

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
C.M.A.No.1030 of 2018

and
C.M.P.No.8325 of 2018

The Manager,
Tamil Nadu State Transport Corporation,
No.12, Ramakrishna Road,
Chinna Puthur, Salem 636 007. ... Appellant/Respondent

Vs

1.A.Makbool John

2.Minor M.Mohamed Al Rayon

3.Sabeera bebe ... Respondents/Petitioner

PRAYER : Civil Miscellaneous Appeal filed against the judgment award and decree dated 12.08.2017 made in M.C.O.P.No.1596 of 2015 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Salem.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.N.Damodaran

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Transport Corporation against the award of Rs.18,60,000/- awarded as compensation to the respondents for the death of one Mohamed Jaffer, aged about 40 years, employed as driver, allegedly earning about Rs.35,000/- per month, in the accident which occurred on 25.04.2015, when he was riding his motorcycle from Salem to Ayothiyapattinam, during which time the Transport Corporation bus driven rashly and negligently hit behind the motorcycle causing the death of the deceased. Therefore, the claim petition.

2.The Tribunal found that the accident occurred because of the rash and negligent driving of the driver of the appellant/Transport Corporation bus and awarded a sum of Rs.18,60,000/- as compensation. The said award is being challenged before this Court.

3.Heard Mr.D.Venkatachalam, learned counsel appearing for the appellant. Since the liability has not been questioned, this Court is considering only the quantum of compensation.

4.According to Mr.D.Venkatachalam, learned counsel for the appellant, fixing a sum of Rs.15,000/- per month for a driver is on the higher side. Therefore, he seeks to reduce the amount.

5.A perusal of the award would show that the Tribunal fixed Rs.15,000/- as monthly income and did not add any amount towards future prospects. Acceding to the contention of the learned counsel for the appellant, this Court reduces the monthly income from Rs.15,000/- to Rs.10,000/- and if 50% is added towards future prospects, the same would come to Rs.15,000/-. Therefore, the said amount determined by the Tribunal, without adding future prospects is confirmed.

6.The Tribunal rightly deducted 1/3rd towards personal expenses, taking into consideration the size of the family of the deceased and applied the right multiplier of "15" as the age of the deceased was 40 years and determined the loss of income at Rs.18,00,000/-.

6.Loss of consortium:

Even though as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Rs.40,000/- has to be awarded to the 1st respondent/widow, only a sum of Rs.20,000/- was awarded to the widow by the Tribunal. Hence, a sum of Rs.40,000/- is awarded towards loss of consortium.

7.Loss of love and affection:

Similarly, a sum of Rs.20,000/- was awarded to the 2nd respondent, who is 4 years old. Taking into consideration the other amounts awarded, this Court is not inclined to enhance the amount under this heading. Hence, the Tribunal's award under this head is confirmed.

8.Funeral Expenses, Loss of estate and Transportation:

No amount was awarded by the Tribunal towards funeral expenses; loss of estate and transportation. Therefore, a sum of Rs.15,000/- each is awarded towards loss of estate and

funeral expenses and a sum of Rs.10,000/- is awarded towards transportation charges.

9.Hence, the total compensation payable in this case is Rs.19,00,000/-.

Head	Amount (Rs.)
Loss of Income	1800000
Loss of consortium	40000
Loss of love and affection	20000
Loss of estate	15000
Funeral expenses	15000
Transport charges	10000
	1900000

10.The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. Though the Transport Corporation has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.18,60,000/- is enhanced to Rs.19,00,000/-, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

11.Out of the award amount, the 1st respondent/wife is entitled to get Rs.10,00,000/-; the 2nd respondent/minor son is entitled to get Rs.7,00,000/- and the 3rd respondent/mother is entitled to get Rs.2,00,000/-.

12.The claimants are directed to pay the additional court fee, if any, within a period of one week from the date of receipt of a copy of this order.

13.Taking into consideration that the buses bearing Regn. Nos.TN-30-N-1539 and TN-30-N-1218, have been attached, pursuant to the attachment warrant issued by the Tribunal in the Execution Petition filed to execute the award passed by the Tribunal in MCOP.No.1596 of 2015, the said buses are directed to be released by the Tribunal forthwith, without insisting upon any deposit, as this court by this order granted time till 24.06.2018 to deposit the award amount. If the award amount is not deposited on or before 24.06.2018, the Tribunal shall immediately attach the buses.

14.The appellant/Transport Corporation is directed to deposit the entire award amount, as per the modified award passed by this Court, on or before 24.06.2018. On such deposit being made, The Tribunal is directed to transfer the respective shares of respondents 1 and 3 to their bank accounts. As far as 2nd respondent/minor's share is concerned, the same shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till he attains majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

15.With the above directions, this Appeal is dismissed. Consequently connected miscellaneous petitions is closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sai

To

I Additional District Judge,
Motor Accidents Claims Tribunal,
Salem.

+1cc to Mr.D.Venkatachalam, Advocate sr.no.5258

C.M.A.No.1030 of 2018

mr(co)

aa25/04/2018

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