

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.460 of 2009

1.N. Annapoorani

2.K.N. Chandrasekaran

.. Appellants/Claimants

Vs.

1.S.P.Velusamy

2.The Managing Director,

Tamil Nadu State Transport Corporation Ltd.,

(Coimbatore Division I),

Coimbatore 641 043.

.. Respondents/Respondents

(R1 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.08.2005, made in M.C.O.P. No.814 of 2004, on the file of the I Additional District Court, (Motor Accident Claims Tribunal) Coimbatore.

For Appellants : Mr. Bharath Gowtham

for Mr. T.R. Rajaraman

For Respondents: Ms. A. Indumathi

for M/s. A.Sundara Vadhanan (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed against the dismissal of claim petition as against the 2nd appellant and for enhancement of compensation granted to the 1st appellant in the award dated 04.08.2005, made in M.C.O.P. No.814 of 2004, on the file of the I Additional District Court, (Motor Accident Claims Tribunal) Coimbatore.

2.The appellants-claimants filed M.C.O.P. No.814 of 2004, on the file of the I Additional District Court, (Motor Accident Claims Tribunal) Coimbatore, claiming a sum of Rs.10,00,000/- as compensation for the death of one Srinivasan, who died in the accident that took place on 18.07.2003.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to

rash and negligent driving by 1st respondent/driver of the Bus belonging to the 2nd respondent-Transport Corporation and directed the 2nd respondent to pay a sum of Rs.1,00,000/- as compensation to the 1st appellant and dismissed the claim petition as against the 2nd appellant.

4. Not being satisfied with the amounts awarded by the Tribunal to the 1st appellant and challenging the dismissal of claim petition as against the 2nd appellant in the award dated 04.08.2005 made in M.C.O.P. No.814 of 2004, the appellants have come out with the present appeal.

5. The learned counsel appearing for the appellants contended that the Tribunal erred in awarding Rs.75,000/- for loss of dependency to the 1st appellant alone and erred in holding that the 2nd appellant is not a dependent. The Tribunal failed to see that the 2nd appellant was unemployed and was living along with the 1st appellant and deceased was supporting the entire family. A married brother is also dependent on the deceased even if he is not legal heir of the deceased. The Tribunal without considering the documents marked as Exs.P6, P8 and P9, erroneously granted only meagre sum of Rs.15,000/- for medical expenses, when the appellants have spent Rs.38,500/- towards medical expenses. The total compensation awarded by the Tribunal is meagre and prayed for setting aside the dismissal of the claim petition against the 2nd appellant and for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Transport Corporation contended that the 2nd appellant is elder brother of the deceased and he is not a legal heir and dependent of the deceased. The Tribunal has rightly dismissed the claim petition against the 2nd appellant. The Tribunal considering the Income Tax Returns filed by the deceased and age of the 1st appellant, has granted a lump sum of Rs.75,000/- for loss of dependency, which is not meagre. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

7. Heard learned counsel appearing for the appellants as well as the 2nd respondent-Transport Corporation and perused the materials available on record.

8. From the materials on record, it is seen that it is the contention of the appellants that the deceased was a Business Partner in M/s. Covai Auto Rebuilders and was earning a sum of Rs.9,000/- per month. The appellants filed Ex.P18 - Income Tax Returns of the deceased. The deceased has declared his annual income as Rs.84,000/-. The Tribunal fixed the monthly income of the deceased as Rs.7,000/-. The Tribunal considering the age of

the 1st appellant, mother of the deceased and deduction of the amount towards personal expenses of the deceased after marriage, awarded a sum of Rs.75,000/- for loss of dependency to the 1st appellant without following the structural formula as per II Schedule. The deceased was aged 38 years at the time of accident and the multiplier applicable as per the II Schedule is '15'. The deceased died as a Bachelor. Hence, deducting 50% towards personal expenses of the deceased and applying the multiplier '15', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.6,30,000/- [Rs.7,000/- x 12 x 15 x 1/2]. The appellants have produced Exs.P6, P8 and P9 to prove that they have spent a sum of Rs.38,500/- towards medical expenses. The Tribunal did not accept the said bills on the ground that the appellants did not examine the author of the bills. Considering the fact that the deceased was given treatment from 18.07.2003 to 25.07.2003, till his death, the appellants are entitled to a sum of Rs.38,500/- towards medical expenses, as per the medical bills. The 1st appellant lost her son at an early age. The Tribunal has granted only a sum of Rs.5,000/- towards loss of love and affection. The 1st appellant is entitled to a sum of Rs.40,000/- towards loss of love and affection. The Tribunal has not given any reason for dismissing the claim petition against the 2nd appellant/ brother of the deceased.

9.It is well settled that even elder brothers and married sisters will be dependent of the deceased. In view of the same, the 2nd appellant is also entitled to receive compensation. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate. The Tribunal altogether has awarded a sum of Rs.5,000/- towards transportation to hospital and funeral expenses. The appellants are entitled to a sum of Rs.15,000/- towards funeral expenses separately. Hence, the amount awarded by the Tribunal towards transportation and funeral expenses is modified and the sum of Rs.5,000/- awarded is confirmed towards transportation. 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	75,000/-	6,30,000/-	Enhanced
2.	Transportation to Hospital and funeral expenses	5,000/-	5,000/-	Confirmed
			15,000/-	Granted

3.	Loss of love and affection to the 1 st appellant	5,000/-	40,000/-	Enhanced
4.	Medical expenses	15,000/-	38,500/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	1,00,000/-	7,43,500/-	Enhanced by Rs.6,43,500/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,00,000/- is enhanced to Rs.7,43,500/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. Out of the said amount, the 1st appellant is entitled to 75% of the total compensation i.e., Rs.5,57,625/- and the 2nd appellant is entitled to 25% of the total compensation i.e., Rs.1,85,875/-. The 2nd 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, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.814 of 2004. On such deposit, the appellants are permitted to withdraw the enhanced award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.6,43,500/-. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District Judge,
(Motor Accident Claims Tribunal),
Coimbatore.

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

C.M.A.No.460 of 2009

RSV(CO)

GN(13/05/2021)