granted by the Tribunal in this case, the Tribunal has committed certain arithmetic mistake and accordingly, the compensation is to be awarded is a sum of Rs.4,89,500/-. Thus, the quantum of compensation awarded by the Tribunal is enhanced to Rs.4,89,500/- (Rupees Four Lakhs Eighty Nine Thousand and Five

Hundred only) as per Section 163-A of the Motor Vehicles Act. Accordingly, the respondent/Transport Corporation is directed to deposit the award amount with accrued interest at the rate of 7.5% per annum within a period of six (6) weeks from the date of receipt of a copy of this judgment and on such deposit, the appellants/claimants are permitted to withdraw the entire amount as per the apportionment granted by the Tribunal and the Minor portion is to be deposited in any one of the Nationalized Bank in an interest bearing Deposit scheme and to be renewed periodically. The payments are to be made through RTGS. The appellants are directed to pay court fee for the enhanced compensation.

14. In the result, the quantum of compensation is enhanced and the civil miscellaneous appeal in C.M.A.No.1786 of 2017 stands allowed in part. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judge,
Small Causes Court,
(Motor Accidents Claims Tribunal),
Chennai.

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

1 cc to Mr.K. Varadha Kamaraj, Advocate, Sr. 23377

1 cc to Mr.K.J. Sivakumar, Advocate, Sr. 23866

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