BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	08.02.2021
Date of Judgment	27.04.2021

CORAM
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI
C.M.A(MD)No.202 of 2018
and
CMP(MD)No.3193 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation
Kumbakonam Limited,
Kumbakonam. : Appellant/Respondent

Vs.

1.Five Rose
2.Minor Azarudeen
3.Minor Riyaz
(R2 and R3 minor respondents are represented by their mother and natural guardian 1st respondent) : Respondents/Petitioners

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Special District Court), Tiruchirappalli, made in MCOP No.252 of 2016, dated 22.03.2017.

For Appellant : Mr.P.Prabhakaran

For Respondents : Mr.D.Boopal

J U D G M E N T

This appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Special District Court), Tiruchirappalli, made in MCOP No.252 of 2016, dated 22.03.2017.

2.The brief facts of the case is that the deceased Adam Settu was a Photographer and he was running a Photo Studio under the name and style of Adam Photo Studio at Trichy. On 25.04.2008, at about 23.00 hours, after closing his shop, the deceased Adam Settu was riding his two wheeler TVS Star City TN-47-P-4642 on Trichy-Pudukkottai main road, at that time, the Transport Corporation Bus TN-63-N-0894 came in the opposite direction in a rash and negligent manner and in order to over take the Bullock Car came in the same direction and dashed against the deceased two wheeler.

In that process, the deceased fell down and sustained grievous fatal injuries all over the body and died on the spot. The legal heirs of the deceased Adam Settu, filed a claim petition seeking compensation of Rs.10,00,000/- on the ground that the offending vehicle caused the accident.

3.The claimants have stated that the deceased was 36 years at the time of accident and he was working as a Photographer, thereby he was earning Rs.15,000/- per month. It is alleged that the said Adam Settu died only due to the negligence on the part of the driver of the bus.

4.In the counter filed by the Appellant Transport Corporation, they disputed the manner of accident and their liability to pay compensation.

5.Before the tribunal, on the side of the claimants, 2 witnesses were examined and marked 4 documents. On the side of the Transport Corporation, no witness was examined and no document was marked.

6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.11,47,128/- together with interest @ 7.5% p.a.

7.Heard both sides and perused the materials available on record.

8.The manner of the accident and the finding on negligence are not in dispute and the appeal is confined only to quantum of compensation awarded by the Tribunal.

9.The learned counsel for the appellant Transport Corporation mainly argued that the tribunal erred in awarding higher quantum of compensation to the claimants and failed to award a fair compensation and the multiplier adopted by the tribunal is not correct and the monthly income arrived at by the tribunal is on the higher side and the award of the tribunal under the conventional heads are also on the higher side, hence, the award of the tribunal has to be reduced. On the other hand, the learned counsel for the respondents/claimants submitted that in this case, the tribunal, while calculating the loss of income, has not added any amount towards future prospects and in respect of other heads, the award is reasonable, which does not warrant any interference of this court.

10.It is not in dispute that the deceased was working as a

Photographer and he died at the age of 36 years. Since no reliable document has been produced on the side of the claimants to prove the income of the deceased, the tribunal has fixed the monthly income of the deceased at Rs.6,500/-. By applying multiplier '16' and after deducting 1/3rd from the salary of the deceased for his personal expenses, the tribunal has awarded Rs.8,32,128/- towards loss of income. Further, the tribunal has awarded Rs.1,00,000/- towards consortium; Rs.2,00,000/- towards loss of love and affection for wife and two minor sons; Rs.15,000/- towards funeral and transportation expenses. In total, the tribunal has awarded Rs.11,47,128/- to the claimants along with interest @ 7.5% p.a.

12.Perusal of the records would reveal that the deceased was a Photographer and he was earning Rs.15,000/- per month, but no proof was filed on the side of the claimants to that effect. Since no reliable document was filed to prove the income of the deceased, the tribunal has rightly fixed Rs.6,500/- as monthly income of the deceased.

13.It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. In the instant case, the tribunal has not added any amount towards future prospects. Hence, this court is of the considered view that 40% has to be added towards future prospects to calculate the income of the deceased, as per the decision of the Hon'ble Supreme Court reported in **2017(6) CTC 493** ***(National Insurance Company Limited vs. Pranay Sethi and others)***. By doing so, the monthly loss of income of the deceased is calculated at Rs.9,100/- (Rs.6,500/- + 2,600/-). After deducting 1/3rd towards his personal and living expenses, the monthly income is arrived at Rs.6,067/- (Rs.9,100/- x 1/3). By applying proper multipler 15, this court awards **Rs.10,92,060/-** (Rs.6,067/- x 12 x 15) towards loss of income. In addition to that, under the conventional heads, as per the decisions in **Pranay Sethi's case and Magma General Insurance's case**, this Court awards Rs.40,000/- towards loss of consortium to the 1st claimant; Rs.80,000/- towards loss of consortium to the claimants 2 and 3; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.12,42,060/**- together with interest @ 7.5% p.a.

14.In the result, this Civil Miscellaneous Appeal is partly allowed. The award is enhanced to **Rs.12,42,060/-** from Rs.11,47,128/-. The appellant Transport Corporation is directed to deposit the modified award amount together with interest @ 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the 1st claimant is entitled to withdraw Rs.5,92,060/-. The minor claimants 2 and 3 are entitled to Rs.3,25,000/- each. Insofar as the share of the minor claimants is concerned, the Tribunal is directed to deposit their share in any one of the Nationalised Bank, in a fixed deposit scheme initially for a period of three years renewable thereafter, till they attain majority. The 1st claimant/being the mother and guardian of minors is permitted to withdraw the accrued interest once in three months directly from the Bank for the welfare of the minors. The claimants shall pay the additional court fee for the enhanced amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Trichy.

2.The Record Keeper-2 copies
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.P.PRABHAKARAN, Advocate (SR-17626[F] dated 27/04/2021)

Judgment made
in CMA(MD)No.202 of 2018
27.04.2021

KM(28.05.2021) 4P 5C