

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2445 of 2011
(Through Video Conferencing)

1.S.Latha

2.C.Pappammal

3.S.Pachaiyappan @ Vinoth

(Minor aged about 5 years rep.by his natural
guardian S.Latha, first Appellant herein)

... Appellants/Claimants

Vs.

The Managing Director,
State Transport Corporation Ltd.,
Kanchipuram.

... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988 against the Judgment and decree dated
28.02.2001 made in M.C.O.P.No.559 of 1999 on the file of the
Motor Accidents Claims Tribunal, (Sub Court) Tiruvallur.

For appellants : Mr.Ponnusamy for
M/s.Anand and Surya

For respondent : Mr.C.S.K.Sathish

J U D G M E N T

The claimants are the appellants in this Civil
Miscellaneous Appeal. In this appeal, the appellants seek for
enhancement of compensation awarded by the Motor Accident
Claims Tribunal Chennai, in the impugned Judgment and Decree
order dated 28.02.2001, in M.C.O.P.No.559 of 1999.

2. The appellants/claimants filed a claim petition before
the Tribunal. By the impugned order, the Tribunal has awarded a
sum of Rs.1,97,000/- together with interest at 7.5% from the
date of the claim petition till the date of deposit.

3. As per the records, on 08.03.1999 at about 20.15 hrs., the deceased Subramani was waiting at the Chittakootu Road bus stand, when a bus bearing Reg.No.TN-21-N-0122 of the respondent was allegedly driven by its driver in a rash and negligent manner dashed against the bus stop. It was stated that as a result of same, the deceased Subramani, who was standing at the bus stand, sustained grievous injuries and later died in the hospital. Therefore, the appellants/claimants filed the above claim petition for compensation against the respondent.

4. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligence of the bus driver of the respondent / State Transport Corporation and directed latter to pay a sum of Rs.1,97,000/- as compensation together with interest and cost from the date of the claim petition.

5. Not being satisfied with the amounts awarded by the Tribunal, the appellants have filed this Civil Miscellaneous Appeal and seek for enhancement of the compensation.

6. The learned counsel appearing for the appellants/claimants contended that at the time of accident, the deceased was aged 38 years and was doing agricultural work and was also engaged in riding bullock cart. It was further submitted that he was earning a sum of Rs.3,000/- per month at the time of the accident/death. However, the Tribunal has fixed a meagre sum of Rs.900/- but at the same time, has fixed the notional income of the deceased as Rs.10,000/- p.a after deducting the personal expenses. It is contended that the Tribunal ought to have fixed the notional income of deceased as Rs.2,000/- p.m. even though he was self employed and was working in an unorganized sector. It is further submitted that the Tribunal has not granted compensation towards future prospects and has not awarded any amount towards loss of estate. It was submitted that the amounts awarded by the Tribunal towards loss of consortium and loss of love and affection are meagre and hence, prayed for enhancement of compensation.

7. Per contra, the learned counsel for the respondent Transport Corporation contended that the appellants have not produced any evidence to prove the avocation and income of the deceased. It was submitted that the appellants are therefore not entitled for future prospects. It was further submitted that the Tribunal after considering the entire evidence on record, has awarded a just compensation of Rs.1,97,000/- to the appellants, which by no means can be said to be meagre. Hence, he prayed for dismissal of this appeal.

8. It is further submitted that already this Court in its order dated 04.12.2008 in C.M.A.No.2357 of 2003 has awarded compensation to the claimant, viz. The wife of the deceased there in the same accident. Therefore, he submits that at best same yardstick may be followed while enhancing the quantum of compensation on the conventional heads.

9. During the course of hearing, it was mentioned that the 2nd appellant, who is the mother of the deceased, has passed away on 15.10.2011. A memo that has been filed today by the 1st appellant and the same is recorded.

10. It is further submitted on behalf of respondent State Transport Corporation that though the 2nd appellant died on 15.10.2011, no evidence has been filed to substantiate that the 1st and 3rd appellants are only the legal heirs of the 2nd appellant. He further submitted that the 1st and 3rd appellants may therefore be directed to file sufficient evidence before the Tribunal to substantiate that they are only the legal heirs of the 2nd appellant.

11. I have heard the learned counsel appearing for the appellants/claimants and the learned counsel for the respondent. I have also perused the evidence on record.

12. It was stated that the deceased was an agriculturist and was purportedly earning a sum of Rs.3,000/- per month. However, the appellants failed to prove the avocation and income of the deceased. The deceased was stated to be a owner of the bullock cart and was said to be earning extra money by transporting goods using his bullock cart. The Tribunal has fixed a sum of Rs.900/- per month and has made skewed deduction towards personal expenses of the deceased to determine the compensation.

13. The accident is of the year 1999. In my view, the monthly notional income fixed by the Tribunal is meagre. Considering the same, I am inclined to adopt a notional income of the deceased as Rs.2,000/- per month. The Tribunal has not granted future prospects. As per the decision of the Hon'ble Supreme Court reported in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680, the future prospects is awarded at 40% of the income of the deceased.

14. According to the appellants, the deceased was aged 38 years at the time of accident. There is no dispute regarding the age of the deceased. Therefore, 15 is the correct multiplier to be applied as per the decision of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12. Therefore, the compensation awarded by

the Tribunal towards loss of dependency is re-quantified as follows:-

Loss of dependency:-

Income of the deceased - Rs.2,000/- per month

Annual Income (2,000 x 12) - Rs.24,000/-

Less: Personal Expenses 1/3th (24,000 x 1/3) - Rs. 8,000/-

- Rs.16,000/-

Add: Future prospectus 40% (16,000 x 40/100) - Rs. 6,400/-

- Rs.22,400/-

Multiplier - (22,400 x 15) - Rs.3,36,000/-

15. A sum of Rs.10,000/- awarded by the Tribunal towards loss of consortium is meagre and same is therefore enhanced to Rs.25,000/-. The Tribunal has not awarded any amount towards loss of estate and transportation. A sum of Rs.15,000/- and Rs.3,000/- are awarded towards loss of estate and transportation. Thus, the compensation awarded by the Tribunal is modified as follows:

Heads	Amount awarded by the Tribunal	Re-quantified amount of this Court	Status (confirmed or enhanced or granted or reduced)
Loss of dependency	Rs.1,72,800/-	Rs.3,36,000/-	Enhanced
Loss of Consortium to the 1 st appellant	Rs. 10,000/-	Rs. 25,000/-	Enhanced
Loss of love & affection to 3 rd appellant.	Rs. 10,000/-	Rs. 10,000/-	Confirmed
Loss of Estate	-	Rs. 15,000/-	Granted
Transportation	-	Rs. 3,000/-	Granted
Funeral expenses	Rs. 5,000/-	Rs. 5,000/-	Confirmed

Total	Rs.1,97,800/-	Rs.3,94,000/-	Enhanced by another sum of Rs.1,96,200/-
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Thus, the amount of compensation of Rs.1,97,800/- awarded by the Tribunal is enhanced to Rs.3,94,000/-.

16. The respondent is therefore directed to deposit the re-quantified amount of Rs.3,94,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of such deposit and costs, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

17. On the amount of compensation of Rs.1,97,800/- awarded by the Tribunal, the appellants were entitled to the following share as awarded by the Tribunal:-

Amount of Rs.1,97,800/- awarded and the apportioned by the Tribunal	
1 st appellant	Rs.1,07,800/-
2 nd appellant	Rs. 30,000/-
3 rd appellant	Rs. 60,000/-

18. On the enhanced amount of compensation of Rs.1,96,200/- (3,94,000 - 1,97,800/-), the 1st appellant and the 3rd appellant who are the wife and son of the deceased C.Subramani shall be entitled to the equal share since the 2nd appellant mother of the deceased C.subramani has passed away during the pendency of this appeal.

19. A sum of Rs.30,000/- awarded by the Tribunal to the 2nd appellant (since deceased) shall be paid to the 1st and the 3rd appellants in equal proportion together with interest thereon subject to the deduction of any amount already withdrawn by her during her life time.

20. The 1st appellant is permitted to withdraw her share amount of Rs.2,20,900/- (1,07,800 + 98,100 + 15,000) together with interest thereon and cost, less any amount already withdrawn, by filing suitable application before the Tribunal. Since the 3rd appellant was aged about 3 years at time of filing of the claim petition and would have attained the age of majority, the 3rd appellant is permitted to file appropriate application for recording the age of majority to withdraw his share amount of Rs.1,73,100/- (60,000 + 98,100 + 15,000) together with interest thereon.

21. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

kkd/jen

Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:-

Motor Accidents Claims Tribunal,
(Sub Court) Tiruvallur.

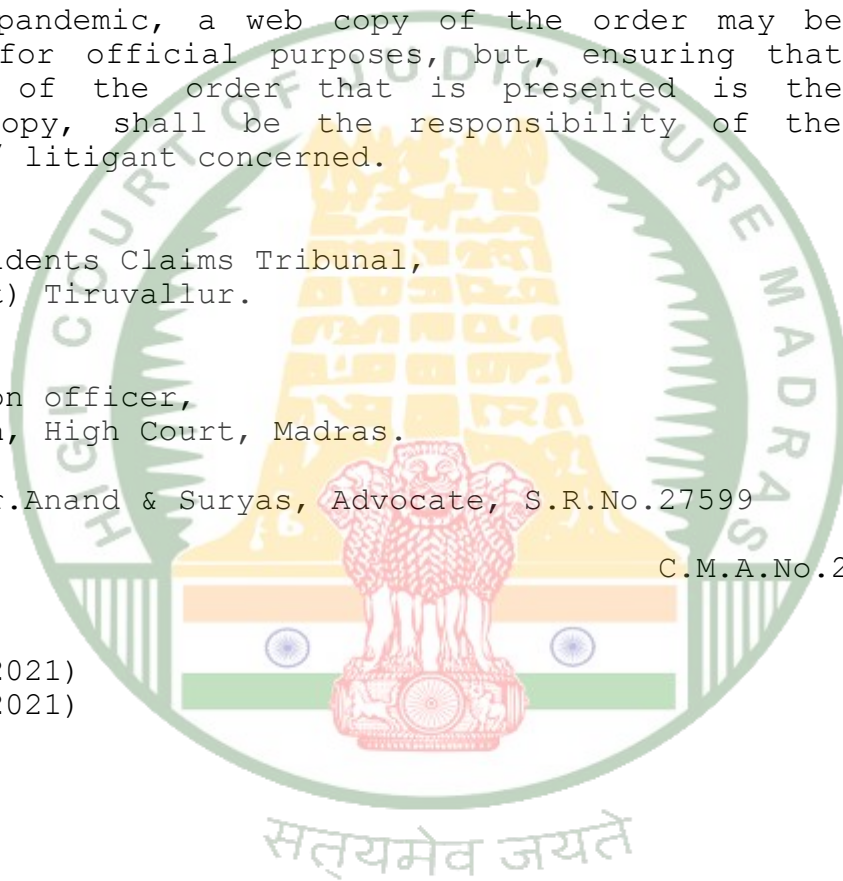
Copy to:

The Section officer,
VR Section, High Court, Madras.

+1cc to Mr.Anand & Suryas, Advocate, S.R.No.27599

C.M.A.No.2445 of 2011

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