

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.586 of 2020

1.S.Amutha
2.A.Kalaivani
3.S.Gokulraj
4.D.Kannammal

.. Appellants/Petitioners

Vs.

1.Vanitha

..R1/R

2.The Managing Director,
TNSTC,
No.12, Ramakrishna Road,
Salem - 7.

.. R2/R2

(amended as per I.A.No.646/2019
dated 13.03.2019)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.09.2019 made in M.C.O.P.No.2161 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.K.Suryanarayanan
for Mr.T.Senthilvelmurugan

For R2 : Ms.R.Kavitha
for Mr.D.Raghu
(Standing Counsel for TNSTC)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 24.09.2019 made in M.C.O.P.No.2161 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

2.The appellants and 1st respondent are the claimants in M.C.O.P.No.2161 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. They filed the above

said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Srinivasan, who died in the accident that took place on 19.08.2017.

3. According to the appellants and 1st respondent, on 19.08.2017 at about 07.10 A.M., while the deceased was riding his motorcycle on four road, Salem near Gandhi Stadium opposite to House of Engineers, the 2nd respondent-Transport Corporation's bus which was coming in the opposite direction driven by its driver in a rash and negligent manner, dashed against the deceased and caused the accident. In the accident, the deceased sustained grievous injuries all over his body and succumbed to injuries. At the time of accident, the deceased was aged 42 years and was working as Driver in Dharan Natural Stones, Seelanaiyakanpattty, Salem and was earning a sum of Rs.20,000/- per month. Therefore, the appellants and 1st respondent filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation against the 2nd respondent-Transport Corporation.

4. The 2nd respondent-Transport Corporation filed counter statement and denied various averments made by the appellants and 1st respondent. According to the 2nd respondent-Transport Corporation, the deceased only rode his motorcycle in a rash and negligent manner and on seeing the same, the driver of the 2nd respondent-Transport Corporation's bus stopped the vehicle. But the deceased could not control the speed of the motorcycle and dashed against the bus and invited the accident. Therefore, the driver of the 2nd respondent-Transport Corporation's bus is not responsible for the accident. The appellants and 1st respondent have to prove that they are the legal heirs of the deceased and also the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the appellants and 1st respondent is highly excessive and prayed for dismissal of the appeal.

5. Before the Tribunal, the 1st appellant examined herself as P.W.1 and eye-witness Ravi was examined as P.W.2 and 10 documents were marked as Exs.P1 to P10. On behalf of the 2nd respondent-Transport Corporation, one Palaniappan was examined as R.W.1 and no document was marked.

6. 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 2nd respondent-Transport Corporation's bus and fixed 15% contributory negligence on the part of the deceased for not wearing helmet at the time of accident and directed the 2nd respondent-Transport Corporation to pay a sum of Rs.10,22,048/- towards 85% of the

award amount as compensation to the appellants and 1st respondent.

7. Challenging the portion of the award fixing 15% contributory negligence on the part of the deceased and for enhancement of compensation, the appellants and the 1st respondent have come out with the present appeal.

8. The learned counsel for the appellants contended that the Tribunal erred in fixing 15% contributory negligence on the part of the deceased when the accident has occurred only due to the negligence on the part of the driver of the 2nd respondent-Transport Corporation's bus. The deceased was aged 42 years and was working as Driver in Dharan Natural Stones, Seelanaiyakanpattty, Salem and was earning a sum of Rs.20,000/- per month. But the Tribunal fixed a meagre sum of Rs.8,000/- per month as notional income of the deceased. There are five dependants of the deceased and the Tribunal ought to have deducted 1/4th towards personal expenses of the deceased instead of deducting 1/3rd. The Tribunal has not awarded any amount towards loss of love and affection. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award fixing 15% contributory negligence on the part of the deceased and for enhancement of compensation.

9. Per contra, the learned counsel appearing for 2nd respondent-Transport Corporation contended that the deceased also contributed to the accident. Therefore, 15% contributory negligence fixed on the part of the deceased is proper. In the absence of any material evidence with regard to avocation and income, a sum of Rs.8,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal rightly deducted 1/3rd towards personal expenses of the deceased. The amounts awarded by the Tribunal under different heads are not meagre. The appellants and the 1st respondent have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellants and 1st respondent as well as the learned counsel appearing for the 2nd respondent-Transport Corporation and perused entire materials on record.

11. From the award passed by the Tribunal, it is seen that the Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the 2nd respondent-Transport

Corporation's bus and fixed 15% contributory negligence on the part of the deceased on the ground that the deceased was not wearing helmet at the time of accident. The reason given by the Tribunal for fixing 15% contributory negligence on the part of the deceased is proper and the same is hereby confirmed.

12.As far as quantum of compensation is concerned, it is the contention of the appellants and the 1st respondent that the deceased was aged 42 years and was working as Driver in Dharan Natural Stones, Seelanaiyakanpattty, Salem and was earning a sum of Rs.20,000/- per month at the time of accident. But they failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.8,000/- per month as notional income of the deceased. The accident occurred in the year 2017 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident, age and nature of work done by the deceased, a sum of Rs.13,000/- per month is fixed as notional income of the deceased. The deceased was aged 42 years at the time of accident and the Tribunal has rightly granted 25% enhancement towards future prospects and adopted multiplier '14'. There are five dependants of the deceased but the Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased instead of deducting 1/4th. In view of the above, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.20,47,500/- {Rs.16,250/- [Rs.13,000/- + Rs.3,250/- (25% of Rs.13,000/-)] X 12 X 14 X 3/4 }. The Tribunal has not awarded any amount towards loss of love and affection. Therefore, the appellants 2 to 4 and the 1st respondent are entitled to a sum of Rs.20,000/- each towards loss of love and affection. The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant, funeral expenses and loss of estate are just and reasonable and hence, the same are hereby confirmed.

13.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	11,20,056/-	20,47,500/-	Enhanced
	85% of the amount	9,52,048/-	17,40,375/-	

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
2.	Loss of consortium to the 1 st appellant	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection	-	80,000/-	Granted
	Total	Rs.10,22,048/-	Rs.18,90,375/-	enhanced by Rs.8,68,327/-

14. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.10,22,048/- is hereby enhanced to Rs.18,90,375/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. The 2nd respondent-Transport Corporation is directed to deposit the enhanced award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, 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.2161 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. On such deposit, the appellants and the 1st respondent are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
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Assistant Registrar (CS-V)

//True copy//

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Sub Assistant Registrar

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To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Salem.

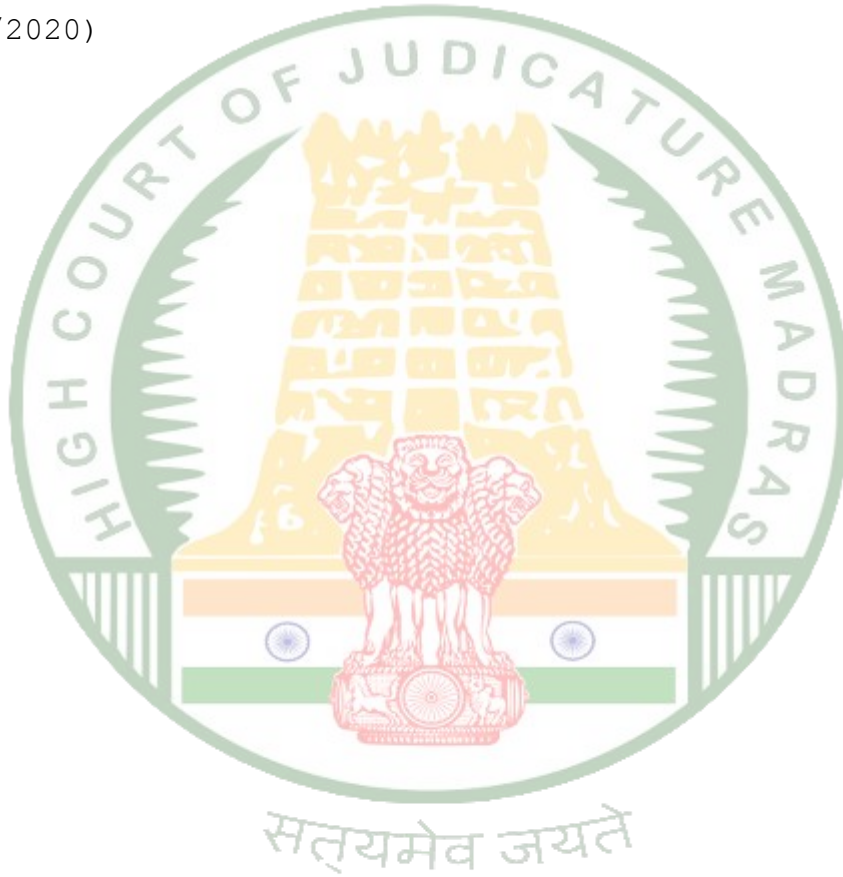
2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.T.Senthilvelmurugan, Advocate SR.No.15068

+1cc to Mr.D.Raghu, Advocate SR.No.15316

C.M.A.No.586 of 2020

EV (CO)
GMY (10/11/2020)



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