

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3479 of 2013

1.D.Silambarasi

2.Minor D.Balaji

(Rep. by next friend & Mother, 1st appellant)

3.Valliyammai

4.Palani

... Appellants/Claimants

Vs

The Managing Director,

Tamil Nadu State Transport Corporation Limited,

Villupuram

... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.A.C.T.O.P.No.8 of 2012 dated 05.04.2013 on the file of the Principal District Judge, Motor Accident Claims Tribunal, Villupuram.

For Appellants : Mr.C.Munusamy

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

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 05.04.2013 made in M.A.C.T.O.P.No.8 of 2012 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Motor Accident Claims Tribunal, Villupuram.

2. The appellants herein are the claimants in M.C.O.P.No.8 of 2012 on the file of the Motor Accident Claims Tribunal. They filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Durai, in the accident that took place on 27.05.2008.

3. On 27.05.2008 at about 01.30 P.M., when one Durai was riding two wheeler bearing Registration No.PY-01-8-3136 from Panruti to Karuvepilaipalayam village on the extreme left side of Cuddalore-Chithoor Road from east to west, the respondent's

bus bearing registration No.TN-32-N-2268 came from the opposite direction in a rash and negligent manner, near Eripalayam Gate, and while overtaking the vehicles, dashed against the said Durai, due to which, he sustained fatal injuries and died on the spot. The accident was caused due to utter negligence on the part of the Driver of the bus.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Bus belonging to the respondent and directed the respondent to pay a sum of Rs.4,48,000/- as compensation to the claimants.

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

6. The learned counsel for the appellants would submit that the trial Court erred in deciding the quantum of compensation payable to the appellants herein, when it is rightly found that the negligence was on the part of the respondent's vehicle. The deceased was working as a Driver at M/s.S.M.R.Transport Company and earning not less than Rs.15,000/- per month besides a sum of Rs.100/- per day as batta. The learned Judge ought to have considered the fact that the first appellant was examined as P.W.1 and employer of the deceased was examined as P.W.3 and they categorically deposed that the deceased was working as Driver at M/s.S.M.R. Transport Company and earning not less than Rs.15,000/- per month besides a sum of Rs.100/- per day as batta. The learned Judge grossly erred in fixing the monthly income of the deceased at Rs.3,000/- without any plausible reasons. In view of the recent ruling rendered by the Hon'ble Apex Court of India, even for non-earning members, the notional income must be fixed as Rs.8,000/- per month. Further, the trial Court ought to have considered the future prospects of the deceased with the strength of available documentary as well as oral evidence on record and the multiplier adopted should have been 18 instead of 17. The learned Judge ought to have deducted only 1/5 amount from the monthly income of the deceased towards personal expenses instead of 1/3. The learned Judge did not consider the ruling and guidelines invariably rendered by the Hon'ble Apex Court in computing compensation in the case relating to the death or bodily injuries in the motor accidents caused for no fault of them/victims. The amount awarded by the Tribunal under various heads are very low and it should be in accordance with the ruling rendered by the Hon'ble Apex Court of India in the cases reported in Reshma Kumari, 2013 (1) TN MAC 481 and Vimal Kanwar, 2013 (1) TN MAC 641. The learned counsel for the appellant also would submit that the Trial Court erred in awarding lesser sum towards funeral expenses and loss of love

and affection without considering the fact that the deceased was a sole breadwinner of their family. Hence, the learned counsel for the appellants prayed for allowing this appeal.

7. The learned counsel for the respondent would submit that the claim petition filed by the claimants for the claim of compensation is devoid of merits and facts. This appeal is not maintainable in law and on facts and it is liable to be dismissed. Further, he would submit that the driver of the respondent has not drove the bus in a rash and negligent manner at the time of accident and the respondent cannot be held liable to pay the compensation. Hence, he prayed to dismiss the appeal.

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

9. It is seen that the deceased driver's earning of not less than Rs.15,000/- per month was not refuted by the contesting appellants. Normally, in claims case, the tendency of the claimants is to boost the income of the deceased, for obvious reasons. Hence, the evidence of P.W.1 in this regard cannot be taken as such. Therefore, the income of the deceased has to be taken only notionally for the purpose of the claim petition. Accordingly, considering the fact that the deceased was a driver, which of course was not refuted by the appellant, the income of the deceased is notionally taken as Rs.3,000/- per month or Rs.36,000/- per annum. As per the guideline in the second schedule of the Motor Vehicle Act, the proper multiplier for the age group of the deceased would be 17. Therefore, the overall loss of income of the deceased would come to 36,000 X 17 =Rs.6,12,000/-. As per the further guideline issued in the second schedule, the 1/3 of the above total amount should be deducted, towards the expenses of the deceased, if he would have incurred, he had been alive, which shall come to Rs.2,04,000/-, thereby leaving remainder of Rs.4,08,000/-. Apart from the above amount, the Tribunal has awarded compensation towards funeral expenses, loss of consortium and loss of love and affection, which are also confirmed. Therefore, the compensation awarded by the Court below reads 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	4,08,000/-	4,08,000/-	Confirmed
2.	Funeral Expenses	5,000/-	5,000/-	Confirmed

3	Loss of consortium	10,000/-	10,000/-	Confirmed
4.	Loss of love and affection	25,000/-	25,000/-	Confirmed
	Total	Rs.4,48,000/-	Rs.4,48,000/-	Confirmed

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

1. Principal District Judge,
The Motor Accident Claims Tribunal,
Villupuram.

+1cc to Mr.C.S.K.Sathish, Advocate, S.R.No. 15394

C.M.A.No.3479 of 2013

SV(CO)
GN(08/01/2021)

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