

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.813 of 2011

1.Rani
2.Thanji Ammal
3.Minor Venkatesan
4.Minor Parthiban
5.Minor Murugan ...Appellants/Petitioners

..Vs..

The Managing Director
Tamil Nadu State Express Corporation
Vellore ...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 13.06.2006, passed in M.C.O.P.No.486 of 2005, on the file of the Motor Accident Claims Tribunal, Tiruvanamalai.

For Appellant : Mr.F.Terry Chellaraja

For Respondent : Mr.S.Sairaman

JUDGMENT

The appellants are the claimants in M.C.O.P.No.486 of 2005, on the file of the Motor Accidents Claims Tribunal, Tiruvanamalai. They filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.10,00,000/- for death of one Pachaiyappan, husband of the first claimant and father of the claimants 3 to 5 and son of the second claimant.

2.The brief case of the appellants/claimants is as follows:

On 08.10.2004, at about 07.30 hours, when the deceased Pachaiyappan was walking along Chengam road, near Kannakurukai Amman Medicals, a speeding bus bearing Registration No.TN 23 N 1398 belonging to the respondent, hit him, as a result of which, he sustained grievous injuries all over his body and he was immediately rush to Government Hospital, Tiruvanamalai. However, he succumbed injuries on the way to hospital. According

to the appellants/claimants, the rash and negligent driving of the driver of the bus bearing Registration No. TN 23 N 1398 belonging to the respondent was the cause of the accident and therefore, the respondent is liable to pay compensation to them.

3.The respondent contested the claim petition by filing a counter. The Motor Accident Claims tribunal, Triuvanamalai after analysing the evidence on record, awarded a compensation of Rs.3,91,000/- together with interest at the rate of 7.5% per annum.

4.Not satisfied with the quantum of compensation awarded by the tribunal, the appellants/claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 seeking for enhancement of compensation.

5.Mr.F.Terry Chellaraja, learned counsel appearing for the appellants would contend that though the deceased was a mason earning a sum of Rs.6,000/- per month, the tribunal has fixed the income of the deceased as only Rs.3,000/- per month. He would further contend that no amount was added towards future prospects of the deceased. His further contention is that a very meagre amount was awarded under the heads of funeral expenses and loss of consortium.

6.Per contra, Mr.S.Sairaman, learned counsel appearing for the respondent would contend that the tribunal after considering the various aspects has awarded a sum of Rs.3,91,000/- and the same need not be disturbed at this juncture.

7.A perusal of the records shows that the deceased had three minor children, wife and aged mother as his dependents. However, the tribunal has deducted 1/3 towards the personal expenses of the deceased. The Compensation awarded by the tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of income	Rs.3,84,000/-
2.	Loss of consortium	Rs.5,000/-
3.	Funeral expenses	Rs.2,000/-
Total		Rs.3,91,000/-

8.The tribunal has not awarded any amounts towards future prospects, especially, when the deceased was aged just 37 years on the date of accident. Since the deceased was a mason by profession, the notional income is fixed as Rs.4,500/-. As per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 40% should be added

towards future prospects and the income would be Rs.6,300/- per month. Since, there are five dependents, 1/4th should be deducted towards the personal expenses of the deceased and the proper multiplier to be adopted in the instant case is 15 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.4,500/-
40% Future Prospects = Rs.1,800/-
Total = Rs.4,500/- + Rs.1,800
= Rs.6,300/- x 3/4 = Rs.4,725
Loss of earning capacity
= Rs.4,725/- x 15 x 12
= Rs.8,50,500/-

9. Apart from the above amount, the appellants/claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards loss of estate, loss of consortium and funeral expenses. The Compensation awarded by this court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of earning capacity	Rs.8,50,500 /-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.9,20,500/-

Thus the claimants are entitled to a sum of Rs.9,20,500/- together with interest at the rate of 7.5% per annum.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the tribunal is enhanced from Rs.3,91,000/- to Rs.9,20,500/-.

(iii) The respondent in MCOP.No. 486 of 2005 is directed to deposit the enhanced compensation amount (less the amount already deposited by them) 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 M.C.O.P.No.486 of 2005, dated 13.06.2006, on the file of the Motor Accident Claims Tribunal, Tiruvanmalai within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the Tamil Nadu State Transport Corporation Limited, the appellants/claimants are at liberty to withdraw the same, as apportioned by the tribunal, after following due process of law.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The District Judge,
Motor Accidents Claims Tribunal,
Maduranthakam.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to M/s.M.Malar, Advocate, SR.No.7087
+1cc to Mr.S.Sairaman, Advocate, SR.No.7416

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Kak(11/06/2019)

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