IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2310 of 2013
and
MP.No.1 of 2013

The Managing Director,
Karnataka State Road Transport Corporation
Bangalore Division,
Shanthinagar, Bangalore – 560027. ... Appellant

..Vs..

1. Parvathamma
2.Babu
3.Dhanalakshmi
4.Vijayakumar
5.Manikandan
6.Minor. Vinoth Kumar
7.Minor . Giri Kumar
(Minors represented by mother /1st petitioner) ...Respondents/claimants

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 17.04.2013 made in MCOP.No.1033 of 2010 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.S.V.Ramesh

For Respondents : Mr.Mukund R. Pandiyan

JUDGMENT

This appeal has been filed by the appellant/Insurance Company seeking to set aside the impugned award dated 17.04.2013 passed by the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri, in MCOP.No.1033 of 2010 .

2. The case of the appellant, in brief, is as follows:

On 12.10.2008, when the deceased Rajappa got down from the bus at Mookandapalli bus stop and waiting to cross the road, the driver of the SRTC mini bus bearing Regn.No.K.A.19.F.1957 driven the vehicle in a rash and negligent manner, came from Hosur to Bangalore side and hit on the said Rajappa and caused the accident, due to which, the deceased sustained severe head injuries and later, he died. Claiming compensation of Rs.10,00,000/, the claimants filed a claim petition in M.C.O.P.No.1033 of 2010 before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.7,77,000/- with interest at the rate of 6% per annum from the date of the petition till the date of deposit payable by the appellant. Questioning the liability fixed on the appellant/Insurance Company, the present appeal came to be filed.

3. The Appellant / Insurance Company, unsatisfied with the liability fastened on them under the impugned award, has preferred this appeal seeking to set aside the award of the Tribunal.

4. The learned counsel for the appellant has submitted that the judgment and decree of the Tribunal is materially irregular, lacks evidence and contrary to law. The Tribunal has failed to note that the post mortem report reflects the age of the deceased as 47 years but the trial court has taken the age of the deceased as 44 years without any supportive documents. It erred in adopting the multiplier of 14 wherein it should be less for a person whose age is only 47 years. It has also erred in concluding that the respondents 2 to 5 are majors and married in holding that the respondents are the dependents of the deceased. It failed to note that the question of deduction towards family and living expenses would be one third and not one fifth. It failed to note that the deceased all of a sudden

tried to cross the road, due to which, the deceased met with an accident and as such, the appellant is not liable. It failed to note that no income proof is filed to show that the deceased was earning Rs.5000/- p.m., and the court without any basis has fixed the salary as Rs.5000/-. The finding of the Tribunal in respect of negligence and involvement of the appellant's vehicle is contrary to the evidence on record and perverse .and hence the appellant/Insurance Company ought to be exonerated.

5. The learned counsel for the respondents has submitted that the Tribunal has rightly considered the materials and evidences and has awarded the just and fair compensation and also rightly fixed the liability on the Insurance Company and hence, the same does not require any interference in the hands of this Court. Hence, he prays for dismissal of the Appeal.

6. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record carefully and meticulously.

7. Now the question to be decided is only with regard to the liability fixed on the part of the appellant / Insurance Company by the Tribunal.

8. From the materials available on record, it is seen that the appellant has contended that deceased was a Supervisor in a brick kiln. But no proof of income has been filed by the claimants. In the absence of material evidence, the Tribunal fixed a sum of Rs.5000/- as monthly income of the deceased, who died in the accident that had occurred in the year 2008, which seems to be reasonable.

9. The main contention of the appellant is that the Tribunal has committed an error in deducting 1/5 towards personal expenses of the deceased. Since the deceased was a married man and there are seven dependents on the deceased, it would be appropriate to deduct ¼ towards the personal expenses of the deceased instead of 1/5, as per *Sarla Verma* and *Praney Sethi case*. This Court finds much force in the submission of the counsel for the appellant. It is an admitted fact that the claimants are the

legal heirs to succeed to the estate of the deceased. As per the decision of the Honourable Supreme Court in *Pranay Sethi* case, the deduction towards personal expenses and living expenses of the deceased should be one-third where the number of dependent family members is 2 to 3. In the present case, except the claimants, there is no other legal heir left behind by the deceased on his death. A perusal of Ex.P2/Post mortem report, would reveal that the deceased was 47 years at the time of accident. Hence, adoption of the multiplier of 14 is an erroneous one in the instant case and the correct multiplier to be adopted is '13' since the age of the deceased is proven as 47 years. Similarly, this court opines that, in this instant case, the deduction to be adopted is '¼' towards family and living expenses. Therefore, the Tribunal ought not to have deducted $1/5^{th}$ as in the case of a bachelor, instead, it ought to have deducted ¼ of the income. Accordingly, the loss of dependency is modified from Rs..7,77,000/- to Rs.6,90,000/-. as detailed below:

5000 - ¼ =1250; 5000 – 1250 = 3750 ; 3750 x 12 x 13 = Rs.5,85,000/-

10. In all other respects, the amount awarded by the Tribunal under other heads are confirmed. Thus, this Court is inclined to modify the compensation granted by the Tribunal as detailed hereunder:

Heads	***Amount awarded by the Tribunal (Rs.)***	***Award Amount by this Court (Rs.)***
Loss of Dependency	6,72,000/- (4000 x 12 x14)	Rs.5,85,000/- (3750 x 12 x13)
Love & Affection	72,000/-	72,000/-
Loss of Consortium	20,000/-	20,000/-
Funeral Expenses	5,000/-	5,000/-
Loss of Estate	8,000/-	8,000/-
Total	**7,77,000/-**	**6,90,000/-**

11. In the result,

(i) This appeal is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

(ii) The compensation awarded by the Tribunal is modified from Rs.7,77,000/- to Rs.6,90,000/- with interest at the rate of 6% p.a. from the date of claim petition till the date of realisation.

(iii) The appellant/Insurance Company is directed to deposit the modified award amount i.e, Rs.6,90,000/- along with interest at the rate of 6% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.1033 of 2010 within a period of six weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the appellants/claimants along with accrued interest through RTGS within a period of two weeks thereafter. No costs.

22.06.2023

Index:Yes/No
Internet:Yes/No

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To

1.The Motor Accidents Claims Tribunal
Additional District Court, Krishnagiri.

2.The Section Officer
V.R.Section,
High Court of Madras.

A.A.NAKKIRAN, J.

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