

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:02.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.473 of 2013

1. Murali @ Govindasamy
2. R.Renuka
3. J. Ramakrishnan

... Appellants/ Petitioners

vs.

1. Tamil Nadu State Transport Corporation,
Limited, rep. By its Managing Director,
Villupuram Division-1.
2. Tamil Nadu State Transport Corporation
Ltd., Rep. By its Managing Director,
Kumbakonam Division-IV.

... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, allow the claim in MCOP.No.5037 of 2004 passed by the Motor Accident Claims Tribunal (Additional District Judge/Fast Track Court-I), Chennai dated 25.02.2010.

For Appellants : Mr.K.Varadha kamaraj

For Respondents : Mr.C.S.K.Sathish - R1
Mr.D.Venkatachalam - R2

JUDGMENT

[This Appeal was taken up for hearing through Video Conferencing]

This appeal has been filed by the claimants seeking enhancement of compensation under the Impugned Award dated 25.02.2010 passed by the Motor Accident Claims Tribunal (Additional District Judge/Fast Track Court-I) Erode in MCOP.No5037 of 2004.

2. The appellants/claimants have preferred this appeal seeking enhancement of compensation on the ground that the compensation awarded by the Tribunal, is very meagre and it is not a just compensation.

3. A person by name Geetha Lakshmi, died on 14.09.2004 as a

result of an accident caused by a bus bearing Registration No.TN 55 N 0317 owned by the second respondent.

4. The appellants are the legal heirs of the deceased Geetha Lakshmi, who are the Appellants herein. They preferred a claim before the Motor Accidents Claims Tribunal (Additional District Judge/Fast Track Court-I) Erode in MCOP.No5037 of 2004, seeking enhancement of compensation for the death of Geetha lakshmi.

5. The Motor Accidents Claims Tribunal, under the impugned award, directed the second respondent/transport corporation to pay the appellants/claimants a compensation of Rs.3,23,000/- together with interest and costs, as detailed hereunder:-

Sl.No.	Heads	Award
1	Pecuniary loss	2,88,000/-
2	Loss of consortium	15,000/-
3	Loss of love and affection	10,000/-
4	Funeral expenses	8,000/-
5	Transportation	2,000/-
	Total	3,23,000/-

6. The appellants/claimants, unsatisfied with the quantum of compensation awarded by the Tribunal, have filed this appeal seeking enhancement.

7. Heard Mr.K.Varadha kamaraj, learned counsel for the Appellants / claimants and Mr.C.S.K.Sathish, learned counsel for the first respondent and Mr.D.Venkatachalam, learned counsel for the second Respondent.

8. Before the Tribunal, the claimants have filed six documents, which were marked as Ex.P1 to Ex.P6 and two witnesses were examined viz., Mr.Murali, husband of the deceased as PW1; Lakshmi - an eyewitness to the accident as PW2. On the side of the respondents, one witness was examined viz., RW1, who is the driver of the bus owned by the second respondent and no document was filed.

9. In the claim petition, the appellants/claimants have pleaded that the deceased Geetha Lakshmi was a tailor, earning Rs.250/- per day, at the time of the accident. They have also pleaded that the deceased was aged 21 years at the time of the accident. The age and avocation of the deceased has not been disputed by the respondents before the Tribunal as seen from the

evidence available on record. Since no documentary evidence was produced by the appellants/claimants to substantiate the monthly income of the deceased, the Tribunal, under the impugned award, has assessed the monthly income of the deceased on notional basis at Rs.3,000/-. The age of the deceased has also been proved through the post-mortem certificate (Ex.P5), which reveals that the deceased was aged 21 years at the time of the accident. The Tribunal has erroneously deducted 50% towards personal expenses of the deceased. The deceased was not a bachelor and since her legal heirs are three in number, which includes her husband and her parents, the correct deduction to be made is $1/3^{\text{rd}}$ as per the decision of Hon'ble Supreme Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC). Accordingly, the same is modified by this Court.

10. The deceased was aged 21 years at the time of the accident which is proved through the post mortem certificate (Ex.P5). The correct multiplier to be adopted is '18' multiplier. However, the Tribunal has erroneously applied the multiplier of '16'. Accordingly, the same is modified by this Court and '18' multiplier is adopted for calculating the pecuniary loss suffered by the appellants.

11. With regard to the assessment of the monthly income by the Tribunal is concerned, this Court is of the considered view that the said assessment is a correct assessment, since no documentary evidence was produced by the appellants/claimants before the Tribunal and further the year of the accident is 2004. However, the Tribunal has failed to award any compensation towards loss of future prospects to the appellants, which they are legally entitled to as per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680. Accordingly, this Court grants 40% towards loss of future prospects to the appellants/claimants.

12. With regard to the compensation awarded by the Tribunal under the various other heads, viz., loss of consortium, loss of companionship and funeral expenses are concerned, the same will have to be necessarily enhanced as the compensation awarded by the Tribunal under those heads are low and it is not a just compensation. In accordance with the settled practice, this Court enhances the compensation towards loss of consortium and loss of companionship from Rs.15,000/- to Rs.40,000/- and enhances the compensation towards funeral expenses from Rs.8,000/- to Rs.15,000/-. The Tribunal, has also failed to award any compensation to the appellants/claimants towards loss of estate. As per the decision of the Hon'ble Supreme Court in the case of Pranay shethi referred to supra, the

appellants/claimants are entitled to get a sum of Rs.15,000/- towards loss of estate. The Tribunal ought not to have separately awarded compensation to the appellants/claimants towards loss of love and affection when it has already awarded compensation towards loss of companionship. However, the Tribunal has erroneously awarded a sum of Rs.10,000/- as compensation towards the said head, which is rejected by this Court. Similarly, being a fatal accident claim, the Tribunal ought not to have awarded any compensation towards transportation. However, the Tribunal has erroneously awarded Rs.2,000/- as compensation towards transportation, which is also rejected by this Court.

13. It is made clear that the second respondent is alone liable to compensate the appellants/claimants as the vehicle which caused accident was owned by the second respondent alone.

14. For the foregoing reasons, the compensation awarded by the tribunal under the impugned award to the appellants is enhanced in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pecuniary Loss	2,88,000/-	6,04,800/-
Loss of consortium	15,000/-	40,000/-
Loss of love and affection	10,000/-	
Funeral Expenses	8,000/-	15,000/-
Loss of Estate		15,000/-
Transportation	2,000/-	
Total	3,23,000/-	6,74,800/-

Conclusion:

15. In the result, the appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The second respondent insurance Company is directed to deposit the modified award amount i.e, Rs.6,74,800/- along with interest and costs, after deducting the amount, if any, already deposited, to the credit of MCOP.No.5037 of 2004 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is

directed to transfer the share of the Appellants/claimants as per the order of this Court through RTGS within a period of four weeks thereafter. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

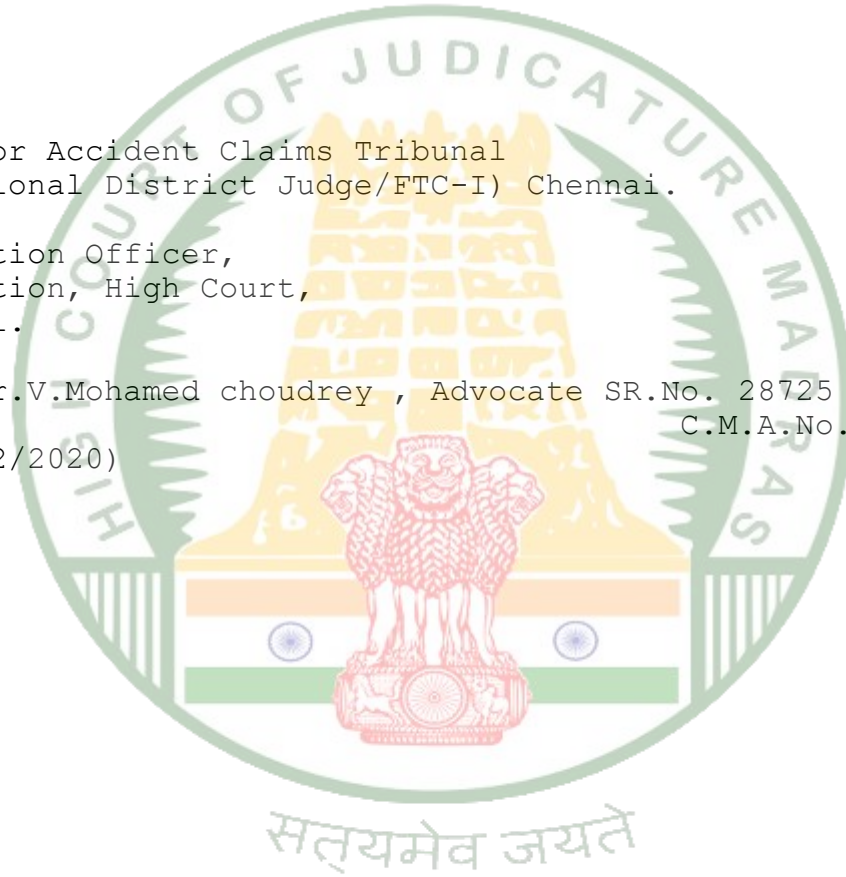
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To

1.The Motor Accident Claims Tribunal
(Additional District Judge/FTC-I) Chennai.

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

+1cc to Mr.V.Mohamed choudrey , Advocate SR.No. 28725
C.M.A.No.473 of 2013
A.SK(08/12/2020)



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