

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.3182 of 2014

1.K.Kaniraj
2.K.Neethiraja
3.K.Chitra
4.K.Jagan

... Appellants/Claimants

vs.

The Managing Director,
Tamilnadu State Transport Corporation
(Kumbakonam) Limited,
Railway Station New Road,
Kumbakonam - 612 001.

...Respondent/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 14.02.2012 in M.C.O.P.No.4162 of 2009 on the file of the Motor Accidents Claims Tribunal, (V Small Causes Court,) Chennai.

For Appellants : Mr.A.Shanmugaraj

For respondent : Mr.D.Venkatachalam

JUDGMENT

The appellants are the claimants in M.C.O.P.No.4162 of 2009 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.4,00,000/- for the death of one Sermakani, wife of the first claimant, mother of the claimants 2 to 4 in a road accident that took place on 15.01.2009.

2. The case of the claimants is that on 15.01.2009, the deceased was travelling as a passenger in a Maruthi Omni bearing Registration No. TN 09-N-2261 along National highway 45, Vikravandi. At about 12.30 am, when the driver of the van parked the van on the left side of the road, a speeding TNSTC bus bearing Reg.No.TN-45-N-2469 hit the van, as a result of which, the deceased Sermakani died on the spot.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the bus bearing Reg.No.TN-45-N-2469 belonging to the Tamil Nadu State

Transport Corporation Limited and therefore, they are liable to pay compensation of Rs.4,00,000/- to them.

4. The learned Motor Accidents Claims Tribunal / V Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.3,52,000/- together with interest at the rate of 7.5% per annum to the claimants. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.A.Shanmugaraj, learned counsel appearing for the appellants / claimants contended that though the claimants have specifically contended that the deceased was earning a sum of Rs.150/- per day as a labourer in a construction company, the Tribunal fixed the monthly income of the deceased only as Rs.3,600/-. He further contended that 1/3rd has been deducted towards personal expenses of the deceased, though there are four persons depending for his income. He therefore prayed for enhancement of compensation.

6. Per contra, Mr.D.Venkatachalam, learned counsel appearing for the respondent / Transport Corporation contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

7. It is pertinent to point out that the accident took place in the year 2009 and in the facts and circumstances, the notional income fixed by the Tribunal at Rs.3,600/- per month is very low and therefore, a sum of Rs.4,500/- per month is taken up as notional income of the deceased. As per the decision of the Supreme Court of India in National Insurance Co. vs. Pranay Sethi and Others reported in 2017 (2) TNMAC 601 (SC), 25% should be added towards future prospects of the deceased. Since there are four dependents, 1/3 should be deducted towards the personal expenses of the deceased. The deceased was aged 50 years on the date of accident and the proper multiplier to be adopted in the instant case is 13 as per the decision rendered in Sarla Verma and Others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation:

$$[(Rs.4,500 + Rs.1,125/- (Rs.4,500/- \text{ of } 25\%) \times 12 \times 13 \times 2/3)]$$
loss of dependency is modified to Rs.5,85,000/-

8. Apart from the above said amount, the appellants / claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of consortium" and "funeral expenses" respectively, as per the decision rendered in National Insurance Co. vs Pranay Sethi and Others reported in 2017 (2) TNMAC 601 (SC). The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.5,85,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
al	Tot	Rs.6,55,000/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.3,52,000/- to Rs.6,55,000/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.3,52,000/- to Rs.6,55,000/-.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The respondent / Tamil Nadu State Transport Corporation Limited is directed to deposit the enhanced compensation amount i.e., Rs.6,55,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.4162 of 2009 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mtl

To

The Motor Accidents Claims Tribunal,
The V Judge, The Court of Small Causes,
Chennai.

+1cc to Mr.A.Shanmuagaraj , Advocate SR.No. 82638

+1cc to Mr.D.Venkatachalam , Advocate SR.No. 82551

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