

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.686 of 2016

1.Vennila

2.Minor Deepika

Represented by her next guardian
mother Vennila

... Appellants/Claimants

Vs.

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
37-Mettupalayam Road,
Coimbatore.

..Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.03.2013 made in M.C.O.P.No.352 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

For Appellants : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed seeking enhancement of compensation granted by the Tribunal in the award dated 21.03.2013 made in M.C.O.P.No.352 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

2.The appellants are claimants in M.C.O.P.No.352 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari and they filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Ramesh, who died in the accident that took place on 22.03.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due

to rash and negligent driving by the driver of the bus belonging to the respondent/Transport Corporation and directed the respondent to pay a sum of Rs.6,46,000/- as compensation to the appellants/claimants.

4. Not being satisfied with the award amount granted by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation granted by the Tribunal.

5. The learned counsel appearing for the appellants contended that the deceased was working as a power loom worker and he was earning not less than Rs.8,000/- per month. The Tribunal has erred in fixing the meagre sum of Rs.4,500/- per month as notional income of the deceased. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the appellants have not let in any evidence with regard to avocation and income earned by the deceased and in the absence of any evidence with regard to his avocation, the Tribunal has fixed Rs.4,500/- per month as notional income of the deceased, which is proper. The Tribunal has awarded a total sum of Rs.70,000/- under conventional heads and the same is in order as per the judgment of the Honble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi) and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent and perused the materials available on record.

8. From the materials available on record, it is seen that the appellants have claimed that the deceased was earning not less than Rs.8,000/- per month in power loom. PW2 examined on behalf of the appellants has stated that the deceased was working in S.R.M.Textiles and was earning Rs.8,000/- per month. PW2 had not produced any document to substantiate that the deceased was earning Rs.8,000/- per month. In the absence of any evidence with regard to income of the deceased, the Tribunal has fixed notional income of the deceased at Rs.4,500/- per month. The accident took place in the year 2009. Hence, the notional income of the deceased fixed by the Tribunal is enhanced to Rs.6,000/- per month. The deceased was aged 33 years at the time of accident. The Tribunal has not awarded any amount for future prospects and hence the appellants are entitled to 40% for future prospects. Thus, the award of the Tribunal towards loss of income is modified as follows:

$$\text{Rs.6,000/-} + 2400 \text{ (6000 X 40\%)} \times 12 \times 16 \times \frac{2}{3} = \text{Rs.10,75,200/-}$$

The Tribunal has awarded a total sum of Rs.70,000/- under conventional heads. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), the appellants are entitled to only a sum of Rs.70,000/- under conventional heads. In view of the same, the amounts awarded by the Tribunal under conventional heads are hereby confirmed. 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.	Loss of income	5,76,000	10,75,200	Enhanced
2.	Funeral Expenses	10,000	10,000	Confirmed
3.	Loss of consortium	30,000	30,000	Confirmed
4.	Loss of Love and Affection	20,000	20,000	Confirmed
5.	Transportation	10,000	10,000	Confirmed
	Total	6,46,000	11,45,200	Enhanced by Rs.4,99,200 /-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,46,000/- is hereby enhanced to Rs.11,45,200/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The first appellant being the wife of the deceased is entitled to Rs.7,00,000/- and the second appellant being the daughter of the deceased is entitled to Rs.4,45,200/-. The appellants/claimants shall pay necessary Court fee if any, on the enhanced compensation. The respondent is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the first appellant is permitted to withdraw her respective share amount along with proportionate interest and costs, less the amount if any, already withdrawn. The share amount of the minor/second appellant is directed to be deposited in any one of the nationalized bank till she attains majority. The first

appellant/first claimant is permitted to withdraw the interest once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar (Insp.cell)

//True copy//

Sub Assistant Registrar

kj

To

The Subordinate Judge,
The Motor Accidents Claims Tribunal
Sankari.

+2cc to Mr.C.Paraneedharan, Advocate SR.No.3359

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.3226

C.M.A.No.686 of 2016

VD (CO)
GMY (10/07/2019)



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