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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1142 & 2748 of 2015 and
M.P.No.1 of 2015

C.M.A.No.1142 of 2015:

The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
No.3/137, Salamedu,
Vazhuthareddy,
Villupuram - 605 602.

...Appellant

Vs.

1.A.Shakila

2.Minor.Shamileshwar
(Minor 2nd respondent represented
by his mother, 1st respondent)

3.Selliammal

...Respondents

C.M.A.No.2748 of 2015:

1.A.Shakila
2.Minor.Shamileshwar
(Minor 2nd appellant represented
by his mother, 1st appellant)
3.Selliammal

...Appellants

Vs.

The Managing Director,
Tamil Nadu State Transport
Corporation (VPM-Division 1) Limited,
No.3/137, Salamedu,
Vazhuthareddy Post,
Villupuram - 605 602.

...Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.01.2014 made in M.C.O.P.No.2263 of 2011 on the file of Motor Accidents Claims Tribunal, Principal District Court, Cuddalore.



C.M.A.No.1142 of 2015 :

For Appellant : Mr.K.J.Sivakumar
For Respondents : Mr.S.Kalyanaraman

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C.M.A.No.2748 of 2015 :

For Appellants : Mr.S.Kalyanaraman
For Respondent : Mr.K.J.Sivakumar

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

C.M.A.No.1142 of 2015 is filed by the respondent-Transport Corporation against the award dated 03.01.2014 made in M.C.O.P.No.2263 of 2011 on the file of Motor Accidents Claims Tribunal, Principal District Court, Cuddalore and C.M.A.No.2748 of 2015 is filed by the claimants for enhancement of compensation.

2.Both the Civil Miscellaneous Appeals are arising out of the same award and hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petition, for the sake of convenience.

3.The claimants filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Anbarasan, who died in the accident that took place on 07.09.2011.

4.According to the claimants, on 07.09.2011 at about 19.30 hours, while the deceased was riding his motorcycle on ECR Road, near Suruthi Hotel, Mullodai, Puducherry, the driver of the bus belonging to the respondent-Transport Corporation drove the same in a rash and negligent manner and dashed against the deceased and caused the accident. Due to the said accident, the said Anbarasan succumbed to death on the way to hospital. Therefore, the claimants, being the wife, son and mother of the deceased filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Anbarasan, against the respondent-Transport Corporation.

5.The respondent-Transport Corporation filed counter statement and denied all the averments made by the claimants. According to the respondent-Transport Corporation, the deceased only drove his motorcycle in a rash and negligent manner and dashed against the right side corner near the indicator of the bus and fell down and invited the accident. Hence, the accident occurred only due to negligence on the part of the deceased. Therefore, the respondent-Transport Corporation is not liable to



pay any compensation to the claimants. The claimants are not the legal heirs of the deceased. The claimants have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the claimants is extremely high and prayed for dismissal of the claim petition.

6. Before the Tribunal, on behalf of the claimants, the 1st claimant examined herself as P.W.1 and eye-witness Sivakumar as P.W.2 and one Veeran @ Krishnan, who was the member of Mechanised Fishing Boat Association was examined as P.W.3 and 15 documents were marked as Exs.P1 to P15. The respondent-Transport Corporation did not let in any oral and documentary evidence.

7. 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-Transport Corporation and directed the respondent-Transport Corporation to pay a sum of Rs.8,66,000/- as compensation to the claimants.

8. Against the said award dated 03.01.2014 made in M.C.O.P.No.2263 of 2011, the respondent-Transport Corporation has come out with the appeal in C.M.A.No.1142 of 2015 and the claimants have come out with the appeal in C.M.A.No.2748 of 2019 for enhancement of compensation.

9. The learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal ought not to have accepted the evidence of P.W.1, who is the wife of the deceased and she is not an eye-witness to the accident. The Tribunal ought not to have considered the evidence of P.W.2/eye-witness and Ex.P1/F.I.R. The claimants have not produced any material evidence with regard to avocation and income of the deceased. In such circumstances, a sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the deceased is excessive. The amounts awarded by the Tribunal under other heads are excessive. The claimants have not made out any case for enhancement of compensation and prayed for dismissal of C.M.A.No.2748 of 2015 and for allowing C.M.A.No.1142 of 2015.

10. Per contra, the learned counsel appearing for the claimants contended that the deceased was aged 28 years at the time of accident and was a Fisherman and also owning a boat and was earning a sum of Rs.30,000/- per month. The claimants also examined one Veeran @ Krishnan, who is one of the member of Mechanised Fishing Boat Association as P.W.3 to prove the avocation and income of the deceased. Therefore, the monthly income fixed by the Tribunal is meagre. The deceased was aged 28 years at the time of accident and the Tribunal has not granted



any enhancement towards future prospects. The Tribunal has granted only meagre sum of Rs.10,000/- towards loss of consortium to the first claimant. The amounts awarded by the Tribunal under funeral expenses, loss of love and affection are meagre. The Tribunal has not awarded any amount towards loss of estate and prayed for allowing C.M.A.No.2748 of 2015 and for dismissal of C.M.A.No.1142 of 2015.

11.Heard the learned counsel appearing for the respondent-Transport Corporation as well as the learned counsel appearing for the claimants and perused the entire materials on record.

12.From the materials available on record, it is seen that the Tribunal considering the evidence of Ex.P1/F.I.R., Ex.P2/Motor Vehicle Inspector's report, P.W.1/wife of the deceased and P.W.2/eye-witness, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation. The respondent-Transport Corporation has not produced any contra evidence to disprove the evidence of P.W.1, P.W.2 and Ex.P1/F.I.R. There is no error in the above finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, the claimants have contended that the deceased was aged 28 years at the time of accident. He was a Fisherman owning a boat and was earning a sum of Rs.30,000/- per month. To substantiate their contention, the claimants examined one Veeran @ Krishnan, who is one of the member of Mechanised Fishing Boat Association as P.W.3, who deposed that the deceased earned a sum of Rs.1,500/- per day and also produced Ex.P5/salary certificate. The Tribunal considering the claim made by the claimants and the evidence of P.W.3, fixed notional income of the deceased at Rs.6,000/- per month. The accident occurred in the year 2011 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.7,000/- per month is fixed as notional income of the deceased. The deceased was aged 28 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.13,32,800/- {Rs.9,800/- [Rs.7,000/- + Rs.2,800/- (40% of Rs.7,000/-)] X 12 X 17 X 2/3}.

14.From the award passed by the Tribunal, it is seen that the Tribunal has awarded a meagre sum of Rs.10,000/- towards loss of consortium to the first claimant, a sum of Rs.20,000/- towards loss of love and affection to the claimants 2 and 3 and a sum of Rs.10,000/- towards funeral expenses are enhanced to Rs.40,000/-, Rs.25,000/- and Rs.15,000/- respectively. The



Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded by this Court towards loss of estate. The compensation awarded by the Tribunal towards transportation is just and reasonable and hence, the same is 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
1.	Loss of dependency	8,16,000/-	13,32,800/-	Enhanced
2.	Loss of consortium	10,000/-	40,000/-	Enhanced
3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Loss of love and affection	20,000/-	25,000/-	Enhanced
5.	Transportation	10,000/-	10,000/-	Confirmed
6.	Loss of estate	-	15,000/-	Granted
	Total	Rs.8,66,000/-	Rs.14,37,800/-	enhanced by Rs.5,71,800/-

15.The compensation awarded by the Tribunal at Rs.8,66,000/- is hereby enhanced to Rs.14,37,800/- together with interest at the rate of 6% per annum from the date of petition till the date of deposit. The claimants are directed to pay the necessary Court fee as per the order of this Court dated 11.09.2014 made in M.P.No.1 of 2014 in C.M.A.SR.No.60783 of 2014. 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 common judgment to the credit of M.C.O.P.No.2263 of 2011 on the file of Motor Accidents Claims Tribunal, Principal District Court, Cuddalore. On such deposit, the claimants 1 and 3 are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor 2nd claimant is directed to be deposited in any one of the Nationalized Banks, till the minor 2nd claimant attains majority. On such deposit, the 1st claimant, being the mother of the minor 2nd claimant is permitted to withdraw the accrued interest once in three months for the



welfare of the minor 2nd claimant. It is made clear that the appellants shall not be entitled to any interest for the delay period in filing the appeal on Rs.5,71,800/-, the amount now enhanced by this Court as per the order of this Court dated 27.11.2015 made in M.P.No.2 of 2014 in C.M.A.SR.No.60873 of 2014.

16.In the result, C.M.A.No.2748 of 2015, filed by the claimants is Partly Allowed and C.M.A.No.1142 of 2015, filed by the respondent-Transport Corporation is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

krk

To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Cuddalore.
2. The Section Officer,
VR Section,
High Court, Madras.

+2ccs to Mr.S.Kalyanaraman, Advocate, S.R.No.4497
+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.4312

C.M.A.Nos.1142 & 2748 of 2015

BP[co]
NSK 02/12/2021