IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.314 of 2015

1.Vasanthi
2.Premanand
3.Ramya
4.Kannammal .. Appellants/Claimants

Vs.

1.Appusamy

2.The Managing Director,
The Tamil Nadu State Transport Corporation,
Coimbatore Division at Erode,
37, Mettupalayam Road,
Coimbatore 641 043. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.08.2014 made in M.C.O.P.No.458 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

For Appellants : Ms.R.Shase for Mr.M.Guruprasad

For Respondents: M/s.R.T.Sundari for R2
No appearance for R1

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 08.08.2013 made in M.C.O.P.No.458 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

2.The appellants are the claimants in M.C.O.P.No.458 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. They filed the above said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the death of one Kumar, who died in the accident that took place on 27.05.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the first respondent, driver of the bus, belonging to the second respondent and directed respondents to jointly and severally pay a sum of Rs.15,61,350/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the Tribunal ought to have taken gross income of the deceased for calculating loss of income. The Tribunal erred in deducting Rs.50,000/- from the income of the deceased. The said amount is exempted as per Income Tax Act and the said amount was earned by the deceased. The Tribunal failed to fix the notional income on monthly basis. The deceased was aged 54 years and 5 months at the time of the accident. The Tribunal failed to grant any enhancement towards future prospects and failed to properly appreciate the Income Tax returns, while calculating the income and prayed for enhancement of compensation.

6. Per contra, the learned counsel for the second respondent/Transport Corporation contended that the Tribunal has calculated the income of the deceased properly and fixed the annual income and awarded compensation. The Tribunal has considered the evidence of P.W.2/son of the deceased, who deposed that he along with his deceased father was carrying on business and the Tribunal rightly deducted 25% from the income of the deceased. The Total compensation awarded by the Tribunal is not meagre and prayed dismissal of the appeal.

7.Though notice has been served on the first respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent/Transport Corporation and perused all the materials available on record.

9.The only issue to be decided in this appeal is whether deduction made by the Tribunal for calculating the income of the deceased is proper. The appellants contended that the deceased was carrying on business in the name of AVM Export Printers and was earning a sum of Rs.1,50,000/- per month. To substantiate their claim with regard to the income of the deceased, the appellants have filed Exs.P9 to P11/Income Tax returns to show the income of the deceased. The Tribunal took into consideration, Ex.P11 which relates to the Financial Year 2011 - 2012 prior to the date of accident. In the said Exhibit, the deceased declared his total income as Rs.3,57,160/-. He also mentioned deduction of Rs.54,344/- and tax payable is Rs.12,651/- and the deceased is entitled to refund of Rs.42,280/-. The Tribunal took into consideration, the deduction of Rs.54,344/- but did not take into consideration the refund amount of Rs.42,280/-. As rightly pointed out by the learned counsel for the appellants, the said amount has to be added to the income of the deceased and the income of the deceased is arrayed at Rs.3,45,100/-. The Tribunal deducted 25% of the income, on the ground that machineries, all the equipments and materials are available in the Firm and Firm will get regular income. The finding of the Tribunal for deducting 25% of the income that the partnership firm will get regular income is without any basis and the same is on assumption and presumption. The deduction of 25% from the income of the deceased is set aside. A sum of Rs.3,45,100/- per annum is fixed as notional income of the deceased. The deceased was aged 51 years at the time of the accident and hence, the appellants are entitled for 10% enhancement towards future prospects. Since there are four dependents, the Tribunal has rightly deducted $1/4^{th}$ towards the personal expenses of the deceased. By applying multiplier '11', the amount granted by the Tribunal towards loss of dependency is modified to Rs.28,47,075/- [(Rs.3,45,100/-x 11 x 3/4)]. The Tribunal has awarded a meagre sum of Rs.10,000/- towards loss of consortium and the same is hereby enhanced to Rs.40,000/-. The amounts awarded by the Tribunal under the heads funeral expenses is meagre and the same is hereby enhanced to Rs.15,000/-. The Tribunal has failed to award any amount towards loss of estate. A sum of Rs.15,000/- is awarded towards loss of estate. The amount awarded by the Tribunal under the heads transportation and damages to articles are just and reasonable and hence the same are hereby confirmed.

10.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 dependency	15,26,350	28,47,075	Enhanced
2.	Loss of consortium	10,000	40,000	Enhanced
3.	Transportation	5,000	5,000	Confirmed
4.	Funeral expenses	10,000	15,000	Enhanced
5.	Damages to articles	10,000	10,000	Confirmed
6.	Loss of estate	-	15,000	Granted
	Total	Rs.15,61,350/-	Rs.29,32,075/-	Enhanced by Rs.13,70,725/-

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,61,350/- is hereby enhanced to Rs.29,32,075/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The respondents are jointly and severally directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vkr

To

1.The Special District Court,
Motor Accident Claims Tribunal,
Erode.

2.The Section Officer,
VR Section,
High Court, Madras.

+1 CC to Mr.M.Guruprasad, Advocate sr 10711.

C.M.A.No.314 of 2015

CA(CO)
SP(22/01/2021)