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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2020

Pronounced On : 05.01.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.532 of 2015
and
M.P.(MD)No.3 of 2015

The General Manager,
Tamil Nadu State Transport Corporation,
Pudukkottai. : Appellant /Respondent

Vs.

1.Lalitha
2.Minor Kalpana
3.Minor Gayatri
4.Govindaraj
5.Meena : Respondents 1 to 5/ Petitioners 1 to 5
(Minors 2 and 3 are represented through their mother and natural guardian/Lalitha first respondent)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Additional District Court & Special Court, Pudukottai in M.C.O.P.No.222 of 2013, dated 30.07.2014.

For Appellant : Mr.D.Sivaraman

For R1 to R3 : Mr.P.Ganapathi Subramanian

For R4 and R5 : No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred against the award passed in M.C.O.P.No.222 of 2013, dated 30.07.2014 on the file of the Motor Accident Claims Tribunal cum Additional District Judge, Pudukkottai.

2.The Appellant/Tamil Nadu Transport Corporation, who was made liable to pay a sum of Rs.18,65,127/- with interest at 7.5% per annum to the claimants/petitioners for the death of Mohanraj, who died in an accident occurred on 29.11.2012, challenged the quantum of award arrived at by the tribunal.

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3.The appellant, though in the memorandum of the appeal, challenged the finding of the trial Court that the Bus driver was responsible for the accident, the same was not pressed into service. But the challenge is only with respect to quantum of compensation. Admittedly, the first claimant is the wife, claimants 2 and 3 are the minor daughters, fourth claimant is the father and fifth claimant is the mother of the deceased Mohanraj.

4.The case of the claimant is that the deceased Mohanraj was doing mason and also agricultural work and was earning a sum of Rs.7,000/- per month, that the claimants were depending on the income of the deceased, that the deceased was aged about 35 years at the time of accident and that therefore, they have been claiming a sum Rs.25 lakhs towards compensation.

5.During trial, the claimants have examined the first claimant Tmt.Lalitha as P.W.1 and one Shanmugam alleged to be the occurrence witness as P.W.2 and exhibited 13 documents as Ex.P.1 to Ex.P.13. On the side of the Appellant/Transport Corporation, they have examined their driver Subramanian as R.W.1 and adduced no documentary evidence.

6.The trial Court, upon considering the evidence, both oral and documentary came to the conclusion that the Bus driver was responsible for the accident and mulcted lability on the Appellant/Transport Corporation, directing them to pay a sum of Rs.18,65,127/- with interest at 7.5% per annum. Aggrieved by the said award, the Transport Corporation has preferred the present appeal.

7.The points for consideration are :

(1) Whether the amounts awarded under the heads of loss of love an affection and loss of estate at Rs.5,00,000/- and Rs.1,00,000/- respectively, are excessive and not reasonable?

(2) Whether the quantum of compensation awarded at by the tribunal is proper and is in accordance with law?

(3) Whether the impugned award dated 30.07.2014 is liable to be interfered with?

Point Nos. 1 to 3:

8.The Appellant/Corporation in the memorandum of the appeal has challenged the decision of the trial Court in fixing the income of the deceased at Rs.4,500/- per month, addition of 50% of in-come towards future prospects, deduction of $1/5^{th}$ of the income for personal expense of the deceased and adoption of multiplier of 16. But at the time of arguments before this Court, the learned counsel for the appellant has fairly stated that they are not disputing those aspects and their main challenge is only with respect to the amount awarded under the heads of loss of love and affection and loss of estate.

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9.The learned counsel for the appellant would strongly contend that the award of Rs.5,00,000/- for loss of love and affection is highly excessive, unimaginable and unsustainable that the tribunal has also awarded unreasonable award amount of Rs.1,00,000/- towards loss of estate, which would only amount to double compensation. As rightly contended by the learned counsel for the appellant, Our Honourable Supreme Court has specifically held that when the compensation was awarded towards loss of consortium, then the question of granting any amount under the head of loss of love and affection does not arise at all. In **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700, Hon'ble Supreme Court** allowed only Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate under the conventional heads. Hence, the very granting of Rs.1,00,000/- towards loss of estate is also not proper and is not in accordance with law.

10.Considering the above, this Court has no hesitation to hold that the granting of compensation of Rs.5,00,000/- towards loss of love and affection and Rs.1,00,000/- towards loss of estate is legally unsustainable and the same is liable to be set aside. But the Honourable Supreme Court in **Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others** reported in **(2018) 18 SCC 130**, and **the New India Assurance Company Ltd., Vs. Smt.Somwati and others**, passed in **Civil Appeal No.3093 of 2020 and batch, dated 07.09.2020** case has permitted the spousal consortium to be awarded to the surviving spouse, parental consortium to be awarded to the children upon the premature death of their parents and filial consortium to be awarded to the parents for the loss of their children at the same amount that is fixed in **Pranay Sethi**'s case.

11.Applying the above legal dictum, the claimants being the wife, minor children and the parents of the deceased, are certainly entitled to get Rs.40,000/- each towards loss of consortium and they are also entitled to get Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate under the conventional heads and the revised calculation is as follows:

Loss of dependency	-Rs.10,36,000/-
Medical Expenses	-Rs. 1,83,327/-
Transportation Charges	-Rs. 10,000/-
Funeral Expenses	-Rs. 15,000/-
Loss of Consortium	-Rs. 2,00,000/-
Loss of Estate	-Rs. 15,000/-
	- Rs.14,59,327/-

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Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accodingly.

12.In the result, the Civil Miscellaneous Appeal is partly allowed and compensation amount is modified from Rs.18,65,127/- to Rs.14,59,327/- with interest at 7.5% per annum. The Appellant/Corporation is directed to deposit the modified award amount, less the amount already deposited, if any and on such deposit, the claimants are permitted to withdraw the award amount as apportioned by the tribunal, less amount already withdrawn, if any, by filing a necessary application before the Tribunal. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

das

To

1.The Motor Accident Claims Tribunal,
Additional District Court & Special Court,
Pudukottai

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

+1 CC to Mr.P.GANAPATHI SUBRAMANIAN, Advocate (SR-163[F] dated 05/01/2021)

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-311[F] dated 06/01/2021)

order made in
C.M.A(MD)No.532 of 2015
and
M.P.(MD)No.3 of 2015
05.01.2021

KM(25.05.2021) 4P 6C

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