

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2017

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.M.A.No.1032 of 2017

1. Karpagam

2. M.Navaneethan

... Appellants/Petitioners

Vs

The Managing Director
Tamil Nadu State Transport Corporation Ltd
Division II, Rangapuram,
Vellore

... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 26.07.2012 made in M.C.O.P.No.376 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court), Kanchipuram.

For Appellants : Mr.M.Sivakumar

For Respondents : Mr.K.J.Sivakumar

JUDGMENT

Challenging the award dated 26.07.2012 passed by the Motor Accidents Claims Tribunal, Subordinate Judge, Kancheepuram, in M.C.O.P.No.376 of 2009, the Claimants have come up with this appeal seeking enhancement of compensation.

2. On 17.12.2008 at about 12.30 p.m., when the claimant was standing on the left side of the Kanchipuram bus stand platform, the Transport Corporation Bus bearing Registration No.TN 23-N-1582, which was driven from Vandhavasi towards Kanchipuram, came in a rash and negligent manner and entered inside the bus stand with uncontrollable speed and hit against the deceased, due to which, she sustained fatal injuries. Hence, the daughters of the deceased have filed a Claim Petition before the Tribunal seeking a sum of Rs.5,00,000/- as compensation.

3. On a consideration of the oral and documentary evidence, the Tribunal held that the driver of the bus is

responsible for the accident and awarded a sum of Rs.2,90,000/- as compensation to the claimants. Break-up details of the award are as follows:

Loss of Income	Rs.2,64,000/-
Funeral Expenses	Rs. 10,000/-
Mental Agony	Rs. 10,000/-
Transport Charges	Rs. 5,000/-
Damages to cloth	Rs. 1,000/-
Love and affection	Nil
Total	Rs.2,90,000/-

4. Heard both sides and perused the materials available on record.

5. On a perusal of the award, it is seen that the deceased was stated to be a Coolie in a rice mill and she was presumed to have earned a notional income of Rs.6,000/- per month. Since there is no proof in support of the avocation of the deceased, the monthly income is fixed at Rs.3,000/- as per the decision of the Supreme Court in the case of Syed Sadiq vs. Divisional Manager, United India Insurance Company Limited, (2014) 2 SCC 735, . However, the Tribunal fixed her monthly income at Rs.2,000/-, after making provision for her personal expenses at $1/3^{rd}$, and it applied a multiplier of 11 based on the decision of the Supreme Court in the case of Sarala Varma Vs. Delhi Transport Corporation & another reported in [2009(2) TNMAC 1]: [2009 ACJ 1298], and arrived at a total dependency at Rs.2,64,000/- under the head "loss of income". It is the contention of the learned counsel for the appellants that the deceased, who was aged about 54 years, a labourer in Modern Rice Mill, has drawn a salary of Rs.6,000/- per month, but the Tribunal has fixed the monthly income of the deceased only Rs.3,000/- and awarded the compensation of Rs.2,64,000/-, which is very low and the same has to be enhanced. Considering the fact that the deceased was a Coolie/Labourer, this Court modifies the compensation under the head "loss of income" from 2,64,000/- to Rs.3,96,000/- [$4,500 \times 12 \times 11 \times 2/3$]. As the Claims Tribunal has not awarded any compensation towards love and affection to the daughters of the deceased, a sum of Rs.20,000/- is awarded under the head "Love and affection". So far as the head under "mental agony", the award passed by the Tribunal is set aside. Compensation granted under the other heads, 'Funeral Expenses', 'Transport Charges' and 'Damages to cloth', are just and reasonable and the same are confirmed. The final figure arrived at various heads will appear as below :

Loss of Income	Rs.3,96,000/-
Funeral Expenses	Rs. 10,000/-
Mental Agony	-
Transport Charges	Rs. 5,000/-
Damages to cloth	Rs. 1,000/-
Love and affection	Rs. 20,000/-
Total	Rs.4,32,000/-

6. On going through the papers, it is seen that there was a delay of 1090 days in filing the appeal and while condoning the delay, the claimant has agreed for waiving of interest for the default period and hence the appellant is not entitled to any interest for the said period.

7. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal is enhanced from Rs. 2,90,000/- to Rs.4,32,000/-. The respondent-Transport Corporation is directed to deposit the entire award amount, less if any already deposited, within four weeks from the date of receipt of a copy of this order, and on such deposit, the claimants are entitled to withdraw it forthwith. The claimants are directed to pay the necessary Court fee, if any for the enhanced portion of the award amount. The claimants are not entitled to interest for the above said delay period. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

srn

To

The Motor Accident Claims Tribunal
(Sub Court), Kanchipuram.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.18570
+1cc to Mr.M.Sivakumar, Advocate, S.R.No.18562

C.M.A.No.1032 of 2017

MG(CO)
CA(10/04/2017)