

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2020
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.881 of 2020

1. J.Anusuya
2. Minor Krishnakumar
3. Minor Sangeetha
4. Minor Jayakumar
5. Sowbakkiyam Appellants/ Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram Division-1) Ltd.,
3/137, Salamedu, Vazhuthareddy,
Villupuram 605 602 Respondent/ Respondent

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 06.10.2018 made in MCOP.No.2481 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore (FAC) .

For Appellant : Mr. Ramya V. Rao

For Respondents : Mr. K.J. Sivakumar

J U D G M E N T

Feeling unsatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Special Sub Court, Cuddalore (FAC) in MCOP No.2481 of 2016, dated 06.10.2018, the claimants are before this Court with this appeal seeking enhancement of compensation.

2. The case of the claimant in brief reads as follows:-

It is a case of fatal accident. The deceased one Jayaraman was working as a mason and he was aged about 35 years at the time of accident. On 13.02.2016, at about 3.45 p.m., while he was riding his TVS XL moped from Panruti to Salem Main Road, near Puthukoil, Aauguchettiplayam, a bus, belongs to the respondent Corporation, bearing registration No.TN 32 N 3258, came from the opposite direction in a rash and negligent manner and dashed against the moped of the deceased, in which, he suffered fatal injuries and immediately, he was taken to Panruti Government Hospital and thereafter, he was referred to Government Headquarters Hospital Cuddalore and thereafter, he was admitted in Jipmer Hospital, Puducherry, where, he succumbed to injuries. According to the claimants, the deceased is the sole breadwinner of the family and he was earning a sum of Rs.20,000/- per month. Hence, the claimants filed the claim petition seeking compensation of Rs.25 lakhs.

3. The respondent/Transport Corporation remained ex-parte before the Tribunal.

4. In order to prove their claim, the claimants examined two witnesses and marked as many as 6 documents. On the side of the respondent, neither any witness has been examined nor any documents have been marked.

5. The Tribunal, after considering the materials available on records, came to a conclusion that the accident has been taken place due to the rash and negligent driving of the driver of the respondent-Corporation bus and held that the respondent is liable to pay the compensation. So far as the quantum of compensation is concerned, the Tribunal fixed the monthly income of the deceased at Rs.6500/-. As the deceased was 35 years, the Tribunal fixed the future prospects at 40% and deducted 1/4 towards his personal expenses and applying the multiplier of 16, arrived at the loss of dependency at Rs.13,10,400/-. Apart from that, the Tribunal awarded a sum of Rs.15,000/- each towards loss of estate and funeral expenses and awarded a sum of Rs.40,000/- towards loss of consortium and in total, Tribunal awarded a sum of Rs.13,80,400/-, which was directed to be paid by the respondent/Transport Corporation with interest at the rate of 7.5%. Feeling not satisfied with the same, the claimants are before this Court with this Appeal.

6. The learned counsel for the appellants would submit that the accident has taken place in the year 2016 and the deceased was a mason and he was earning more than a sum of Rs.15,000/- per month. However, the Tribunal fixed the monthly income of the

deceased at Rs.6500/- without any reason whatsoever and towards loss of love and affection to the minor children and mother of the deceased, no compensation was awarded by the Tribunal.

7. Per contra, the learned counsel appearing for the respondent/Transport Corporation would submit that even though the deceased is said to have working as a mason, except the oral evidence of P.W.1 no material evidence is available on record to substantiate the same. However, the Tribunal, after considering the entire materials, rightly fixed a sum of Rs.6500/- as monthly income. He would further submit that since the Tribunal has awarded consortium to the wife of the deceased, there is no necessity to award any amount towards loss of love and affection to the minor children and mother of the deceased. According to the learned counsel, the Tribunal has awarded a just compensation and there is no necessity to interfere with the same.

8. I have considered the rival submissions and perused the materials available on records carefully.

9. The case of the claimants is that the deceased was working as a mason and earning more than a sum of Rs.15,000/- per month. The wife of the deceased was examined as P.W.1 and she has given evidence that he was working as a mason. As the deceased is a mason, who is working in a village, he can not produced any documentary evidence to support the same. That apart, the evidence of P.W.1 was also not challenged by the respondent before the Tribunal. Considering the fact that the deceased is a mason, he can easily get a sum of Rs.600/- per day and even assuming that he was working for 20 days in a month, he would get a sum of Rs.12,000/- per month. However, the Tribunal, without considering the same, fixed the monthly income of the deceased at Rs.6500/-, which is very low. Hence, the monthly income of the deceased is fixed at Rs.12,000/- and as per the judgment passed by the Hon'ble Supreme Court in Pranay Sethi's case, 40% of the monthly income is added towards future prospects, which comes to Rs.16,800/- (12000+4800) and since the claimants are 5 in numbers, after deducting 1/4 of monthly income, the notional income of the deceased is fixed at Rs.12,600/- (Rs.16800-4200). Since the deceased was 35 years at the time of ccident, applying the multiplier of 16, the loss of dependency comes to Rs.24,19,200/- (12600x12x16). So far as loss of consortium is concerned, the Tribunal has awarded a sum of Rs.40,000/- only to the wife. There are 3 minor children and mother. As per the judgment of the Hon'ble Supreme Court in United India Insurance Company /vs/ Satinder Kaur @ Satwinder Kaur and others in C.A.No.2705 & 2706 of 2020 , dated 30.06.2020, the children are entitled for a sum of Rs.40,000/- each for parental consortium, in total they are entitled for a

sum of Rs.1,20,000/- and the mother is also entitled for filial consortium of Rs.40,000/-. Apart from that the claimants are entitled for a sum of Rs.15,000/- each towards loss of estate and funeral expenses and hence, the claimants are entitled for a total sum of Rs.26,49,200/-, rounded to Rs.26,50,000/- towards compensation.

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal in M.C.O.P.No.2481 of 2016 is enhanced from Rs.13,80,400/- to Rs.26,50,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 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 eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the enhanced award amount along with interest and costs as apportioned by the Tribunal, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrp

To

The Motor Accidents Claims Tribunal,
Special Sub Court, (FAC)
Cuddalore.

Copy to:

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

+1cc to Mr.A.N.Viswanathan Rao, Advocate SR.No. 42309

+1cc to Mr.K.J.Sivakumar , Advocate SR.No. 41895

C.M.A.No.881 of 2020

A.SK(08.03.2021)