IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2105 of 2019

1.Kudiarasan
2.Tamilarasi .. Appellants/ Petitioner

Vs.

The Managing Director
Tamil Nadu State Transport Corporation Limited
Division II, Villupuram, Vellore. .. Respondent / Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.12.2018 made in M.C.O.P.No.87 of 2017 on the file of Motor Accident Claims Tribunal, III Additional District Court, Vellore at Tirupattur.

For Appellants : Mr.V.Kumaravelan
For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 05.12.2018 made in M.C.O.P.No.87 of 2017 on the file of Motor Accident Claims Tribunal, III Additional District Court, Vellore at Tirupattur.

2.The appellants are claimants in M.C.O.P.No.87 of 2017 on the file of Motor Accident Claims Tribunal, III Additional District Court, Vellore at Tirupattur. They filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of their father viz., Sivagnanam, who died in the accident that took place on 24.02.2016. 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.25,34,092/- 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 doing bricklin business and was owning two tractors, one tipper lorry and an ordinary lorry for his bricklin business. Apart from bricklin business, the deceased used to lease out the vehicles for hire and earned income. At the time of his death, the deceased was earning a sum of Rs.35,000/- per month. The appellants have filed R.C.book and permit of the lorry in the name of the deceased and Ex.P8/receipt for payment of panchayat tax. The appellants have examined Panchayat President as P.W.3 to prove the business and income of the deceased. The Tribunal without considering the above materials, fixed meagre sum of Rs.9,000/- per month as notional income of the deceased. The fact that the appellants have spent a sum of Rs.17,66,292/- towards medical expenses of the deceased itself shows that the deceased belong to affluent family and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the appellants have not proved that the deceased was earning a sum of Rs.35,000/- per month. The appellants have not produced any document with regard to income of the deceased. P.W.3/Panchayat President in his cross-examination admitted that he did not know the income earned by the deceased. In the absence of income tax returns and other materials, the Tribunal has fixed a sum of Rs.9,000/- per month as notional income of the deceased and the same is not meagre. The amounts granted by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

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

6.From the materials available on record, it is seen that the appellants have not substantiated their claim that the deceased was earning a sum of Rs.35,000/- per month. They have produced receipt for payment of property tax and examined P.W.3 Panchayat President to prove the income of the deceased. From the evidence of P.W.3, it is seen that the deceased was doing bricklin business and was owning vehicles and was earning income by hiring the vehicles. But P.W.3 has admitted in his cross-examination that he is not aware of the income earned by the deceased. The best evidence with regard to the income of the self employee is his income tax returns for the relevant period. The appellants have not stated that the deceased was an income tax assessee and have not produced any income tax returns. In such circumstances, the Tribunal rightly did not accept the contention of the appellants that the deceased was earning a sum of Rs.35,000/- per month. The accident is of the year 2016 and the notional income of Rs.9,000/- per month fixed by the Tribunal is meagre. Considering the date of accident as well as nature of business carried on by the deceased, a sum of Rs.12,000/- is fixed as notional income of the deceased. The Tribunal has granted 10% enhancement towards future prospects, applied multiplier 9 and deducted 1/3rd towards personal expenses, which is proper. The loss of income awarded by the Tribunal is modified to Rs.9,50,400/- (Rs.12,000/- + 1200 [Rs.12,000/- X 10%] X 12 X 9 X 2/3). In addition to that, the Tribunal has awarded compensation towards funeral expenses, loss of love and affection and medical bills. The same are not meagre and hence, they 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 or reduced
1.	Loss of income	7,12,800	9,50,400	Enhanced
2.	Funeral expenses	15,000	15,000	Confirmed
3.	Loss of love and affection	40,000	40,000	Confirmed
4.	Medical bills	17,66,292	17,66,292	Confirmed
	Total	25,34,092	27,71,692	Enhanced by Rs.2,37,600 /-

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.25,34,092/- is hereby enhanced to Rs.27,71,692/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. The 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/claimants are permitted to withdraw their respective share of the award amount as per the apportionment made by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To
1.The Judge,
Motor Accident Claims Tribunal
III Additional District Court,
Vellore at Tirupattur.

2.The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.K.J.Sivakumar , Advocate SR.No. 100863
+1cc to Mr.V.Kumaravelan , Advocate SR.No. 101117

C.M.A.No.2105 of 2019

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A.SK(24/07/2020)