



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.631 of 2017

Mrs.Madhavi

...Appellant

Vs

State of Tamil Nadu,
Rep. by its Commissioner of Police,
Egmore, Chennai 8.

...Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.02.2014 made in M.C.O.P.No.839 of 2012 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents: Mr.Y.T.Aravind Gosh
Additional Government Pleader (CS)

J U D G M E N T

The appeal is filed by the claimant seeking enhancement of compensation, being not satisfied with the award of Rs.9,04,000/- granted by the Tribunal for the death of her son at the age of 21.

2. According to the claim petition, on 02.12.2011 at about 21.15 hours, while the son of the claimant was riding his motor cycle bearing Registration No. TN 22 BQ 5823 along Alandur road opposite to E.B office at Guindy, a Tata Sumo bearing Registration No.TN 23 G 0540 knocked behind the motor cycle. The injured motor cyclist was taken to the Government Hospital, Chennai, but he died on the same day. Being mother and the sole dependent of the deceased, K.Venkatesh, claim petition for Rs.12,00,000/- was filed before the Tribunal.



3. It was contended in the claim petition that the deceased was working as Mechanic in V.S.T.Auto Agency Ltd., earning Rs.6,000/- per month.

4. The respondent filed counter denying the negligence of the Tata Sumo driver and also the ownership of the vehicle. Also denied liability stating that the Commissioner of Police is not the actual owner of the vehicle but the Superintendent of Police, Vellore District, is the owner.

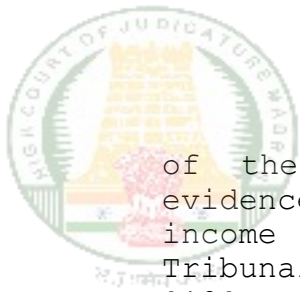
5. Before the Tribunal, the claimant examined 3 witnesses and marked 10 exhibits. The respondent has neither examined any witness nor marked any documents.

6. Relying upon the F.I.R. Ex.P1 and other documents, the Tribunal held that there is a legal presumption against the driver of the Tata Sumo regarding the negligence and as the owner of the vehicle, the State of Tamilnadu is vicariously liable to compensate the deceased. Relying upon the ESI Photo Identity Card marked as Ex.P8, the Tribunal has ascertained the date of birth of the deceased as 09.04.1990 and fixed his age as 21 years. The salary certificate relied by the claimant which are marked as Ex.P6 and Ex.P9 indicate the monthly earning of the deceased was Rs.4,767/- therefore the multiplicand was fixed by rounding off the salary as Rs.4,500/- and '18' as multiplier. After deducting 1/ 2 towards his personal expenditure, the Tribunal has added an additional 50% as future prospects, awarded a total sum of Rs.7,29,000/- towards loss of income. In addition, it has awarded Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of love and affection and Rs.50,000/- towards loss of estate.

7.The present appeal is filed for enhancement on the ground that the Tribunal ought to have taken Rs.6,000/- as monthly salary of the deceased person, relying upon the oral evidence of the claimant and should have deducted only 1/3 towards personal expenditure. It is also contended that higher compensation ought to have given under the head of loss of love and affection.

8. Learned Government Pleader appearing for the respondent submitted that the Tribunal has gone by the records and documentary evidence regarding the income of the deceased person and has awarded fair and just compensation. In fact, the award under the head love and affection; funeral expenses; and loss of estate is on the higher side, over and above the standardized structured formula prescribed by the Constitution Bench of the Supreme Court in Pranay Sethy's case.

9. It is settled principle of law that the documentary evidence will prevail upon ocular evidence regarding the income



of the deceased. This Court, on perusal of documentary evidence, (i.e.,) the salary certificate, pay slips, find the income of the deceased is only Rs.4,767. So, rightly the Tribunal has rounded off it to Rs.4,500/- and applied multiplier '18' to award fair compensation. As pointed out by the learned Government Pleader appearing for the respondent, the compensation awarded under the head funeral expenses, love and affection and loss of estate, which as per Pranay Sethy's judgment can only be upto maximum of Rs.70,000/-. In this case, the Tribunal has awarded Rs.1,75,000/-, nearly a lakh and Rs.5,000/- over and above the quantum fixed by the Supreme Court. Therefore, this Court finds no merit in the appeal. Hence, the Civil Miscellaneous Appeal is dismissed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To

1. Motor Accidents Claims Tribunal
III Small Causes Court,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.V.Mohan Choudary, Advocate, S.R.No.3957

+1cc to the Additional Government Pleader (C.S), S.R.No.3417

CMA NO.631 OF 2017

AD(CO)
SU(07/10/2021)