BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	11.01.2021
Date of Judgment	05.02.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.390 of 2016

1.V.Veerayee
2.Minor Manoj
3.Minor Manju
4.G.Mokkai
(Minor Appellants 2 and 3 are represented by her mother and natural guardian the 1st appellant herein) : Appellants/Claimants

Vs.

M/s.Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Byepass Road,
Madurai.
Rep. by its Managing Director : Respondent/Respondent

PRAYER:- Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (District and Sessions Judge (Communal Clash Cases), Madurai, made in MCOP No.656 of 2011, dated 26.07.2012.

For Appellants : Mr.M.Saravanan
For Respondent : Mr.K.Sudalaiyandi

J U D G M E N T

This appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal [District and Sessions Judge (Communal Clash Cases], Madurai, dated 26.07.2012 made in MCOP No.656 of 2010.

2.The brief facts of the case is that on 08.02.2010 at about 20.45 pm, the deceased Velmurugan was riding his motor cycle TN-

58-U-1494 from Madurai Mattuthavani-Kappalur Ring Road at Paramapupatty and at that time, the Transport Corporation bus TN-58-N-1204 came in a rash and negligent manner and hit against the motor cycle and due to it, the deceased thrown away and sustained multiple grievous injuries on the head and all over the body and died on the spot. The legal heirs of the deceased Velmurugan filed 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 25 years at the time of accident and he was doing Jasmine Flower merchant business, thereby he was earning Rs.20,000/- per month. It is alleged that the said Velmurugan died only due to the negligence of the driver of the bus.

4.In the counter filed by the 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 6 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.5,19,000/- 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 appellants/claimants mainly argued that the tribunal erred in awarding lesser quantum of compensation to the claimants and failed to award a fair compensation and the tribunal ought to have adopted higher multiplier and erred in not taking into account the future monetary benefits and erred in arriving at the lesser monthly income for the deceased and the award of the tribunal under the conventional heads are also on the lower side, hence, the award of the tribunal has to be enhanced.

10.On the other hand, the learned counsel for the respondent submitted that the award is reasonable, which does not warrant any interference of this court.

11.It is not in dispute that the deceased was doing Jasmine Flower Merchant business. It is not in dispute that the deceased died at the age of 29 years. Since no reliable document has been filed 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.3000/-. By applying multiplier '17' and after deducting 1/4th from the salary of the deceased for his personal expenses, the tribunal has awarded Rs.4,59,000/- towards loss of income. The tribunal has awarded Rs.5,000/- towards transport expenses; Rs.5,000/- for funeral expenses; Rs.30,000/- towards loss of love and affection; Rs.20,000/- towards loss of consortium. In total, the tribunal has awarded Rs.5,19,000/- to the claimants along with interest @ 7.5% p.a.

12.Perusal of the records would reveal that the deceased was doing Jasmine Flower Merchant business and he was earning Rs.20,000/- per month, but no proof was filed on the side of the claimants. Considering the above facts and keeping in view of the decision of the Hon'ble Apex Court in the case of **Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd., (2014(1) TN MAC 459 (SC),** this court fixed the notional income of the deceased at Rs.6,500/- per month.

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 1/4th towards his personal and living expenses, the monthly income is arrived at Rs.6,825/- (Rs.9,100/- x 1/4). By applying proper multipler 17, this court awards **Rs.13,92,300/-** (Rs.6,825/- x 12 x 17) towards loss of income. In addition to that, as per the decisions in **Pranay Sethi's case and Magma General Insurance's case,** this Court awards Rs.1,60,000/- towards loss of consortium to the claimants 1 to 4; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.15,82,300/**- together with interest @ 7.5% p.a.

14.In the result, this Civil Miscellaneous Appeal is partly allowed. The award is enhanced to **Rs.15,82,300/-** from Rs.5,19,000/-. The respondent 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.5,82,300/- and the 4th claimant is entitled to withdraw Rs.2,00,000/- with accrued interest and costs without filing any formal petition before the tribunal. The minor claimants 2 and 3 are entitled to Rs.4,00,000/- 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 minor children. The claimants shall pay the additional court fee for the enhanced amount. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

er

To

1.The Motor Accident Claims Tribunal/
District and Sessions Judge (Communal Clash Cases),
Madurai.

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

+1 CC to M/s.K.SUDALAI YANDI, Advocate (SR-3591[F] dated 05/02/2021)
+1 CC to M/s.R.SUBRAMANIAN, Advocate SR-3649[F] dated 08/02/2021

Judgement made
in CMA(MD)No.390 of 2016
05.02.2021

kg(CO)
TR(21.04.2021) 4P 6C