BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.07.2022

Pronounced on : 12.08.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.171 of 2019
and
C.M.P.(MD)No.1549 of 2020

The Managing Director,
Tamil Nadu State Express Transport Corporation,
Chennai. ... Appellant / 2nd respondent

Vs.

1.Guruvammal

2.Ramachandran ... Respondents / Claimants

3.Ravi

4.Kathirvel Murugan

5.National Insurance Company Limited,
Omalur Main Road,
Salem. ... Respondents/ Respondents 1,3 and 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow this appeal, set aside the award and decree made in M.C.O.P.No.200 of 2010 dated 15.11.2016 on the file of the Motor Accident Claims Tribunal/ Principal Sub Court, Tenkasi.

For Appellant	: Mr.P.Prabhakaran
For R1 and R2	: Mr.R.J.Karthik
For R3	: Given up
For R4	: No appearance
For R5	: Mr.V.Sakthivel

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order in M.C.O.P.No.200 of 2010, on the file of the learned Principal Subordinate Judge, Tenkasi. The appellant is the second respondent. Respondents 1 and 2 herein are the claimants. Respondents 3 to 5 herein are the respondents 1,3 and 4 in the original claim petition.

2.Brief substance of the claim petition is as follows:

On 18.07.2010 at about 10.50 pm., the deceased was riding a two wheeler bearing registration number TN 30 AC 5402 in a slow and cautious manner and at that time, a bus bearing registration number TN 01 N 6665 was driven by its driver in a rash and negligent manner, came from behind and dashed against the rear side of the two wheeler. The deceased died on the spot. The age of the deceased was 24 years at the time of accident. He was working as an Engineer in Bharath Inspection Service, Trichy. He was earning Rs.17,000/- per month. He got employment abroad for a salary of Rs.40,000/- per month. Claimants are his dependants. They claim Rs.1 Crore as compensation.

3.Brief substance of the counter filed by the second respondent is as follows:

The bus was driven by its driver in a careful and cautious manner. The respondent driver is not responsible for the accident. There is no damages in the front portion of the bus. The deceased met with an accident in some other vehicle and a complaint was wrongly lodged against the respondent bus.

4.Brief substance of the counter filed by the fourth respondent is as follows:

The Tribunal is not having jurisdiction to try the case. The claimants are not the legal representatives of the deceased. The petitioners are liable to prove the age, income and profession of the deceased. The fourth respondent is not a necessary party.

5.On the side of the petitioner, two witnesses were examined and 16 documents were marked. One witness was examined and no document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.14,46,000/- as compensation.

6.Against the award, the appellant has approached this Court by way of an appeal on the following grounds:

The Tribunal has erred in holding that the driver of the appellant was solely responsible for the accident. The Tribunal failed to note that the appellant bus was never involved in the alleged accident. The motor vehicle inspection report reveals that there was no such damage on the front portion of the appellant bus. The Tribunal has erred in fixing the monthly income of the deceased as Rs.12,000/- per month. The Tribunal has adopted multiplier 18 which is high. The Tribunal has awarded Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards transport expenses, Rs.25,000/- towards funeral expenses and awarded a total compensation of Rs. 14,46,000/- which is excessive.

7.The driver of the vehicle was not examined on the side of the respondent. On the side of the claimant, it is stated that since the driver of the vehicle was suspended, the conductor gave evidence on the side of the first respondent. The First Information Report was registered against the first respondent. On the basis of the evidence of P.W.2 eye witness and on the evidence of Ex.P1, Ex.P5 and Ex.P6, it is decided that the bus driver is responsible for the accident.

8.On the side of the appellant it is stated that the second claimant was aged about 24 years at the time of filing of the petition. No document was filed to prove that the second claimant was only a student, at the time of accident. He may be a earning member. The deceased and the second claimant are of the same age. There is no possibility of the second claimant to be the dependant of the deceased. As per the decision of the Hon'ble Supreme Court reported in the Sarla Verma case, when number of dependents are more, the Court, in exceptional cases, may deduct 1/3 of the income towards own expenses of the deceased. In this case, the number of dependency are only two. The age of the second claimant is equal to that of the deceased. There was no evidence to prove that the second claimant, was a student then.

9.On the side of the respondent it is stated that the mother of the deceased is a widow. The brother is only a student. Both of them are depending upon the income of the deceased and hence only 1/3 of the income has to be deducted towards own expenses. The dependants are only 2 and the deceased, being a bachelor might have contributed 50% of his income to his mother and brother and hence it is decided that the claimants are the dependants of the deceased.

10.On the side of the claimants it is stated that the deceased was aged about 24 years and that he was a B.E. graduate. Ex.A8 was marked to prove the income. Though, the income was mentioned as Rs.17,000/- per month, since the employer was not examined the Tribunal has fixed the monthly income at Rs.12,000/- per month. After deducting 50% towards his own expenses, the Tribunal fixed the monthly income as Rs.6,000/- which is very low.

11.On the side of the claimants it is stated that as per the dictum of the Hon'ble Supreme Court in the case of Sarla Verma, Reshma Kumari, Rajesh and Munna Lal Jain, it was held as follows:

"Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the Personal & Living Expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third".

12.Another judgment of the Hon'ble Supreme Court in the case of **National Insurance Co.Ltd., vs Pranay Sethi and others** reported in **2017 (6) CTC 493** is cited, wherein it is held as follows:

"39.Before we proceed to analyse the principle for addition of Future Prospects, we think it seemly to clear the maze which is vividly reflectible from Sarla Verma, Reshma Kumari, Rajesh and Munna Lal Jain. Three aspects need to be clarified. The first one pertains to deduction towards Personal and Living Expenses. In Paragraphs 30, 31 and 32, Sarla Verma lays down:

"30.Though in some cases the deduction to be made towards Personal & Living Expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent

decisions of this Court, we are of the view that where the deceased was married, the deduction towards Personal and Living Expenses of the deceased should be one-third (1/3rd where the number of dependent family members is 2 to 3, one-fourth(1/4th) where the number of dependent family members is 4 to 6, and one-fifth(1/5th) where the number of dependent family members exceeds six.

31.Where the deceased was a bachelor and the Claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as Personal & Living Expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence of the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependant on the father.

32.Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the Personal& Living Expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the *income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third".*

13. No witness was examined on the side of the claimants to substantiate the salary certificate Ex.A10. Ex.A9 is only a photocopy. There is no oral or documentary evidence, to support Ex.A9. From Ex.A7, Ex.P11 to Ex.P14, it is clear that the deceased has completed B.E., Engineering Course and he is having technical qualifications. All the diploma certificates are regarding temporary courses, which long last only for a few dates.

14.Considering the fact that the deceased has completed Engineering Course. There was possibility of the deceased to have earned Rs.12,000/- per month and the income fixed by the Tribunal is reasonable. The age of the deceased, as per the driving license, is 24 years and hence the multiplier applied is correct. The claimants have not chosen to file a cross objection or an appeal for enhancement of compensation. Considering all the above points, it is decided that the loss of income fixed by the Tribunal is reasonable.

15.The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards transport expenses, Rs.25,000/- towards funeral expenses. The accident took place in the year 2010 and as per the dictum of the Hon'ble Supreme Court in **Pranay Sethi** case, the claimants are entitled only for Rs.70,000/- towards conventional charges.

16.Hence, the compensation is modified as under:

Loss of Income	-	Rs.12,96,000/-
Loss of love and affection (Conventional Charges)	-	Rs. 70,000/-
Transport expenses	-	Rs. 25,000/-
Funeral expenses	-	Rs. 25,000/-
Total	-	Rs. 14,16,000/-

The award is fixed as **Rs.14,16,000/-.**

17.The Civil Miscellaneous Appeal is allowed in part. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.14,46,000/- to **Rs.14,16,000/- (Rupees Fourteen Lakhs sixteen thousand only)** which shall carry interest at the rate of 7.5% per annum.

(ii) The Appellant Transport Corporation, is directed to deposit the entire compensation of Rs.14,16,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs to the credit of M.C.O.P.No.200 of 2010 on the file of the Motor Accident Claim Tribunal (Principal Subordinate Judge), Tenkasi, within a period of eight weeks from the date of receipt of a copy of this order, less any amount already deposited. Excess amount, if there is any is directed to be refunded to the appellant.

(iii) On such deposit being made by the appellant/Transport Corporation, the first respondent / first claimant is permitted to withdraw a sum of Rs.12,16,000/-(Rupees Twelve Lakhs and Sixteen Thousand only), with interest and the second respondent herein/ second claimant is permitted to withdraw a sum of Rs.2,00,000/-(Rupees Two Lakhs only) with interest and cost less any amount already withdrawn by them. Consequently, connected miscellaneous petition stands closed.

12.08.2022

Index: Yes / No
Internet : Yes / No

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R.THARANI, J.

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To

1.The Motor Accident Claims Tribunal cum Principal Subordinate Judge,
Tenkasi.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

Pre - Delivery Judgment made in
C.M.A(MD)No.171 of 2019
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