

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2491 of 2012

1.Tamilarasi
2.Venkatesh
3.Santhi
4.Chandra
... Appellants/Claimants

Vs.

1.R. Alexander
(R1 remained exparte before the Tribunal
and notice is dispensed with.)
2.The Managing Director,
Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
No. 37, Mettupalayam Road,
Coimbatore.
... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 30.03.2012, made in M.C.O.P. No. 329 of 2011, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Erode.

For Appellants : Mr. P. Parthi Kannan
for M/s. S. Kaithamalai Kumaran

For Respondents: No appearance (for R2)

R1 : Exparte

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J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 30.03.2012, made in M.C.O.P. No. 329 of 2011, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Erode.

2.The appellants-claimants filed M.C.O.P. No. 329 of 2011, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Erode, claiming a sum of Rs.10,00,000/- as compensation for the death of one M. Balasubramaniam, who died in the accident that took place on 05.03.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the Bus belonging to the 2nd respondent-Transport Corporation and directed the respondents to pay a sum of Rs.1,15,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 30.03.2012, made in M.C.O.P. No. 329 of 2011, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the deceased was doing Real estate business and was earning a sum of Rs.20,000/- per month. The Tribunal without considering the evidence of P.W.3, which substantiates the oral testimony of P.W.1, fixed only a sum of Rs.15,000/- per annum as notional income of the deceased. There are four dependents of the deceased. The Tribunal deducted 1/3rd towards personal expenses of the deceased, instead of 1/4th. The appellants 2 to 4 lost the guidance of their father. The compensation awarded by the Tribunal towards loss of love and affection, loss of consortium, transportation and funeral expenses are meagre and prayed for enhancement of the compensation.

6.Though notice has been served on the 2nd respondent and their counsel name is printed in the cause list, there is no representation for them.

7.Heard the learned counsel appearing for the appellants and perused the materials available on record.

8.It is the contention of the appellants that the deceased was doing Real Estate Business and was earning a sum of Rs.20,000/- per month. They failed to prove the same. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed meagre sum of Rs.15,000/- per annum as notional income of the deceased and failed to grant any enhancement towards future prospects. The accident is of the year 2011 and the deceased was aged 60 years at the time of accident. Considering the age and year of accident, this Court

fixes a sum of Rs.6,500/- per month as notional income of the deceased and grants 10% enhancement towards future prospects. There are four dependents of the deceased. The Tribunal erroneously deducted 1/4th towards the personal expenses of the deceased, instead of 1/4th. The Tribunal applied the multiplier '5', instead of '9'. Hence, after deducting 3/4th towards personal expenses of the deceased and applying the multiplier '9', the amount awarded by the Tribunal towards loss of income is modified to Rs.5,79,150/- {[Rs.6,500/- + Rs.650/- (10% of Rs.6,500/-)] x 12 x 9 x 3/4}. The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant, loss of love and affection to the appellants 2 to 4 and funeral expenses are meagre. The 1st appellant having lost her husband, is entitled to a sum of Rs.40,000/- towards loss of consortium, the appellants 2 to 4, having lost their father, are entitled to a sum of Rs.40,000/- towards loss of love and affection and the amount awarded towards funeral expenses is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amount awarded by the Tribunal towards transportation is just and reasonable and hence, the same is hereby confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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 income	50,000/-	5,79,150/-	Enhanced
2.	Loss of love and affection to the appellants 2 to 4	30,000/-	40,000/-	Enhanced
3.	Loss of consortium to the 1 st appellant	25,000/-	40,000/-	Enhanced
4.	Funeral expenses	5,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted

6.	Transportation	5,000/-	5,000/-	Confirmed
	Total	1,15,000/-	6,94,150/-	Enhanced by Rs.5,79,150 /-

10. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.1,15,000/- is enhanced to Rs.6,94,150/- along with interest and costs. The respondents are directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 329 of 2011. On such deposit, the appellants are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, 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.5,79,150/-. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Principal District Judge,
(Motor Accident Claims Tribunal),
Erode.

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

+1cc to Mr.S.Kaithamalai Kumaran, Advocate Sr.24409

C.M.A. No. 2491 of 2012

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srg 20/11/2020