

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.02.2017

CORAM

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.649 of 2010

1.Bakiyam
2.S.Sudha
3.S.Suresh

... Appellants/Claimants

Vs.

The Managing Director,
Tamil Nadu Transport Corporation Ltd.,
No.12, Ramakrishna Road, Salem-7. ... Respondent/Respondent

Prayer.: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 01.10.2009 in M.C.O.P.No.1755 of 2007 on the file of the Motor Accidents Claims Tribunal (1st Additional District Judge) Salem.

For Appellants : Mr.C.Kulanthaivel
For Respondent : Mr.P.Jagadeeswaran

JUDGMENT

The appeal has been preferred by the claimants for enhancement of compensation.

2. The first claimant is the wife and the claimants 2 and 3 are the son and daughter of the deceased Subramani.

3. The appellants filed the above petition claiming compensation of Rs.25,00,000/- for the death of Subramani who died in a motor accident on 16.02.2007. According to the appellants, the driver of the bus bearing No.TN.27N.1375 at the time of accident drove the bus in a rash and negligent manner and dashed against the van bearing Registration No.TN.30.D9559, in which the deceased travelled. As a result of the accident, the deceased sustained injury and later succumbed to the injuries.

4. In support of their claim, the claimants examined two witnesses and marked 10 documents. The Tribunal after considering the material held that the accident occurred only due to rash and negligent of the driving of the bus driver. The bus belonged to the respondent.

5. The Tribunal, on consideration of materials, has awarded a total compensation of Rs.2,85,500/-. The compensation was directed to be paid with 9% interest from the date of the claim petition.

6. The claimants have preferred this appeal for enhancement of compensation. The Tribunal had fixed the monthly income of the deceased at Rs.2,000/-p.m. It has awarded Rs.4,000/- to the 1st petitioner/wife towards loss of consortium, Rs.15,000/- towards loss of love and affection, Rs.2,500/- towards funeral expenses.

7. The learned counsel for the respondent/Transport Corporation would submit that there is no tangible evidence to show that the deceased was earning a sum of Rs.15,000/- p.m. He would further submit that the Tribunal, on the basis of the materials, has correctly fixed the monthly income at Rs.2,000/- and it does not require any modification.

8. The learned counsel for the appellant would submit that the deceased was a partner in a firm and he owned agricultural lands and he would have earned a sum of Rs.15,000/- per month. In the absence of any concrete evidence, the Tribunal fixed the monthly income at Rs.2,000/-. The learned counsel for the appellant has relied upon the judgment in New India Assurance Co., Ltd., Kumaran Road, Tiruppur 641 601, Coimbatore District vs. Kayalvizhi and 5 Others, 2010(1) CTC 823, wherein it has been observed as follows:

The land possessed by the deceased still remains with the claimants as his legal heirs. There is, however, a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered".

In the light of the above said Judgment and dictum laid down and having regard to the age of the deceased and income from agricultural lands and business, this Court is inclined to fix

the monthly income of the deceased at Rs.4,000/-.

9. The learned counsel for the respondent/Transport Corporation would submit that there is no tangible evidence to show that the deceased was earning a sum of Rs.15,000/- p.m. He would further submit that the Tribunal, on the basis of the materials, has correctly fixed the monthly income at Rs.2,000/- and it does not require any modification.

10. The Tribunal awarded a meager sum of Rs.4,000/- as consortium to the wife. It is to be enhanced to Rs.35,000/-. Under the head of loss of love and affection, the Tribunal awarded only Rs.15,000/-. This Court is of the view that the compensation under this head does not require any modification.

11. Accordingly, a sum of Rs.4,000/- is taken as monthly income of the deceased after deducting 1/3 amount towards personal expenses and 15% is added towards future prospects as the deceased was aged 55 at the time of the accident, the multiplier to be applied is 11 The loss of dependency is works out to:

Heads	Calculation
Income	Rs.4000/- p.m.
15% of (i) above to be added as future prospects	[Rs.4,000.00 + Rs.600.00] = Rs.4,600.00 per month
1/3 rd deducted as personal expenses of the deceased	[Rs.4,600.00 - Rs.1533.00] = Rs.3,067.00 per month rounded of Rs.3,000/-
Loss of dependency	[Rs.3,000.00 x 12 x 11] = Rs.3,96,000
Loss of consortium	Rs. 35,000
Loss of Love and affection	Rs. 15,000
Funeral expenses	Rs. 2,500
Total	Rs.4,48,500/-

12. The appellants are entitled to a total compensation of Rs.4,48,500/-. The appeal is partly allowed. The enhanced amount will carry interest at 7.5% per annum. The respondent/Transport Corporation is directed to deposit the enhanced amount less the

amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. Inter se apportionment, shall be in the same ratio as ordered by the Tribunal with proportionate increase in the light of the enhancement of the compensation. The appellants/claimants are permitted to withdraw their respective shares with accrued interest, on due application, after adjusting the amount, if any, already withdrawn. The appellants are directed to pay necessary court fee for the enhanced amount. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kkd

To
The Motor Accidents Claims Tribunal
(1st Additional District Judge,)
Salem

2.The Section Officer
VR Section High Court Madras

+1 cc to Mr.C.Kulanthaivel Advocate sr 10401

C.M.A.No.649 of 2010

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