

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.651 & 652 of 2018

1.Lakshmi
2.Sangeetha
3.Manikandan
4.Chinnapappa .. Appellants/Petitioner in CMA.No.651 of 2018

1.N.Chandra
2.Kavitha
3.Anitha
4.Selvakumar
5.Mani ... Appellants//Petitioner in CMA.No.652 of 2018

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Salem Main Road,
Bharathipuram,
Dharmapuri.

.. Respondent in both CMAs.

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the decree and common judgment dated 20.12.2017 made in MCOP.Nos.34 & 35 of 2015 on the file of the Motor Accident Claims Tribunal cum Additional District Court, Dharmapuri.

For Appellants in both CMAs. : Mr.M.Sivakumar

For Respondent in both CMAs. : Mr.D.Venkatachalam

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the common award dated 20.12.2017 made in MCOP.Nos.34 & 35 of 2015 respectively on the file of the Motor Accident Claims Tribunal cum Additional District Court, Dharmapuri.

2.Both these appeals are arising out of the very same accident and common award. Hence, they are disposed of by this common judgment.

3.The appellants-claimants in both the appeals have filed the said claim petitions, claiming a sum of Rs.15,00,000/- each as compensation for the death of one Murugan and one Nagaraj who died in the accident that took place on 22.11.2014.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent and directed the respondent to pay the sum of Rs.8,35,500/- and Rs.8,94,000/- as compensation to the appellants/claimants respectively.

5.Not being satisfied with the award of the Tribunal, the appellants-claimants have come out with these appeals, seeking enhancement of compensation.

6.The learned counsel appearing for the appellants contended that the Tribunal erred in fixing a meagre sum of Rs.6,500/- as notional income of the deceased in both the appeals. The deceased were aged 47 and 42 years respectively, at the time of accident. According to the appellants, as per the judgment of the Hon'ble Apex Court, the appellants are entitled for 30% enhancement towards future prospects. The Tribunal failed to grant any amount towards future prospects and prayed for enhancement of compensation.

7.Per contra, Mr.D.Venkatachalam, learned counsel appearing for the respondent-Transport Corporation would submit that the appellants have not proved the avocation and income of the deceased. The Tribunal in the absence of any material, erroneously fixed Rs.6,500/- as notional income which is excessive. The appellants are entitled to only a sum of Rs.40,000/- towards loss of consortium. The Tribunal erroneously granted Rs.45,000/- for loss of consortium in both the appeals. The appellants have not made out any case for enhancement and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent -Transport Corporation and perused the materials available on record.

9.From the award of the Tribunal, it is seen that the appellants have contended that both the deceased were doing agricultural work and selling fruits and thereby earning a sum of Rs.10,000/- each, per month. The appellants have failed to prove the said contention. In the absence of any material, the Tribunal fixed Rs.6,500/- as notional income of the deceased and the same is not meagre. The accident is of the year 2014. The Tribunal has not awarded any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court in the case of National Ins. Co. v. Pranay Sethi reported in 2017(2) TNMAC 609 (SC), the appellants are entitled to 25% of enhancement towards future prospects, as both the deceased were aged 47 and 42 years respectively, at the time of accident and

deduction of 1/4th towards personal expenses, as the number of dependents are four and five respectively. The amounts granted by the Tribunal for loss of dependency is modified as Rs.9,50,625/- [6,500 + 1625 (25%) x 12 x 13 x $\frac{3}{4}$] in CMA.No.651 of 2018 and Rs.10,23,750/- [6,500 + 1,625 (25%) x 12 x 14 x $\frac{3}{4}$]. The Tribunal has awarded excessive compensation towards loss of consortium in both the appeals as Rs.45,000/- and the same is reduced to Rs.40,000/- in both the appeals. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows in CMA.No.651 of 2018:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Loss of dependency	7,60,500/-	9,50,625/-	Enhanced
Loss of estate	15,000/-	15,000/-	Confirmed
Loss of consortium	45,000/-	40,000/-	Reduced
Funeral Expenses	15,000/-	15,000/-	confirmed
Total	8,35,500/-	10,20,625/-	Enhanced by Rs.1,85,125/-

The compensation awarded by the Tribunal is modified as follows in CMA.No.652 of 2018:

Heads	Amounts awarded by the Tribunal (RS.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Loss of dependency	8,19,000/-	10,23,750/-	Enhanced
Loss of estate	15,000/-	15,000/-	Confirmed
Loss of consortium	45,000/-	40,000/-	Reduced
Funeral expenses	15,000/-	15,000/-	Confirmed
Total	8,94,000/-	10,93,750/-	Enhanced by Rs.1,99,750/-

10. In the result, these appeals are partly allowed and amounts awarded by the Tribunal is enhanced from Rs.8,35,500/- and Rs.8,94,000/- to Rs.10,20,625/- and Rs.10,93,750/- respectively along with interest and costs. The respondent-

Transport Corporation is directed to deposit the enhanced award amount 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 to the credit of MCOP.Nos.34 & 35 of 2015 respectively. On such deposit, the appellants/claimants in both the appeals are permitted to withdraw their respective shares of enhanced award amount, on the basis of the apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal cum Additional District Court, Dharmapuri

2.The Record Keeper,
V.R. Section, High Court, Chennai.

+1cc to Mr.D.Venkatachalam, Advocate SR.No.16551

+2cc to Mr.M.Sivakumar, Advocate SR.No.16544, 16543

C.M.A.Nos.651 & 652 of 2018

SSV(CO)
GMY(24/07/2019)

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