IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2745 of 2019

1.Khadar
2.Shakila ... Appellants/Plaintiffs

Vs.

1.P.Selvaraju

2.The Managing Director,
Tamilnadu State Transport
Corporation Limited,
Salem Division-1. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.01.2017 made in M.C.O.P.No.208 of 2013, on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.C.Thangaraju

For R2 : Mr.S.V.Vasanthakumar

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 11.01.2017 made in M.C.O.P.No.208 of 2013, on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The brief facts is as follows:
On 23.08.2012 at about 21.00 hrs at Namakkal to Trichy Road when the deceased was driving a Maruthi Omni Van bearing registration No.TN-28/AM-4407, on the left side of the road, in a normal speed, at that time a stage carriage bus bearing registration No.TN-30/N-0082 driven by its driver in a rash and negligent manner, dashed against the deceased and thus the deceased sustained severe grievous multiple injuries all over the body and died on the spot. The legal hiers of the deceased filed the claim petition claiming a sum of Rs.15,00,000/- as compensation under the various heads.

3.The 2nd respondent/Transport Corporation denied the claim as stated by the claimants. The 2nd respondent further

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stated that the deceased who driven the said van in a negligent manner, lost his control and dashed in front of the bus and caused the accident. The sum claimed under various heads are also denied as false and are excessive in the absence of any relevant proof.

4.The Tribunal after analyzing the evidence and documents, fixed the liability on the driver of the said bus. While determining the compensation the Tribunal taking into consideration the evidence of P.W.2/owner of G.P industry in which the deceased worked as Manager and the salary certificate of the deceased, awarded a sum of Rs.7,37,000/- as compensation under the following heads.

Head	Sum awarded by the Tribunal
Loss of Estate	Rs.3,000/-
Funeral Expenses	Rs.3,000/-
Transportation	Rs.2,000/-
Loss of Dependency	Rs.4,86,000/-
Future Prospects	Rs.2,43,000/-
Total	Rs.7,37,000/-

5.Aggrieved against the said award the claimants have preferred this appeal for enhancement. In the grounds of appeal, the appellants have contended that, though the owner of the G.P. Industry deposed that the deceased was paid a salary at Rs.9,000/- per month, the Tribunal reduced it at Rs.4,500/- per month by stating the reason that no salary register was filed. Therefore, the Tribunal ought to have fixed the income of the deceased at Rs.9,000/- per month. The other grievance of the appellants is that the Tribunal has not awarded any sum towards loss of love and affection for the claimants who have lost their son at the age of 19 years and the sum awarded towards loss of dependency and funeral expenses are also very much meagre. The compensation awarded by the Tribunal is not reasonable and totally against the principles laid by High Courts and Supreme Court. Hence, it is the contention of the appellant that the income of the deceased, loss of love and affection and funeral expenses have to be properly considered and the compensation awarded by the Tribunal has to be enhanced.

6.Heard Mr.C.Thangaraju, learned counsel appearing for the appellants and Mr.S.V.Vasanthakumar, learned counsel appearing for the 2nd respondent and perused all the materials available on record.

7.On perusal of the records, it is seen that the deceased in this case is 19 years old and the appellants stated that the deceased was working as a Manager in G.P

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Industry and earning a sum of Rs.9,000/- per month. Though the salary certificate has been filed before the Tribunal to prove the income of the deceased, the Tribunal has not considered the same due to non production of salary register and taken monthly income at Rs.4,500/- and also by adding future prospects at 50%, has arrived loss of income at Rs.2,43,000/-. The appellant very much aggrieved that it is the small industry and they are not maintaining the salary register and other relevant documents and further contended that by considering the age of the deceased and his occupation as manager, the Tribunal ought to have considered the monthly income and Rs.9,000/- as stated in the salary certificate. Though the respondent/Transport Corporation vehemently contended that there was no relevant evidence for taking income at Rs.9,000/-, by considering the evidence of P.W.2/owner of the G.P Industry, where the deceased was working and the salary certificate produced by him, this Court is of the opinion that, it would be proper to take the monthly income of the deceased at Rs.7,500/- per month and by reducing the future prospects awarded by the Tribunal at 50% to 40% as per the earlier decision of the Apex Court, the loss of income is calculated at Rs.11,34,000/- (Rs.10,500/- (7,500 + 40%) x 12 x 18 - 50%). It is seen that the Tribunal has not awarded any amount towards loss of love and affection to the appellants and the same is granted as Rs.40,000/- each. Since the amount awarded by the Tribunal towards funeral expenses and loss of estate is meagre, the same are enhanced to Rs.15,000/- respectively. 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 Dependency	7,89,000 (Dependency + Future prospect)	11,34,000	Enhanced
2.	Loss of Estate	3,000	15,000	Enhanced
3.	Funeral Expenses	3,000	15,000	Enhanced
4.	Transportation	2,000	2,000	Confirmed
5.	Loss of Love and Affection	-	80,000	Granted
	Total	Rs.7,37,000	Rs.12,46,000/-	enhanced by Rs.5,09,000/-

8.In the result, this Civil Miscellaneous Appeal is

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partly allowed and the compensation awarded by the Tribunal at Rs.7,37,000/- is hereby enhanced to Rs.12,46,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

9.The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd 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 twelve 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 (Ad I)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Namakkal.

+1cc to Mr.C.Thangaraju, Advocate, S.R.No.57031

+1cc to Mr.C.Thangaraju, Advocate, S.R.No.57031 (17/02/2020)

C.M.A.No.2745 of 2019

MR(CO)
GN(14/02/2020)

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