BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.06.2024

PRONOUNCED ON : 14.06.2024

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.278 of 2017
and CMP(MD).No.3268 of 2017

The Managing Director
Tamil Nadu State Transport Corporation Limited
Dindigul .....Appellant/Respondent

Vs.

1.Swarnalakshmi

2.Minor Kiruthigha

3.Minor Kaviya

4.Chinnu

5.Pappa

6.Natarajan

7.Illayaraja ...Respondents/Claimants

(Respondents 2 & 3 are minors represented by their mother and natural guardian, the 1st respondent Mrs.Swarnalakshmi)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the judgment and decree in MCOP.No.1306 of

2014 dated 04.12.2015 on the file of the Motor Accident Claims Tribunal and Special District Court, Tiruchirappalli.

For Appellant	: Mr.K.Sudalaiyandi
For R1 to R7	: Mr.N.Sudhagar Nagaraj

J U D G M E N T

The present appeal has been filed by the Transport Corporation challenging the award passed by the Motor Accident Claims Tribunal/Special District Judge, Trichy in MCOP.No.1306 of 2014.

2.It is the averment in the claim petition that while the deceased was riding a two-wheeler, the transport corporation bus coming from the opposite direction had dashed against the two-wheeler. Due to the said impact, the rider had sustained fatal injury and he passed away. According to the claimants, the accident has taken place only due to the rash and negligent driving on the part of the driver of the transport corporation.

3.The claimants had further contended that the deceased was working as a Lab Attender in Bharathidasan University and he was earning a sum of Rs.24,670/- p.m. The claim petition was filed by the wife, two minor children, the parents and brothers of the deceased person claiming a total compensation of Rs.90/- lakhs.

4.The Transport Corporation had filed a counter contending that the rider of the two-wheeler had attempted to overtake a Van on the wrong side of the road. When the driver of the Transport Corporation bus applied sudden brake, he stopped the vehicle on the left side of the road and the bike got dashed in the front side of the respondent bus. Therefore, there is no negligence on the part of the driver of the transport corporation bus. The Transport corporation had further stated that the deceased was not having any valid driving license and he was not wearing helmet at the time of the accident. They had also disputed the quantum as prayed for in the claim petition.

5.The Tribunal after considering the oral and documentary evidence had arrived at a specific finding that the accident had taken place only due to the rash and negligent driving on the part of the driver of the Transport Corporation. There is no dispute with regard to the monthly income of the deceased. The Tribunal had deducted 1/4th towards personal expenses, added 30% towards future prospects and 20% was deducted towards income tax.

6.The Tribunal had arrived at a finding that the correct multiplier for the age of 46 years is 13. However, the Tribunal had adopted a split multiplier by utilizing the multiplier 12 for the monthly income of Rs.24,640/- and 1 multiplier applied at the rate of 50% of Rs.24,670/-. The Tribunal had arrived at a compensation of Rs.28,86,300/- towards loss of dependency. The

Tribunal had further awarded a sum of Rs.50,000/- towards loss of love and affection. Rs.50,000/- towards loss of consortium to the first petitioner, Rs.20,000/- towards funeral expenses and transport expenses. Total compensation of Rs.30,06,300/- has been awarded. Challenging the said award, the present appeal has been filed.

7.According to the learned counsel appearing for the appellant, the deceased was not having any driving license and he was not wearing helmet at the relevant point of time and hence, 20% of the compensation should have been deducted towards contributory negligence on the part of the deceased person.

8.Per contra, the learned counsel appearing for the respondents had contended that the Tribunal was not right in adopting split multiplier. The Tribunal ought to have awarded enhanced amount towards loss of love and affection, transport expenses, funeral expenses and loss of estate. Hence, he prayed for sustaining the award passed by the Tribunal.

9.I have considered the submissions made on either side and perused the material records.

10.As rightly contended by the learned counsel appearing for the respondents/claimants that the Tribunal ought not to have adopted the split multiplier for the service and the retirement period. The judgment of the Hon'ble Supreme Court reported in ***(2022) 5 SCC 107 (R.Valli and others***

Vs.Tamil Nadu State Transport Corporation Limited) in paragraph No.11 has held as follows:

> *"11. Thus, we find that the method of determination of compensation applying two multipliers is clearly erroneous and run counter to the judgment of this Court in Pranay Sethi, affirming the judgment in Sarla Verma. Since the deceased was 54 years of age on the date of incident, therefore, the suitable multiplier would be 11 as per the judgment of this Court in Sarla Verma approved by this Court in Pranay Sethi."*

11.In view of the above said judgment of the Hon'ble Supreme Court, this Court is inclined to apply multiplier of 13 and the compensation under the head of loss of dependency is calculated as follows:

Monthly Income of the deceased	Rs.24,670/-
Less: 1/4th for personal expenses	Rs. 6,167/-

	Rs.18,503/-
Added 30% future prospects	Rs. 5,550/-

	Rs.24,053/-

Total loss of dependency	Rs. 24,053/-
Rs.24,053/-x13x12	**Rs.37,52,268/-**

12.The claimants 6 and 7 are the brothers of the deceased who are aged about 28 and 33 years at the time of accident and they cannot be considered to be dependent upon the deceased person. The wife, two minor daughters and parents are considered to be dependent and each one of them are entitled to Rs.40,000/- towards loss of love and affection and in total, a sum of Rs.

2,00,000/- is awarded towards loss of love and affection. A sum of Rs.15,000/- is awarded towards funeral expenses and Rs.10,000/- is awarded towards transport expenses. A further sum of Rs.15,000/- is awarded towards loss of estate.

The compensation amount is re-assessed as follows:

Loss of dependency	Rs. 37,52,268/-
Loss of love and affection (Rs.40,000/-x 5)	Rs. 2,00,000/-
Funeral expenses	Rs. 15,000/-
Transport charges	Rs. 10,000/-
Loss of estate	Rs. 15,000/-
Total	**Rs. 39,92,268/-**

13.The Hon'ble Division Bench of our High Court in a judgment reported in ***2022(1) TN MAC 794 (DB) (Manager, Cholamandalam MS General Insurance Co.,Ltd., Vs. Nagarathinamma and others)*** has deducted 10% towards non-production of driving license of the deceased and non wearing of helmet. In the present case, though a specific averment is raised in the counter that the deceased person was not having a driving license, the driving license of the deceased person has not been produced. A perusal of Exhibit P2-postmortem report indicates that the deceased has sustained grievous head injury and he had succumbed to the said injury. Therefore, by not having driving license and not wearing of the helmet, the deceased has contributed to the accident. Hence, 10% out of the total compensation is deducted towards contributory negligence. After deduction, the compensation amount is Rs.35,93,041/- and after 20% deduction towards income tax, the total compensation amount comes to Rs.28,74,433/-.

14.The compensation amount is reduced from Rs.30,06,300/- to Rs.28,74,433/-.The appellant is directed to deposit the said modified compensation amount along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant shall be entitled to Rs.9,24,433/-. The claimants 4 and 5 each shall be entitled to Rs.1,25,000/-. The claimants 2 and 3 each shall be entitled to Rs.7,50,000/-. The claimants 6 and 7 shall be entitled to Rs.1,00,000/- each. All the claimants except the 3rd claimant namely minor Kaviya shall be entitled to withdraw their respective share amount along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

15.The share of the 3rd claimant shall be deposited in a Nationalised Bank in Fixed Deposit till she attains majority. The interest accruing on such deposit is permitted to be withdrawn by the 1st respondent/mother of minor, once in three months directly from the bank. After attaining majority, it is for the minor claimant to withdraw her share by making necessary application before the Tribunal discharging guardianship.

16.In the result, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

14.06.2024

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

1. The Motor Accident Claims Tribunal
(Special District Judge),
Tiruchirappalli.

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

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.278 of 2017
and CMP(MD).No.3268 of 2017

14.06.2024