

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1170 of 2012

and

M.P No.1 of 2012

The Managing Director,
The Tamilnadu State Transport
Corporation Ltd.,
Coimbatore Division,
Coimbatore.

...Appellant/2nd Respondent

vs.

1.Kamalathal

2.K.Nallasivam

3.Ealiyammal

..Respondents 1 to 3/Petitioners 1 to 3

4.Senthil Kumar (Given up)

...4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 06.07.2011 passed in MCOP.Nos.596 of 2009 on the file of the Motor Accidents Claims Tribunal / I Additional District Court Judge, Erode.

For Appellant : Mr.S.V.Vasanthakumar

For Respondents : Mr.S.Lakshmanasamy for R1 to R3

R4 - Given up.

JUDGMENT

The appellant Tamil Nadu State Transport Corporation Limited, Coimbatore is the 2nd respondent in MCOP.No.596 of 2009 on the file of the Motor Accidents Claims Tribunal / I Additional District Judge, Erode. The respondents 1 to 3 filed the claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.20,00,000/- for the death of one Kulandaisamy, husband of the first claimant and father of the 2nd claimant and son of the 3rd claimant.

2. The case of the claimants is that on 07.02.2009 at about 11.30 a.m, the deceased Kulandaisamy was riding his two-wheeler bearing Registration No.TN 33 AF 6333 on Erode -Sathyamangalam Road and when he was nearing Cheran Nagar,

Thanneerpandalpalayam, a speeding bus bearing Registration No.TN 33 N 1914 belonging to the appellant / Tamil Nadu State Transport corporation hit the two-wheeler, as a result of which, he sustained injuries all over his body. According to the claimants, though the deceased was rushed to Ramakrishna Hospital at Coimbatore immediately, after the accident he succumbed to injuries on 10.03.2009. According to them, the rash and negligent driving of the driver of the bus (1st respondent) was the cause of the accident and thereafter, the present appellant should pay compensation to them.

3. The first respondent (driver of the bus) remained absent before the Tribunal and he was set exparte. The appellant contested the claim petition and the learned Motor Accidents Claims Tribunal /I Additional District Judge, Erode, after analysing the evidence on record, awarded a compensation of Rs.8,64,000/- together with interest at the rate of 7.5% per annum to the claimants. Aggrieved over the quantum of compensation awarded by the Tribunal, the Tamil Nadu State Transport Corporation Limited, Coimbatore has filed the present appeal.

4. A perusal of the records shows that the deceased was a Milk vendor and the Tribunal has fixed his monthly income as Rs.3,450/-. However, the Tribunal has adopted multiplier as "10" instead of "11" as laid down in the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

5. It is relevant to point out that the claimants have not filed any appeal against the quantum of compensation awarded by the Tribunal. However, the Division Bench of this Court in M/s.Bharathi Axa General Insurance Company Limited vs. Jayalakshmi @ Panchalai and others in CMA.No.3629 of 2013, dated 02.12.2014, held that even though the appellant / Insurance Company has not challenged the quantum of compensation awarded by the Tribunal and in the absence of any appeal or cross objection filed by the respondents / claimants, this Court has got powers and jurisdiction under Order 41 Rule 33 and Section 151 of the Code of Civil Procedure and Article 227 of the Constitution of India to enhance the compensation, if it is found that just compensation was not awarded. Applying the principles laid down in the decision, the Award is enhanced. The monthly income of the deceased is fixed at Rs.5250/- and as per the decision rendered in National Insurance Co. vs Pranay Sethi and others reported in 2017 (2) TNMAC 601 (SC), 10% should be added to the income of the deceased towards future prospects since he died at the age of 54. Since there are three dependents 1/3 should be deducted towards his personal expenses and as already observed, proper multiplier to be adopted in the instant

case is 11, as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.5,250/-

10% Future Prospects = Rs.525/-

Total = Rs.5,250/- + Rs.525/- = Rs.5775/-

After 1/3 deduction = Rs.3850/-

Loss of dependency

= Rs. 3,850/- x 12 x 11

= Rs.5,08,200/-

6. Apart from the above said amount, the appellants / claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/-, Rs.15,000/- and Rs.3,75,000/- towards "loss of estate", "loss of love and affection", "funeral expenses" and medical treatment respectively. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.5,08,200/-
2.	Medical Treatment	Rs.3,75,000/-
3.	Loss of estate	Rs.15,000/-
4.	Loss of love and affection	Rs.40,000/-
5.	Funeral expenses	Rs.15,000/-
Total		Rs.9,53,200/-

Thus the compensation awarded by the Tribunal in MCOP.No.596 of 2009 is enhanced from Rs.8,64,000/- to Rs.9,53,200/- which would carry interest at the rate of 7.5% per annum.

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.8,64,000/- to Rs.9,53,200/-.

(iii) The respondents / claimants are directed to pay the court fee for the enhanced compensation amount, within a period of three weeks from the date of receipt of copy of this order and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The appellant / Tamil Nadu State Transport Corporation Limited is directed to deposit the enhanced compensation amount ie., Rs.9,53,200/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.596 of 2009 on the file of the Motor Accidents Claims

Tribunal/ I Additional District Court, Erode within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the respondents / claimants are at liberty to withdraw the same after following due process of law and as per the ration of apportionment made by the Tribunal.

(vi) Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The I Additional District Court,
Erode.

CMA.Nos.1170 of 2012
and
M.P No.1 of 2012

KJ(CO)
SP(18/01/2021)



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