

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos. 2967 of 2019 & 552 of 2020
and C.M.P. No. 15854 of 2019

C.M.A. No. 2967 of 2019

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
(Kumbakonam),
New Railway Station Road,
Kumbakonam 612 001. .. Appellant/Respondent

Vs.

R. Arumugam (died)
1.A. Rajathilagar
2.A. Hemavathi
3.A. Mohandass .. Respondents/Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 24.10.2018, made in M.C.O.P. No. 2811 of 2015, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Cuddalore.

For Appellant : Mr. D. Venkatachalam

For Respondents: M/s. Ramya V. Rao

C.M.A. No. 552 of 2020 सत्यमेव जयते

R. Arumugam (died)
1.A. Rajathilagar
2.A. Hemavathi
3.A. Mohandass .. Appellants/Claimants

Vs.

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Tamil Nadu State Transport Corporation Ltd.,
(Kumbakonam),
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Kumbakonam 612 001. .. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 24.10.2018, made in M.C.O.P. No. 2811 of 2015, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Cuddalore.

For Appellants : M/s. Ramya V. Rao

For Respondent : Mr. D. Venkatachalam

C O M M O N J U D G M E N T

C.M.A. No. 2967 of 2019 is filed challenging the quantum of compensation granted by the award dated 24.10.2018, made in M.C.O.P. No. 2811 of 2015, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Cuddalore.

C.M.A. No. 552 of 2020 is filed seeking enhancement of the compensation granted by the award dated 24.10.2018, made in M.C.O.P. No. 2811 of 2015, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Cuddalore.

2.Both the appeals arise out of the same accident and same award and therefore, they are disposed of by this common judgment. The parties are referred to as per their ranks in the claim petition.

3.The appellant in C.M.A. No. 2967 of 2019 is the respondent in M.C.O.P. No. 2811 of 2015, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Cuddalore. The appellants in C.M.A. No. 552 of 2020 filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one A. Neethirajan, who died in the accident that took place on 25.06.2015. Pending claim petition, the 1st claimant died.

4.According to the claimants, on 25.06.2015, at about 08.20 p.m., while the deceased was riding his Motorcycle bearing Registration No. TN-51-AZ-7939 at his extreme left hand side of the road at Kaakkakottur, the Driver of the Bus bearing Registration No. TN-49-N-1610 belonging to the respondent-Transport Corporation drove the vehicle in the opposite direction at very high speed in a rash and negligent manner, without blowing horn and hit against the Motorcycle driven by the deceased and caused the accident. Due to the said accident, the deceased was thrown out of the Motorcycle and succumbed to injuries. The claimants who are the father, brothers and sister of the deceased filed the claim petition, claiming compensation against the respondent-Transport Corporation.

5.The respondent-Transport Corporation filed counter statement and denied all the averments made by the claimants in the claim petition. According to the respondent, the accident occurred only due to rash and negligent riding of the Motorcycle by the deceased. The claim petition is bad for non-joinder of the necessary parties to the proceedings. The respondent denied the age, avocation, income and legal heirs of the deceased and the manner of accident. In any event, the total compensation claimed by the claimants are excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 4th claimant examined himself as P.W.1 and marked 8 documents as Exs.P1 to P8. The respondent examined the Driver of the Bus as R.W.1, but did not mark any documents.

7.The Tribunal considering the pleadings, oral and documentary evidence let in by the claimants and oral evidence let in by the respondent, held that the accident has occurred due to rash and negligent driving by the driver of the Bus belonging to the respondent-Transport Corporation and directed the respondent to pay a sum of Rs.13,74,000/- as compensation to the claimants 2 to 4.

8.Challenging the quantum of compensation granted by the award dated 24.10.2018, made in M.C.O.P. No. 2811 of 2015, the respondent-Transport Corporation has filed C.M.A. No. 2967 of 2019 and not being satisfied with the amounts awarded by the Tribunal, the claimants have filed C.M.A. No. 552 of 2020, seeking enhancement of the compensation.

9.The learned counsel appearing for the claimants contended that the deceased was working as Teacher and was earning a sum of Rs.18,000/- per month. The Tribunal without considering Exs.P7 and P8 filed to prove the avocation and income of the deceased, fixed only a sum of Rs.10,000/- per month as notional income. The Tribunal has not awarded any amount towards loss of estate. The amounts awarded by the Tribunal towards loss of love and affection is meagre and prayed for enhancement of the compensation.

10.Per contra, the learned counsel appearing for the respondent contended that the Tribunal having rejected Exs.P6 and P7 on the ground that the author of the document was not examined, erred in fixing a sum of Rs.10,000/- per month as

notional income, which is on the higher side. The claimants 2 & 4 who are the married elder brothers and 3rd claimant who is a married elder sister of the deceased are not dependants of the deceased and hence, the Tribunal erred in granting compensation towards loss of dependancy to the claimants 2 to 4. The Tribunal erred in fixing excessive interest at the rate of 8% per annum and prayed for setting aside the award of the Tribunal.

11. Heard the learned counsel appearing for the claimants 2 to 4 as well as the respondent and perused the materials available on record.

12. It is the contention of the claimants that the deceased was working as Teacher in Sri Sankara Matric Higher Secondary School, Peralam and was earning a sum of Rs.20,000/- per month. They have filed Exs.P6- appointment order and P7- salary certificate to substantiate the same. The Tribunal has fixed a sum of Rs.10,000/- per month as notional income of the deceased. The accident is of the year 2015 and the monthly income fixed by the Tribunal is meagre. The claimants have failed to examine the author of the documents marked as Exs.P6 and P7. Hence, this Court fixes a sum of Rs.12,000/- per month as notional income of the deceased. The deceased was a bachelor, aged 30 years at the time of accident. The Tribunal has rightly granted 40% enhancement towards future prospects and deducted 50% towards personal expenses of the deceased. Hence, applying the multiplier '16', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.16,12,800/- $\{[Rs.12,000/- + Rs.4,800/- (Rs.12,000/- \times 40\%)] \times 12 \times 16 \times \frac{1}{2}\}$. Though the claimants 2 to 4 are elder brothers and sister of the deceased, they are also dependants of the deceased. Hence, the contention of the respondent that the claimants 2 to 4 are not entitled for compensation is erroneous. The Tribunal has not awarded any amount towards loss of estate and funeral expenses. The claimants are entitled to a sum of Rs.15,000/- each towards loss of estate and funeral expenses. The amount awarded by the Tribunal towards loss of love and affection is just and reasonable and hence, the same is hereby confirmed. 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.	Dependency	13,44,000/-	16,12,800/-	Enhanced

2.	Loss of love and affection to the claimants 2 to 4	30,000/-	30,000/-	Confirmed
3.	Loss of estate	-	15,000/-	Granted
4.	Funeral expenses	-	15,000/-	Granted
	Total	13,74,000/-	16,72,800/-	Enhanced by Rs.2,98,800/-

The Tribunal has granted compensation together with interest at the rate of 8% per annum, which is excessive. The claimants 2 to 4 are entitled to interest only at the rate of 7.5% per annum.

13. In the result, both the appeals are partly allowed and the amount awarded by the Tribunal at Rs.13,74,000/- is enhanced to Rs.16,72,800/- along with 7.5% interest and costs. The respondent-Transport Corporation is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 2811 of 2015. On such deposit, the claimants 2 to 4 are permitted to withdraw their respective share of the enhanced award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. It is made clear that the claimants are not entitled for any interest for the delay period on the amount of Rs.2,98,800/-, enhanced by this Court as per the order of this Court dated 10.02.2020, made in C.M.P. No. 2423 of 2020 in C.M.A. SR. 13176 of 2020. The claimants are directed to pay necessary court fee, if any, on the enhanced amount of Rs.2,98,800/-. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Principal District Judge,
(Motor Accident Claims Tribunal),
Cuddalore.

+1 CC to Mr.D. Venkatachalam, Advocate sr 18186.

+1 CC to Mr.A.N. Viswanatha Rao, Advocate sr 17126.

C.M.A. Nos. 2967 of 2019 & 552 of 2020

TM(CO)
SP(05/06/2020)



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