

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	18.08.2020
Pronounced On	17.09.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3194 of 2012

(Through Video Conferencing)

1.Annadurai

2.Marimuthu

3.Balakrishnan

4.Panjamurthy ... Appellants/Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Kancheepuram. ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.03.2012 made in M.A.C.T.O.P.No.4052 of 2008, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court - V, Chennai.

For appellants : M/s.A.Subadra for
M/s.M.Malar

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

J U D G M E N T

The claimants are the appellants in this appeal. They are aggrieved by the impugned Judgment and Decree dated 01.03.2012 passed by the Motor Accidents Claims Tribunal, (Additional District and Sessions Court) Fast Track Court No.V, Chennai in M.C.O.P.No.4052 of 2008.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.4,71,000/- to the appellants/claimants as

compensation together with interest at 9% per annum from the date of the claim petition till the date of deposit, under the following heads:-

Heads and Calculation	Amount
For loss of income (Rs.3,000/- x 11 x12)	Rs.3,96,000 /-
Loss of consortium	Rs. 25,000/-
Loss of love and affection (appellants 2 to 4)	Rs. 30,000/-
Medical expenses	Rs. 10,000/-
Funeral Expenses	Rs. 10,000/-
Total	Rs.4,71,000 /-

3. Aggrieved by the aforesaid compensation awarded by the Tribunal, the appellants/claimants have filed this appeal and seek for enhancement of compensation in this appeal. They are the husband and the sons of the deceased Annathaye. At the time of the accident and death, the deceased was aged about 53 years.

4. Before the Tribunal, it was stated that on 13.08.2008 at about 13.00 hours (i.e., 01.00 p.m) when the deceased was travelling in a bus bearing registration No.TN-21-N-0846, from Maraimalai Nagar to Urapakkam on G.S.T.Road, the bus had stopped for the passengers to disembark. However, as the deceased Annathaye was disembarking from the bus, the driver of the said bus suddenly drove the bus at a high speed, as a result of which, the deceased fell from the moving bus and sustained fatal injuries and died in the hospital.

5. In this Civil Miscellaneous Appeal, the appellants/claimants have stated that the Tribunal has determined the compensation by considering a very low notional income of Rs.4,500/- per month of the deceased merely because she was aged about 53 years at the time of accident and death.

6. It was submitted that in Syed Sadiq Vs. United India Insurance Co. Ltd., 2014 (1) TN MAC 459, the Hon'ble Supreme Court had fixed a notional income of a vegetable vendor as Rs.6,500/- per month. It is therefore submitted that the notional income of the deceased be enhanced to Rs.6,000/- as was declared in the claim petition and prayed for enhancement of compensation.

7. The learned counsel for the appellants/claimants submitted that the Tribunal has wrongly deducted 1/3rd of the aforesaid income towards personal expenses of the deceased. It is submitted that the Tribunal ought to have deducted only 1/4th of the income towards personal expense as the family of the deceased was large.

8. The learned counsel for the appellants/claimants further submitted that the Tribunal has not awarded any amounts towards future prospects and amounts towards loss of consortium.

9. The learned counsel for the respondent State Transport Corporation submitted that the deceased Annathaye was aged about 53 years. It is submitted that though the deceased Annathaye was a vegetable vendor and was allegedly earning a sum of Rs.6,000/- p.m, the appellants/claimants have not produced any evidence to substantiate the same. Therefore, the Tribunal was justified in awarding the aforesaid Compensation by considering the notional income of Rs.4,500/-.

10. He further submitted that the appellants/claimants had restricted the claim and therefore the question of awarding enhanced compensation under Order XLI Rule 33 of C.P.C. will not apply to the fact of the present case, in view of Order XLI Rule 22 of C.P.C. which reads as under:-

"Order XLI Rule 22 of the Code of the Civil Procedure which permits the respondent to file cross objections recognize the respondent's right to support the decree on any of the grounds decided against him by the court below".

11. I have considered the arguments advanced by the learned counsel for the appellants and the respondent. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

12. Before, dealing with the merits of the case, I would like to make it clear that even if a restricted claim was filed before the Tribunal, the Courts and Tribunals are empowered to award enhanced compensation as they are duty bound to award just compensation under the Act to the claimants as was observed by the Hon'ble Supreme Court in Nagappa Vs. Gurudayul Singh, (2003) 2 SCC 274.

13. In the facts of the present case, since no evidence was produced by the appellants/claimants before the Tribunal to substantiate that the deceased was earning a sum of Rs.6,000/-,

the Tribunal had fixed a notional income of Rs.4,500/- per month of the deceased and deducted 1/3rd towards personal expenses of the deceased. In the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735, the notional income of a vegetable vendor was considered as Rs.6,500/-. Therefore, it appears that the appellants/claimants were not apparently satisfied with the income of the deceased fixed by the Tribunal. I therefore accept the claim of the appellants that the notional income of the deceased was Rs.6,000/- per month.

14. As per the decision of the Hon'ble Supreme Court in Sarla Verma Vs. Delhi Transport Corporation, (2009) 6 SCC 12, if the family has more than 3, the Tribunal may permit for deduction of 1/4th of the notional income. In this case, the appellants are all adult aged between 22 years and 55 years. It cannot be held that all of them were dependants of the deceased. Therefore, I find no reasons to interfere with the deduction made by the Tribunal while commutating the compensation.

15. It is noticed that the Tribunal has not awarded any amounts towards future prospects. As per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680, 10% can be added towards future prospects. As per the decision of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 : 2018 Online SC 1546 the parental consortium is awarded only where the children miss the guidance of the deceased parent(s). Since the 2nd to 4th appellants/2nd to 4th claimants were aged about 22 to 29 years at the time of the death of the deceased, no amount can be awarded under the head of parental consortium. At the same time, I find no reasons to interfere with the amount awarded by the Tribunal towards loss of love and affection. The interest awarded by the Tribunal at 9% is excessive. It is therefore reduced to 7.5%.

16. Considering the same, the compensation awarded by the Tribunal is modified under the various heads as follows:-

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date of the claim petition till the date of such deposit, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

19. It is noticed that the children of the deceased, who are the 2nd to 4th appellants, were aged about 29, 25 and 22 years respectively at the time of the accident/death. Therefore, they cannot be considered as dependents of the deceased in a strict sense. The 1st appellant being the husband of the deceased, he can be considered as dependent of the deceased since the 1st appellant and the deceased would have been living together and depended each other.

20. Therefore, out of the re-quantified amount of compensation, the 1st appellant is permitted to withdraw a sum of Rs.3,71,000/- together with interest thereon, less any amount already withdrawn, by filing suitable application before the Tribunal. The 2nd to 4th appellants are permitted to withdraw a sum of Rs.1,00,000/- each together with interest thereon from the balance amount of re-quantified compensation, less any amount already withdrawn, by filing suitable applications before the Tribunal.

21. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above observations. No cost.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jen / kkd
To:

The Motor Accident Claims Tribunal,
Additional District and Sessions Court,
Fast Track Court - V, Chennai.

Copy to

The Section Officer,
VR Section, High Court,
Madras-600 104.

+1cc to M/s.M.Malar, Advocate Sr.30565

C.M.A.No.3194 of 2012

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srg 06/05/2021