THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

C.M.A.No.2113 of 2021

1.Nithya

2.Minor Sri Sharan
[Minor rep. by Mother/Natural Guardian/Nithya]

...Appellants

Vs.

1.S.Ravichandran

2.The Managing Director,
Tamil Nadu State Transport Corporation Limited.,
Chennimalai Road, Erode Town & Taluk.

3.D.Velmurugan

4.Sriram ...Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 21.01.2021 made in MCOP.No.312 of 2017 on the file of the MACT/IV Additional District cum Sessions Court, Erode District at Bhavani.

For Appellants : Mr.M.Lokesh

For Respondents : Mr.M.Murali Vinoth for R2
Mr.R.Sree Vidhya for R4
R1 – served – No appearance
R3 – Left

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J U D G M E N T

(Judgment of the Court was made by **R.SUBRAMANIAN, J.)**

The claimants who are the wife and minor son of the deceased Babu Moan who died in a motor accident that occurred on 01.03.2014 are the appellants. The claimants sought for a compensation of Rs.99,20,000/- for the death of the said Babu Moan.

2. According to the claimants, on 01.03.2014 at about 7.30 p.m., when he was travelling as a pillion rider in a TVS Appachi motorcycle bearing Reg.No.TN-33-AQ-3097 which was driven by his friend

Velmurugan on the Nachiappa Raod, near Akilmedu Main Street at Erode, the bus bearing Reg.No.TN-33-N-2080 belonging to the 2nd respondent Corporation driven by its driver in a rash and negligent manner ran over the deceased, who fell down from the motorcycle, thereby causing his instantaneous death. Contending that the deceased was working as Sales Officer in HDB Financial Services, a subsidiary of HDFC Bank Ltd., and earning a sum of Rs.48,000/- per month the claimants sought for a compensation of Rs.99,20,000/-.

3. The claim was resisted by the 2nd respondent/ Transport Corporation contending that the deceased as well as the rider of the motorcycle were under the influence of the alcohol and it was due to the reckless driving of the motorcycle by the 3rd respondent, the deceased fell down from the vehicle and the bus which was following the two wheeler could not stop, despite frantic efforts by its driver. Terming the accident as a result of the driving under the influence of the alcohol, the Corporation contended that it cannot be made liable since there was no negligence on the part of the driver. It was also contended that the driver of the two wheeler did not have driving license at the time of the alleged accident.

4. At tria,l before the Tribunal, the 1st claimant wife of the deceased was examined as PW1, the eye witness to the accident was examined as PW2 and the Branch Manager of the HDB Financial Service was examined as PW3. Exs.P1 to P11 were marked. Ex.P10 is the letter of appointment. Ex.X1 is the letter issued by the HDB Financial Service on 12.02.2019. Ex.X2 is the cumulative pay slip for the period from April 2013 to February 2014.

5. Upon consideration of the evidence on record the Tribunal refused to believe Ex.X2, since it was an unsigned statement. Taking note of Ex.P10 the Tribunal fixed the monthly income at Rs.9,073/-, added 40% towards future prospects and deducted 1/3rd for personal expenses. Applied the multiplier '16' and arrived at the loss of dependency at Rs.16,25,856/-. The Tribunal added a sum of Rs.2,25,000/- towards loss of love and affection and consortium for the petitioners 1 and 2. Apart from the above, the Tribunal granted Rs.15,000/- each towards loss of estate and funeral expenses and Rs.7,500/- for transportation. The total compensation was thus arrived at Rs.18,88,356/-. The Tribunal took into account the fact that both the rider of the vehicle and the pillion rider viz., the deceased were under the influence of alcohol at the time of the accident and the FIR also disclosed the said fact, held that the deceased had contributed to the accident to an extent of 50%. Therefore, it deducted 50% from the compensation fixed and awarded a sum of Rs.9,94,175/-. Hence, the claimants are on appeal.

6. Mr.M.Lokesh, learned counsel appearing for the appellants would vehemently contend that the Tribunal erred in rejecting Ex.X2. According to the learned counsel, even eschewing Ex.X2, Ex.P10 would show that the salary when he joined the service was Rs.9,073/- in the year 2012. The deceased would have got some increment for the 2 years of service. Therefore, according to the learned counsel, the fixation of Rs.9,073/- based on the appointment order of the year 2012 was wholly unjust.

7. Mr.M.Murali Vinoth, learned counsel appearing for the

Transport Corporation would submit that the salary figure shown in Ex.X2 has been unduly exaggerated and therefore the same should not be taken into account. Pointing out that the total emoluments paid to the deceased which was hovering between Rs.10,000/- to Rs.18,000/- in the other months has suddenly jumped to Rs.48,000/- in February 2014. The learned counsel would contend that this figure has been boosted up only to increase the compensation.

8. Mrs.R.Sree Vidhya, learned counsel appearing for the Insurance Company would submit that in view of the fact that both rider as well as the deceased were under the influence of alcohol, the Insurance Company cannot be made liable and the Tribunal has rightly exonerated the Insurance Company from the liability and has directed payment of Rs.1,00,000/- towards personal accident coverage only.

9. We have considered the rival submissions. We find certain force in the submission of Mr.M.Murali Vinoth on the contents of Ex.X2. A perusal of the said document reveals that the submissions of the learned counsel are perfectly justified. Therefore, Ex.X2 cannot be a safe indicator of the income of the deceased. At the same time, relying upon Ex.P10 dated 27.01.2012 to fix the income atleast 2 years thereafter on 01.03.2014 may not be justified. It is admitted that the deceased had served in various financial institutions before he joined the present employer. That being so, the deceased would have necessarily got some increments and being a sales executive, he would have got some incentives also.

10. We are therefore of the considered opinion that taking into account the cumulative circumstances, the monthly income can be fixed at Rs.15,000/-. May be the deceased would have earned a little more or little less, but, we cannot avoid the guess work and we can only ensure that the fair compensation reaches the victim. We therefore take the monthly income at Rs.15,000/-. PW3, the Manager of the employer has deposed that the employment was not permanent in nature. Therefore, we can add only 40% towards future prospects. Thus the monthly income works out to Rs.21,000/- (Rs.15,000/- + 6000). We have to deduct 1/3rd towards personal expenses. Therefore, the monthly loss of dependency would be Rs.14,000/-, the multiplier applicable is 16. Therefore, the total loss of dependency would be Rs.26,88,000/-. We will have to add a sum of Rs.1,00,000/- payable by the Insurance company viz., 4th respondent. So, the total compensation would be Rs.27,88,000/-.

11. Adverting to the non-conventional damages, the Tribunal has granted Rs.2,25,000/-, the break up of which is as follows, Loss of Love and affection to the wife and the minor child at Rs.1,00,000/-, the Spousal consortium to the wife at Rs.75,000/- and Parental consortium to the minor child at Rs.50,000/-. In all, a sum of Rs.2,25,000/- has been granted towards loss of love and affection and consortium. In ***National Insurance Co. Ltd Vs. Pranay Sethi and others*** reported in ***2018 (1) LW 331,*** the Hon'ble Supreme Court has held that compensation for consortium or love and affection or whatever it is called can only be a fixed amount of Rs.40,000/- per head. Therefore, the wife and the minor child would only be entitled to Rs.80,000/- towards consortium and love and affection. The amount awarded towards loss of estate, funeral expenses transportation are confirmed.

12. Therefore, the total compensation works out to Rs.29,05,500/-. Since the Tribunal has concluded that both the rider and the victim viz., the deceased were under the influence of alcohol when the accident occurred the Tribunal was justified in deducting 50% toward contributory negligence. If we are to deduct 50% towards contributory negligence the amount that the claimant would be entitled to would be Rs.14,52,750/-. It is stated that the Insurance Company has deposited Rs.50,000/-, which is payable by it under the personal accident coverage. Since it is stated that no amount has been deposited by the Corporation, the TransportCcorporation will have eight (8) weeks time to pay its share of the compensation i.e., Rs.14.02,750/- with interest at 7.5% per annum on the said sum from the date of claim petition till date of payment.

13. On such deposit the 1st claimant wife would be entitled to a sum of Rs.8,52,750/- with proportionate interest and the minor child would be entitled to Rs.6,00,000/- within proportionate interest. The share of the minor along with proportionate interest shall be kept in a cumulative interest earning Fixed Deposit in a Nationalized Bank, till he attains the age of majority and the same shall be paid over to him on his attaining majority. The wife will be entitled to withdraw her share of the compensation with proportionate interest. It is seen that the claimants have obtained exemption from paying Court fee, they will pay the Court fee for the enhanced compensation awarded by us. No costs.

(R.S.M.,J.) **(N.S.,J.)**
20.10.2023

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Index :No
Internet :Yes
Neutral Citation :No
Speaking order

To

The Motor Accidents Claims Tribunal,
IV Additional District cum Sessions Court,
Erode District at Bhavani.

<u>R.SUBRAMANIAN, J.</u>
<u>and</u>
<u>N.SENTHILKUMAR, J.</u>

dsa

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