

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2446 of 2010

1.Smt. J. Kumar
2. Smt. Thilagavathi
3. Smt.Sasikala
4.J.Amsavalli
5.Minor Balamurugan
6.Minor Arulmurugan

... Appellants

Vs

The Managing Director,
Tamil Nadu State Transport Corporation Limited.,
Kancheepuram. Division – I, No.3/137,
Salamedu, Vazhudhareddy,
Villupuram 605 602.

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.3.2008 and made in M.C.O.P.No.418 of 2004 on the file of the Motor Accident Claims Tribunal, Sub Judge, Kancheepuram.

For Appellants : Mr. M. Sivakumar

For Respondent : Mr. N. Anand

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated

24.3.2008 passed by the Motor Accident Claims Tribunal, Sub Judge, Kancheepuram in M.C.O.P.No.418 of 2004.

2. The brief facts leading to the filing of the instant appeal are as follows:

(i) One K. Jagadeesan died on 14.5.2004 as a result of an accident caused by a bus bearing Registration No.TN-32-N-1729 owned by the respondent transport corporation.

(ii) The appellants are the dependants of the deceased K. Jagadeesan. They preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.418 of 2004 seeking compensation of Rs.7,00,000/-.

(iii) The Motor Accident Claims Tribunal, by its award dated 24.3.2008 in MCOP.No.418 of 2004 directed the respondent transport corporation to pay the appellants, a sum of Rs.3,09,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation with proportionate costs.

(iv) Aggrieved by the quantum of compensation awarded by the tribunal in its award dated 24.3.2008 passed in MCOP.No.418 of 2004, the instant appeal has been filed by the claimants seeking enhancement of compensation.

3. Heard Mr.M. Sivakumar, learned counsel for the appellants and Mr.N. Anand, learned counsel for the respondent.

4. According to the learned counsel for the appellant, the compensation awarded by the tribunal to the appellants under the impugned award is an inadequate compensation. According to him, the deceased K.Jagadeesan was employed as a Security in a Private concern and was earning a monthly income of Rs.6000/- at the time of the accident. His salary certificate was also marked as Ex.P.7 before the tribunal. According to him, the accident happened on 14.5.2004, but the tribunal without considering the salary certificate Ex.P.7, has without any basis, assessed the monthly income of the deceased at the time of accident as Rs.3,000/-.

5. He would further contend that even though in the grounds of appeal, the appellants have questioned the quantum of compensation awarded under various other heads, the learned counsel has not questioned the same while making his submissions. His arguments was restricted to the assessment of the monthly income by the tribunal under the impugned award.

6. Per contra, learned counsel for the respondent transport

corporation would submit that the employer of the deceased was not examined as a witness before the tribunal to prove that the deceased was earning a monthly income of Rs.6,000/- at the time of the accident. According to him, only based on the materials available on record, the tribunal has fixed the notional income of the deceased at the time of the accident at Rs.3000/-.

7. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels observes the following;

(a) The age and avocation of the deceased at the time of the accident has not been disputed by the respondent transport corporation before the tribunal. Admittedly, the deceased was aged 50 years and was working as a security in a private concern at the time of the accident.

(b) The accident happened on 14.5.2004 resulting in the death of K.Jagadeesan. The appellants have filed the salary certificate of K. Jagadeesan which is marked as Ex.P.7 before the tribunal which discloses that he was earning a monthly income of Rs.6000/- at the time of the accident. Even though the salary certificate Ex.P.7 was marked, the tribunal has assessed the monthly income of the deceased only at Rs.3000/- since the employer of the deceased was not examined as a

witness.

(c) Considering the age and avocation and the year of the accident, this Court is of the considered view that the assessment of the monthly income of the deceased at the time of the accident as Rs.3,000/- is low and it has to be assessed at Rs.4,500/- per month. Except for the erroneous assessment of the monthly income of the deceased at the time of the accident, the compensation awarded under various other heads in the impugned award does not call for any interference by this Court.

(d) Insofar as the deduction of personal expenses of the deceased is concerned, the tribunal has erroneously deducted 1/3rd from the monthly income of the deceased. Since there are six claimants/dependants which include the wife of the deceased and five children, the tribunal ought to have deducted only 1/4th towards the personal expenses of the deceased from his monthly income. Thus by taking into account the monthly income of the deceased at Rs.4,500/- and by adopting 11 multiplier and giving 1/4th deduction towards the personal expenses of the deceased, the loss of income for the dependants is calculated as follows;

$$\text{Rs.4500} - \text{Rs.4500} \times \frac{1}{4} = \text{Rs.3375}$$

$$\text{Rs.3375} \times 12 \times 11 = \text{Rs.4,45,500/-}$$

(e) This Court enhances the compensation awarded by the

tribunal in the following manner;

Sl. No.	Amount awarded by the tribunal	Amount Awarded by this Court
Loss of dependency (4500 x 12 x 11 x ¼)	Rs.2,64,000/-	Rs.4,45,500/-
Loss of consortium	Rs. 15,000/-	Rs. 15,000/-
Transportation cost	Rs. 2,000/-	Rs. 2,000/-
Funeral expenses	Rs. 8,000/-	Rs.08,000/-
Mental agony	Rs. 10,000/-	Rs.10,000/-
Loss of love and affection	Rs. 10,000/-	Rs. 10,000/-
Total	Rs. 3,09,000/-	Rs. 4,90,500/-

(f) The enhanced amount shall carry interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

8. Thus, the compensation awarded by the tribunal under the impugned award is enhanced from Rs.3,09,000/- to Rs.4,90,500/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

9. In fine,

i) the Civil Miscellaneous Appeal is partly allowed. No costs.

ii) the compensation awarded by the tribunal is enhanced from Rs.3,09,000/- to Rs.4,90,500/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation. The

enhanced amount shall carry interest at the rate of 7.5% per annum.

iii) It is represented that the entire compensation awarded by the tribunal has already been deposited. The Transport Corporation is directed to deposit the enhanced compensation amount awarded by this Court along with interest at the rate of 7.5% per annum from the date of claim, till the date of realisation to the credit of MCOP.No.418 of 2004 within a period of four weeks from the date of receipt of a copy of this order.

iv) On such deposit being made, the appellants are entitled for their respective shares as per the ratio apportioned by the tribunal. The appellants 1 to 4 are permitted to withdraw their shares on filing an appropriate application.

v) The shares of the minor respondents shall be deposited in any one of the Nationalised Bank till they attain majority and the 1st appellant/natural guardian of the minor shall be entitled to withdraw the interest on the shares of the minors once in three months.

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Internet: Yes/No

Index: Yes/No

Speaking order/Non-speaking order

msr

ABDUL QUDDHOSE, J.

msr

To

1. The Motor Accident Claims Tribunal,
Sub Judge, Kancheepuram.
2. The Record Clerk,
Vernacular Section,
Madras High Court.

C.M.A.No.2446 of 2010



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