

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2712 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation
Coimbatore Ltd.,
37, Mettupalayam Road,
Coimbatore-43.

.. Appellant

Versus

1. Chinnammal

2. V.Minnal Durai

.. Respondents

Civil Miscellaneous Appeal filed for enhancement of compensation against the decree and order passed in M.C.O.P.No.49 of 2013 dated 23.09.2015 in on the file of Motor Accident Claims Tribunal and IV Additional District Judge, Bhavani, Erode District.

For Appellant : : Mr.S.R.T.Sundari

For Respondents : : Mr.C.Kulanthaivel for R1

JUDGMENT

The appellant/transport corporation has filed this appeal challenging the compensation awarded by the Tribunal in M.C.O.P.No.49 of 2013 dated 23.09.2015 in on the file of Motor Accident Claims Tribunal and IV Additional District Judge, Bhavani, Erode District.

2. For the sake of convenience, the parties were hereinafter be referred to in this judgment as they are arrayed before the Tribunal.

3. The case of the petitioner is that on 11.12.2012 at about 9.05 p.m, when the deceased Kannupaian @ Vadivel was standing on the left side of the road near Kavundapadi bus stand, the second respondent corporation's bus bearing Regn.No.TN-33-N-1906 came at high speed and dashed against the deceased resulting in his death. The bus was driven by the driver of second respondent corporation bus in a careless manner, resulting in the accident. At that time of accident, the deceased was the sole earning member of the family and he was aged about 60 years and was working as a Carpenter and earning not less than 10,000/- per month. Hence, the petitioner seeks compensation of Rs.7,00,000/- from the respondent.

4. On the other hand, opposing the petition, the second respondent/transport corporation contended that the accident did not occur as alleged by the petitioner. The second respondent/transport corporation bus was going in normal speed and the driver operated the bus carefully. The deceased suddenly crossed the road and due to old age, he himself fell down on the road and contributed to the accident. Thus, the second respondent/transport corporation contended that the accident occurred only due to the carelessness of the deceased and the respondents are not responsible for the same. The claim of the petitioner about the age, income and avocation of the deceased are disputed and the same has to be established by the petitioner. Hence the second respondent/transport corporation seeks dismissal of the petition.

5. The petitioner examined herself as P.W.1 and P.W.2 was also examined and produced Ex.P.1 to Ex.P.8 documents before the Tribunal to prove their claim. The second respondent/transport corporation examined the first respondent ie driver of the bus as R.W.1, but did not produce any documents. The Tribunal, on the basis of available materials, found that the first respondent/driver of the bus is responsible for the accident and directed the respondents jointly or severally to pay a sum of Rs.6,54,000/- as compensation to the petitioner.

6. Aggrieved by the said finding of the Tribunal, the second respondent/transport corporation has come forward with the appeal disputing the quantum of compensation awarded by the Tribunal.

7. Heard both sides counsel and perused the records available on the file.

8. The learned counsel for the respondent/transport corporation contended that the Tribunal erred in adopting multiplier "9" instead of "5" and also fixed the income of the deceased on higher side. The respondent corporation contended that the total compensation award by the Tribunal is not based on acceptable materials and as such, the learned counsel seeks to set aside the same.

9. On the other hand, the learned counsel for the petitioner contended that they have proved with appropriate evidence, the age and income of the deceased and as such, the Tribunal has correctly fixed the amount of compensation payable by the respondents and the said award needs no interference. Hence, the petitioner sought for dismissal of the petition.

10. The Tribunal, on the basis of oral evidence of P.W.2 eyewitness to the occurrence as well as Ex.P.1 F.I.R registered

against the driver of the second respondent corporation bus and Ex.P.2 Copy of Observation Mahazar and Ex.P.3 copy of rough sketch of the accident spot and also Ex.P.6 Copy of Charge Sheet laid against the first respondent/driver herein concluded that the accident occurred only due to the rash and negligent driving of the vehicle of the first respondent/driver of the second respondent transport corporation's bus. The said conclusion of the Tribunal is not disputed by the Transport Corporation. Perusing the evidence of P.W.2 and above said documents, it is clear that the accident occurred only due to rash and negligent driving of the first respondent/driver of the bus and F.I.R and Charge Sheet has also been laid against him. In such circumstances, the finding of the Tribunal that the rash and negligent driving of the first respondent/driver of the bus alone is responsible for the accident, is confirmed.

11. The petitioner is the wife of the deceased and only legal heir as evidenced by Ex.P.8 Legal heirship Certificate. The deceased was stated to be 60 years old at the time of accident as per Ex.P.5 Postmortem Certificate, in which his age was mentioned as about 60 years. The petitioner claims that her husband ie., the deceased Kannupaiyan @ Vadivel was working as Carpenter and earning Rs.10,000/- per month. No documentary proof or independent oral evidence to substantiate the same is produced before the Court. Hence, the Tribunal fixed the notional income of the deceased at Rs.6,000/- per month. The petitioner being the only dependent of the deceased, it will be appropriate to deduct 1/3rd of the income and the remaining should be the contribution to the family by the deceased. By deducting 1/3 of the income towards the personal expenses of the deceased, then his contribution to the family would be Rs.6,000/- (-) Rs.2,000/- = Rs.4,000/-, and the multiplier "9" is adopted. The total loss of dependency of the petitioner is arrived at Rs.4,000/- x 12 x 9 = Rs.4,32,000/- . The details of the compensation awarded by the Tribunal are as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of dependency of the deceased (Rs.4,000 x 12 x 9)	Rs.4,32,000/-
2	Loss of consortium to the petitioner	Rs.1,00,000/-
3	Loss of love and affection	Rs.1,00,000/-
4	Funeral expenses	Rs.10,000/-
5	Transport Expenses	Rs.10,000/-
6	Damage to clothing and articles	Rs.2,000/-
	Total	Rs.6,54,000/-

However, the said award is disputed by the petitioners/claimants contending that the notional income of the deceased ought to have been fixed at Rs.7,000/- per month. However, the learned counsel for the second respondent/transport corporation disputed the same and stated that the deceased being 60 years old, could not have earned more amount. The Tribunal has rightly fixed his income. However, considering the facts and circumstances that the accident took place during 2012, it will only be appropriate to fix the monthly income of the deceased at Rs.7,000/- instead of Rs.6,000/- fixed by the Tribunal. Further, the petitioner contended that the Tribunal has not provided compensation for future prospects and the same is to be provided for. The deceased being 60 years old, it will be appropriate to provide 10% of the income towards future prospects. Thus, the loss of dependency is calculated as follows:

The monthly income of the deceased being Rs.7000/- only towards Future Prospects, 10% of the same to be added. Thus the total income is Rs.7,000 /- (+) Rs.700 = 7,700/- out of the same 1/3rd is to be deducted towards personal expenses of the deceased. Thus Rs.5134/- x 12 x 9 = Rs.5,54,472/-.

Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of Consortium = Rs.40,000/-
 Loss of Estate = Rs.15,000/-
 Funeral Expenses = Rs.15,000/-

Rs.5,000/- is granted towards transport expenses. Thus, the total loss of dependency of the petitioner is arrived at Rs.6,29,472/-. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of dependency	Rs.4,32,000/-	Rs.5,54,472/-
2	Loss of consortium to the petitioner	Rs.1,00,000/-	Rs.40,000/-
3	Loss of love and affection	Rs.1,00,000/- -	
4	Loss of Estate		Rs.15,000/-
5	Funeral Expenses	Rs. 10,000/-	Rs.15,000/-
6	Transport Expenses	Rs. 10,000/-	Rs. 5,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
7	Damage to clothes and articles	Rs. 2,000/-	Rs. ...
	Total	Rs.6,54,000/-	Rs. 6,29,472

12. In view of the above modification in the award of the Tribunal, the civil miscellaneous appeal is partly allowed with costs. The second respondent/transport corporation is directed to deposit the entire award amount of Rs.6,29,472/- (Rupees Six lakhs twenty nine thousand four hundred and seventy two only) with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited. On such deposit, the petitioner/claimant is entitled to get the entire award amount. The petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/--

Assistant Registrar(CS IV)

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Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal
IV Additional District Judge,
Bhavani, Erode District
2. The Section Officer, VR Section,
High Court, Madras.
3. The Managing Director,
Tamil Nadu State Transport Corporation
Coimbatore Ltd.,37, Mettupalayam Road,
Coimbatore-43.

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.5922

RR(CO)
sm:19.6.2018

C.M.A.No.2712 of 2016