



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.07.2019

DELIVERED ON: 10.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2410 of 2019

1.Ramesh
2.Malathy

... Appellants/Petitioners

Vs.

1.Iyyadurai
2.Muthukumar
3.The Managing Director
Tamil Nadu State Transport Corporation Ltd,
Kumbakonam,
Rep. by its Branch Manager
Having his office at Railways Station New Road,
Kumbakonam Town and District. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.10.2017 made in M.A.T.C.O.P.No.196 of 2016 on the file of the Motor Accident Claims Tribunal, District Court at Karaikal.

For Appellants : Mr.T.Saikrishnan

For R3 : 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 27.10.2017 made in M.C.O.P.No.196 of 2016 on the file of the Motor Accident Claims Tribunal, District Court at Karaikal.

2.The appellants herein are the claimants aggrieved against the award of the Tribunal Rs.11,03,000/- as compensation against the claim of Rs.25,00,000/-.



3.The brief facts is as follows:

On 20.06.2016 at about 16.30 hours the daughter of the petitioner's namely Bhuvaneshwari was travelling in the TNSTC bus bearing Reg.No.TN-49-N-1901 as a passenger from Karaikal to go to her home at Surakudy, near Hospital bus stop, after attending her seing taining class. Since, the bus which is expected to stop, was not stopped at the said Hospital bus stop and therefore the 1st respondent gave the whistle to stop the bus at the next bus stop called as Government Higher Secondary School bus stop. The said Bhuvaneshwari was getting down from the bus through the front door step of the bus at the said school bus stop and while she was on the way of getting down, the 1st respondent without verifying whether the passenger Bhuvaneshwari has fully got down or not hurriedly, rashly and negligently gave whistle to start the bus as the 2nd respondent also who is duty bounded to verify whether the passenger has got down and not by watching through the side mirror suddenly started the bus and by that made her to fallen down from the door step and made her to be thrown on the road and caused severe head injury on her parietal region and she became unconscious. Immediately, she was tamed to the nearby Community Health Centre, Thirunallar where from she was referred to General Hospital, Karaikal and after giving first aid treatment, she was referred to JIPMER Hospital, Puducherry and on the next day she died. The claimants claimed a sum of Rs.25,00,000/- as compensation for the death of their daughter.

4.The 3rd respondent/Transport Corporation denied the mode of accident as stated in the claim petition. The Transport Corporation contended that there was no fault on the part of bus driver of the 2nd respondent as well as the 1st respondent herein. The 2nd respondent was diligent and careful in his driving and he is an experienced driver. The appellants have failed to prove the nature of age and occupation of the deceased. The amount awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

5.The Tribunal after analyzing the evidence and documents has placed before the same. Regarding the negligence aspect it has given a finding that the Corporation bus driver who is responsible for the accident by both driver and conductor were negligent in their duty and the negligent aspect was fixed on the driver as well as conductor of the said bus. While determining the compensation, the Tribunal has awarded a sum of Rs.11,03,000/- by taking the deceased income at Rs.6,500/- per month. In the absence of any proof and also by verifying Ex.P8/ID card produced by the claimants that she was a student at the time of accident and also by taking the age of the



deceased as 18 years. The loss of income has been arrived by the Tribunal and the sum also assessed by the Tribunal for various losses as claimed by the claimants. The amount awarded by the Tribunal is meagre. Aggrieved against the said award the claimants have preferred this appeal.

6. In the grounds of appeal, the appellants have contended that the fixation of compensation is extremely loss and the quantum of compensation awarded to the appellants is totally unjust and unfair. The Tribunal has erred in fixing the income of the deceased to be Rs.6,500/- per moth when the deceased was a tailor and earning around Rs.400/- per day. The Tribunal ought to have considered the sum and the sum determined by the Tribunal is not justified. Apart from that, the deceased was a college student and the Tribunal has also not properly considered that the deceased was a qualified person in tailoring and as such would have definitely earn much higher sum as monthly income than what was fixed by the claims Tribunal. The deceased was only 18 years at the time of the accident. The appellants have lost their only daughter. The Tribunal not considered these aspects and the sum awarded by the Tribunal are not reasonable as against the principles laid down by High and Supreme Court. In support of his contention, he relied on the following judgment of Hon'ble Supreme Court of India reported in "2018 SCC Online SC 1546" in the case of "Magma General Insurance Co. Ltd., Vs Nanu Ram" is extracted as hereunder:

"The MACT awarded compensation to the family of the deceased as follows:

i. Income: Rs.5,432/- per month

ii. Deduction towards personal expenses: Rs.1,780/-
(1/3rd of income)

iii. Multiplier: 7 (as per the age of the father)

iv. Loss of future income: Rs.2,99,208
[i.e. (5432 - 1780) x 12 x 7]

v. Loss of love and affection : Rs.25,000/-

vi. Funeral expenses : Rs.15,000/-

Total compensation awarded : Rs.3,39,208/-
with interest @ 7% from the
date of the claim until
realization and costs.



The High Court re-assessed the compensation as follows:

- WEB COPY
- i. Income (as per minimum wages) : Rs.6,000/- per month
 - ii. Future prospects at 50% of (i) : Rs.3,000/- per month
 - iii. Total income: Rs.9,000/-
 - iv. Deduction of personal expenses: Rs.3,000/-
(i.e. $\frac{1}{3}$ rd of total income)
 - v. Multiplier: 18 (as per the age of the deceased)
 - vi. Loss of future income: Rs.12,96,000
[i.e. $(9,000 - 3,000) \times 12 \times 18$]
 - vii. Loss of love and affection : Rs.1,00,000/-
(i.e. Rs.50,000/- each)
 - viii. Funeral expenses : Rs.25,000/-
- Total compensation awarded : Rs.14,21,000/-
with interest @ 9% from the
date of the filing the claim
petition till realization"

"8.4. The Insurance Company has submitted that the father and the sister of the deceased could not be treated as dependents, and it is only a mother who can be dependent of her son. This contention deserves to be repelled. The deceased was a bachelor, whose mother had pre-deceased him. The deceased's father was about 65 years old, and an unmarried sister. The deceased was contributing a part of his meagre income to the family for their sustenance and survival. Hence, they would be entitled to compensation as his dependents.

8.5. The Insurance Company has contended that the High Court had wrongly awarded Rs.1,00,000/- towards loss of love and affection, and Rs.25,000/- towards funeral expenses.

The judgment of this Court in Pranay Sethi (Supra) has set out the various amounts to be awarded as compensation under the conventional heads in case of death. The relevant extract of the judgment is reproduced herein below:

"Therefore, we think it seems to fix reasonable sums. It seems to us that reasonable figures on conventional heads,



namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The principles of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years".

7. Heard Mr.T.Saikrishnan, learned counsel appearing for the appellants and Mr.D.Venkatachalam, learned counsel appearing for the 3rd respondent/Transport Corporation and perused all the materials available on record.

8. The appellants are very much aggrieved against the award made by the Tribunal by taking monthly income of the deceased at Rs.6,500/-. On perusal of the records, it is seen that the deceased was a student at the time of the accident for which Ex.P8/ID card and Ex.P9/cash receipt issued by Avvaiyar Government College for Women. Regarding these aspect that she was taken is tailoring, textile and dress stitching, so she learnt ladies tailoring woke and used to undertake stitching works for the ladies and thereby she was earning a sum of Rs.400/- per day was deposed by the Tribunal. The appellants have failed to produce the documents to substantiate the said contention. In the absence of any materials, the Tribunal has fixed monthly income of the deceased as Rs.6,500/- per month including 50% future prospects and the same is meagre. The accident is of the year 2016. The deceased was aged 18 years at the time of accident. Hence, a sum of Rs.7,000/- is fixed as monthly income of the deceased including 40% towards future prospects and by deducting 50% towards personal expenses. The Tribunal applied multiplier '16' is not correct. The correct multiplier is '18'. The amount granted by the Tribunal towards loss of income is modified to Rs.10,58,400/- $[(Rs.7,000/- + 2,800 (Rs.7,000/- \text{ of } 40\%) \times 12 \times 18 \times 1/2)]$. A sum of Rs.1,50,000/- awarded by the Tribunal towards loss of love and affection is excessive and the same is reduced to Rs.50,000/- each to the appellants. The amount awarded by the Tribunal towards transportation and funeral expenses are very meagre and the same are enhanced to Rs.10,000/- and Rs.15,000/- respectively under those heads. The Tribunal has not awarded any amount towards loss of filial consortium. A sum of Rs.20,000/- each is granted to the appellants towards loss of filial consortium. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.10,000/- 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)
1.	Loss of income	Rs.9,36,000/-	Rs.10,58,400/-
2.	Loss of love & affection (Rs.50,000/- each to the appellants)	Rs.1,50,000/-	Rs.1,00,000/-
3.	Transportation	Rs.7,000/-	Rs.10,000/-
4.	Funeral expenses	Rs.10,000	Rs.15,000/-
5.	Loss of filial consortium (Rs.20,000/- each to the appellants)	-	Rs.40,000/-
6.	Loss of estate	-	Rs.10,000/-
	Total	Rs.11,03,000/-	Rs.12,33,400/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,03,000/- is hereby enhanced to Rs.12,33,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

10.The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 3rd respondent/Transport Corporation 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 six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share from the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar

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Sub Assistant Registrar



To

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The District Judge,
Motor Accidents Claims Tribunal,
Karaikal.

Copy to : The Section Officer, V.R. Section,
High Court, Madras.

+1 cc to M/s.Sai & Bharath, Associates Sr.No. 58412
+1 cc to M/s.D.Venkatachalam, Advocate Sr.No. 58383

AKM/16.12.19/7P- 5C /

Judgment made in
C.M.A.No.2410 of 2019