

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2334 of 2019
and
C.M.P.No.10584 of 2019

The Managing Director,
Karnataka State Road Transport Corporation,
Davangere Division, Davangere,
Bengaluru, Karnataka State. ..Appellant/Respondent

Vs

1.Smt.Bhuvaneswari

2.Minor Ruthra

(Minor Represented by her Natural
friend/Guardian Mother 1st respondent)

3.Mrs.Papathi @ Pappa

4.Mr.Perumal ..Respondents/Petitioners

PRAYER : Civil Miscellaneous Appeal filed under Section 173
of the Motor Vehicles Act, 1988 against the Judgment and Decree
dated 01.10.2018 passed in M.C.O.P.No.2055 of 2016 on the file
of the Motor Accident Claims Tribunal (II Additional District
Judge) at Salem.

For Appellant : Mr.T.Thiyagarajan

For Respondents : Mr.SP.Yuvaraj

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Transport Corporation
against the award of Rs.27,70,800/- for the death of one
Mr.Prakash, 30 years old, JCB owner cum driver earning about

Rs.30,000/- per month in the accident occurred on 25.12.2015, when the deceased was travelling as a passenger in SRTC bus to Bangalore. The driver of the bus overtook the car going in front and hit against another KSRTC bus causing accident resulting in death of eight persons including the deceased in this case.

2.Heard Mr.T.Thiyagarajan, learned Counsel for the appellant and Mr.S.Yuvaraj, learned Counsel for the respondents.

3.Mr.T.Thiyagarajan, learned Counsel for the appellant would submit that the compensation is on the higher side. However, Mr.S.Yuvaraj, learned Counsel for the respondents would submit that the monthly income determined at Rs.13,000/- for a JCB driver cum owner is on the higher side and he would rely upon the Judgment of this Court in "Jebastin Punitha and 3 others Vs.S.Selvaraj and other" reported in "2019 (1) TN MAC 257 (DB)" to show that the monthly income has been fixed at Rs.15,000/- for a driver.

4.The only question to be decided is with regard to the quantum of compensation as the negligent aspect has been rightly determined by the tribunal based on PW2, eye witness and also Ex.P.1 FIR filed against the driver of the offending vehicle. Therefore, the said finding is confirmed.

5.As far as the quantum of compensation is concerned, the monthly income has been determined at Rs.13,000/- per month. The accident occurred in the year 2016. In the year 2016, it is very difficult to get a driver even for an amount of Rs.15,000/- and that too a JCB driver. Therefore, Rs.13,000/- determined by the tribunal is low and the same is redetermined at Rs.15,000/-.

6.The age of the deceased is 31 years as proved by Ex.P.11 viz., driving licence. If 31 is the age of the deceased, 40% has to be added towards future prospects. If 40% is added, the monthly income would be $\text{Rs.15,000} + 40\% = \text{Rs.21,000/-}$.

7.The size of the family is four and therefore, 1/4th has to be deducted towards personal expenses. After deducting 1/4th towards personal expenses, the loss of income would be $\text{Rs.21,000} - 1/4 = \text{Rs.15,750/-}$.

8.The right multiplier '16' was applied by the tribunal and therefore, adopting the same multiplier, the loss of income would be $\text{Rs.15,750} \times 12 \times 16 = \text{Rs.30,24,000/-}$.

9.Rs.40,000/- awarded towards loss of consortium to the 1st respondent is confirmed. However Rs.80,000/- awarded towards loss of love and affection to the respondents 2 to 4 needs to be

enhanced. The 2nd respondent, one and a half year old child has lost love and affection and care and guidance of the father throughout her life and therefore, Rs.1,00,000/- is awarded towards loss of love and affection which is akin to the loss of amount awarded to the spouse towards consortium. Rs.40,000/- is awarded towards loss of love and affection to the parents. Rs.15,000/- each awarded towards loss of estate and funeral expenses is confirmed. No amount has been awarded towards transportation and therefore, a sum of Rs.10,000/- is awarded. Therefore, the sum of Rs.27,70,800/- awarded by the tribunal is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of income	30,24,000/-
2.	Loss of Love and affection	1,40,000/-
3.	Funeral Expenses	15,000/-
4.	Loss of consortium	40,000/-
5.	Loss of estate	15,000/-
6.	Transportation	10,000/-
	Total	32,44,000/-
	Rounded off	32,50,000/-

9.Hence, the total compensation payable in this case is Rs.32,50,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

10.Even though the appeal has been preferred by the Transport Corporation against the quantum of compensation, re appreciating the facts and circumstances of the case, this Court suo motu, enhances the compensation from Rs.27,70,800/- to Rs.32,50,000/- under Order XLI Rule 33 and under Section 151 of Civil Procedure Code and under Article 227 of the Constitution of India in an endeavor to do complete justice and for which this Court has got powers and jurisdiction as held by the Honourable Supreme court in "Nagappa V. Gurdoyal Singh reported in 2004 (2) TN MAC 398 (SC)".

11.The transport corporation is directed to deposit the entire award amount as per the order of this Court before the Tribunal along with interest and costs after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the tribunal is directed to transfer the

respective shares of respondents 1, 3 and 4 as per the ratio fixed by the Tribunal through RTGS except the share of the minor which shall be deposited in any one of the nationalized banks in the interest bearing Fixed Deposit until the child attains majority.

12. Accordingly, this appeal is dismissed, by enhancing the award of the Tribunal from Rs.27,70,800/- to Rs.32,50,000/-. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
II Additional District Judge,
Salem.

+1 cc to Mr.T.Thiyagarajan, Advocate, S.R.No.56151

+1 cc to Mr.SP.Yuaraj, Advocate, S.R.No.56191

C.M.A.No.2334 of 2019
and
C.M.P.No.10584 of 2019

NRJK (CO)
SSM(30/09/2019)



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