BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.02.2024

Pronounced On : 22.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.236 of 2020

The Branch Manager,
The Tamil Nadu Government Transport Corporation,
Srivilliputhur Nagar,
Virudhunagar. : Appellant /Respondent

Vs.

1.V.Thangapandian

2.V.Selvi : Respondents/Petitioners

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree, dated 19.02.2018 in M.C.O.P.No.17 of 2015 on the file of the Chief Judicial Magistrate Court, Virudhunagar at Srivilliputhur.

For Appellant : Mr.K.Sudalayandi

For Respondents : No Appearance.

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.17 of 2015, dated 19.02.2018 on the file of the Chief Judicial Magistrate Court, Virudhunagar at Srivilliputhur.

2. The appellant/Transport Corporation, who was made liable to pay compensation of Rs.10,20,920/- with interest and costs to the respondents/claimants for the death of Ponnuthai, consequent to an accident occurred on 10.08.2014, challenged the quantum of compensation awarded at by the Tribunal.

3. It is pertinent to note that though the appellant/Transport Corporation in the appeal grounds has raised the negligence aspect and the consequent liability mulcted on the appellant/Transport Corporation, at the time of hearing the appeal, the learned counsel for the appellant would submit that they are challenging the quantum of compensation awarded by the Tribunal.

4. The learned counsel for the appellant would submit that the Tribunal has mistakenly fixed the annual income of the deceased as Rs.87,480/- ; that the

loss of income arrived at Rs.9,01,920/- is excessive; that the Tribunal has awarded excessively at Rs.1,00,000/- towards loss of love and affection and that the total compensation awarded at Rs.10,20,920/- by the Tribunal is highly excessive and without any basis.

5. The learned counsel for the appellant would mainly contend that the Tribunal, without considering the ample documentary evidence, by mainly relying on the death certificate and the legal heirship certificates, has fixed the age of the deceased at 44 years; that since the claimants being the son and daughter of the deceased were shown to be aged 30 years and 27 years respectively in the year 2014 and that therefore, the age fixed at 44 years cannot be sustained.

6. As rightly contended by the learned counsel for the appellant, in the First Information Report lodged by one Murugan, relative of the deceased, has given the age of the deceased as 60 years at that time. It is not in dispute that after the accident, the said Poonuthai was admitted in Government Hospital, Srivilliputhur and after first aid treatment, she was taken to Jawahar Hospital at Rajapalayam and that despite treatment, she succumbed to the injuries at 9.40 pm on 10.08.2014 itself.

7. As rightly pointed out by the learned counsel for the appellant, in the accident register under Ex.P.2 recorded by duty Medical Officer attached to the Government Hospital, Srivilliputhur and the postmortem certificate under Ex.P.3, the age of the deceased is shown as 60 years. The claimants have also produced the discharge summary issued by the Jawahar Trauma Care Centre under Ex.P.12 and whereunder also the age of the deceased is shown as 60 years. No doubt, in the death certificate under Ex.P.4 and the legal heir certificate under Ex.P.5, the deceased was shown to be aged 44 years. As rightly contended by the learned counsel for the appellant, the above two certificates came to be issued only on the particulars furnished by the applicant.

8. It is pertinent to note that the deceased was working as a house keeper in Sankara Eye Hospital at the time of accident and the claimants have produced the pay slip issued by the said Hospital for proving the income. But they have not chosen to get the copies of the service records or some other records available at Sankara Eye Hospital to prove the age of the deceased. It is not in dispute that the claimants, son and daughter of the deceased were aged 30 years and 27 years in the year 2014 as per their claim petition.

9. Considering the available records, the Tribunal without considering the other documentary evidence, by mainly relying the death certificate and legal heir certificate, has fixed the age of the deceased at 44 years and the same cannot be accepted and that the age of the deceased is taken as 60 years at the time of accident.

10. The Tribunal, taking note of the pay slip issued by the Sankara Eye Hospital, has fixed the monthly income of the deceased at Rs.7,290/-. The Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, has concluded that the deceased was self employed or on a fixed salary, an addition at 40% of the established income should be the warrant, where the deceased was below the age of 40 years. An addition of 25% where deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. Applying the above decision of the Honourable Apex Court, 10 % of the income is only to be added towards future prospects and it comes to Rs.8,019/- per month. (Rs.7,290 x 10/100).

11. The Tribunal has rightly deducted 1/3 of the income towards personal and living expenses of the deceased and after such deduction, the monthly income would come to Rs.5,346/- (Rs.8,019 x 1/3). As per dictum laid down by the Honourable Supreme Court in **Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104,** the appropriate multiplier would be '9' and as such the loss of dependency would come to Rs.5,77,368/- [5,346 x 9x 12].

12. The Tribunal has awarded Rs.1,00,000/- towards loss of love and affection and the Tribunal has not awarded any amount towards loss of consortium. Our Honourable Supreme Court in **Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others** reported in **(2018) 18 SCC 130**, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. Honourable Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, Honourable Apex

Court in **The New India Assurance Company Ltd. Vs. Smt.Somwati and others,** has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in **Pranay Sethi'**s case. But, at the same time, they have specifically observed that no amount should be awarded under separate head of loss of love and affection. Considering the above, the claimants being the son and daughter, are entitled to get Rs.40,000/- each towards loss of parental consortium.

13. The Tribunal has further awarded Rs.15,000/- towards funeral expenses; Rs.4,000/- towards Transportation expenses. On perusal of the records, it is evident that they have produced the medical bills under Ex.P.13 series, wherein the 1st one is cash bill for getting two units of blood for Rs.1,700/- and the second one is for Rs.7,035/- issued by the Jawahar Trauma Care Centre. Admittedly, the appellant has disputed neither the genuineness nor the contents of the bills. Hence, the claimants are also entitled to get medical expenses at Rs.1,700/- and Rs.7,035/-. They are also entitled to get Rs.15,000/- towards loss of estate under the conventional head.

14.Considering the above, this Court decides that the claimants are entitled to get compensation under the following heads:

Head of compensation	Amount awarded by the tribunal	Amount confirmed/ modified by this Court
Loss of dependency	Rs. 9,01,920/-	Rs. 5,77,368/-
Loss of Love & affection	Rs. 1,00,000/-	-
Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
Transportation Charges	Rs. 4,000/-	Rs. 4,000/-
Parental Consortium (40,000x2)	-	Rs. 80,000/-
Loss of Estate	-	Rs. 15,000/-
Medical Bills (Rs.1,700+7,035)		Rs. 8,735/-
Total	Rs.10,20,920/-	Rs.7,00,103/- rounded off Rs.7,00,100/-

15. In view of the above, the claimants are entitled to get total compensation of **Rs.7,00,100/-.** 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 accordingly.

16. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation amount is reduced from **Rs.10,20,920/- to Rs.7,00,100/-** with

interest at 7.5% per annum. The claimants are entitled to get Rs.3,50,050/- each. The Appellant is directed to deposit the modified award amount, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the claimants are permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs.

22.03.2024

NCC : Yes/No
Index : Yes/ No
Internet : Yes/ No
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To

1.The Chief Judicial Magistrate Court,
Virudhunagar at Srivilliputhur.

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

K.MURALI SHANKAR,J.

DAS

Pre-delivery order made in
C.M.A(MD)No.236 of 2020

22.03.2024