

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.903 of 2015

1. Muniyammal
2. R.Murali
3. R. Srinivasan
4. Vijaya
5. Parameswari
6. Devi

...Appellants/Petitioners

Vs.

Tamil Nadu State Transport Corp(Salem)Ltd.,
Rep.by its Managing Director,
No.12, Ramakrishna Road,
Salem.

... Respondent/ Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.12.2014 made in M.C.O.P.No. 2750 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellants

: Mr.V.Mohan Choudary

For Respondent

: Mr.D.Venkatachalam

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 15.12.2014 made in M.C.O.P.No.2750 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.2750 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.. They filed the said claim petition claiming a sum of Rs.12,50,000/- as compensation for the death of one M.N.Raman, who died in the accident that took place on 16.04.2012. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the respondent's

corporation bus and directed respondent/Transport Corporation to pay a sum of Rs.3,25,000/- as compensation to the appellants. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellants/claimants contended that the deceased was working as a Mason and earning Rs.500/- per day at the time of the accident as per the oral evidence of PW1 to PW3. But the tribunal has fixed the monthly income of the deceased at Rs.5000/- which is very meagre. Further, the tribunal has wrongly adopted the multiplier 5 instead of 7, since the age of the deceased was 65years at the time of the accident. He has also contended that the tribunal went wrong in not awarding any amount towards loss of expectation of life. The compensation awarded under other heads viz., Loss of love and affection, Funeral expenses and also very less. Hence, the learned counsel for the appellants seeks enhancement of compensation before this Court by filing the present appeal.

4.Per contra, the learned counsel appearing for the respondent/Insurance Company contended that on the side of the respondent the driver of the MTC bus has been examined as RW1 who deposed that he had seen the deceased only before 15 feet and that he had crossed his vehicle and suddenly on seeing overtaking vehicle he rushed back in panic and fell down before his vehicle for which RW1 is no way responsible for the said accident.

5.Heard the learned counsel appearing for the appellants as well as learned counsel appearing for the respondent/Insurance Company and perused all the materials available on record.

6.From the materials available on record, it is seen that the appellants have contended that the deceased was working as a Mason and was earning Rs.500/- per month. To prove his avocation, PW3 has been examined, who has stated that the deceased was a mastery and she has been working under him. In the absence of any materials, the Tribunal has fixed a sum of Rs.5,000/- per month as notional income of the deceased. This Court by relying the upon the judgment reported in 2014 TNMAC 459 SC which deals with fixation of earning for a vegetable vendor at 6,500/-, fix the same amount as monthly income of the deceased. Further by considering the statements made inteh FIR given by the son of the deceased, who had stated that his age of the father is 65 years, this Court finds it proper to adopt the multiplier 7 instead of 5 adopted by the tribunal at 5 and enhance sum awarded under the head Pecuniary Loss at Rs. 4,09,500/- $(6,500 \times \frac{3}{4} \times 12 \times 7)$. Further, the sum of

Rs.25,000/- granted by the Tribunal towards loss of consortium to the 1st petitioner is meagre and the same is enhanced to Rs.40,000/- and the sum granted towards 'Loss of love and affection to the petitioners 2 to 6 is reduced to Rs.50,000/-. The sum granted at Rs.15,000/- under the head 'Funeral expenses' is reasonable and the same is confirmed. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary loss	2,25,000	4,09,500	Enhanced
2.	Loss of consortium to the 1 st appellant	25,000	40,000	Enhanced
3.	Loss of love and affection to the appellants 2 to 6	60,000	50,000	reduced
4.	Funeral expenses	15,000	15,000	Confirmed
6.	Loss of estate	-	15,000	Granted
	Total	Rs. 3,25,000/-	Rs. 5,29,500/- (Rounded off to Rs.5,29,000/-)	Enhanced by Rs.2,04,000/-

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7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,25,000/- is hereby enhanced to Rs.5,29,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 1st appellant being wife of the deceased is entitled to a sum of Rs. 2,29,000 /- and the appellants 2 to 6 are entitled to a sum of Rs. 60,000 /- each as compensation.

8. The respondent/Transport corporation is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

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To
The III Judge,
(The Motor Accident Claims Tribunal),
Court of Small Causes,
Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.V.Mohan Choudary , Advocate SR.No. 61050
+1cc to Mr.D.Venkatachalam, Advocate SR.No. 60832

C.M.A.No.903 of 2015

A.SK(07.04.2021)