

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3931 of 2019
and

C.M.P.No.22335 of 2019

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Railway Station New Road,
Kumbakonam, Tanjore District. ... Appellant/Respondent

Vs

1.Nazrin Nisha
W/o.Syed Ali

2.Minor Safana
D/o.Syed Ali

3.Minor Mohamed Hafeez
S/o.Syed Ali
(Minors R2 and R3 rep by Mother first Respondent)

4.Isabevi
W/o.Jalaludheen ... Respondents 1 to 4/Petitioners

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.08.2018 made in M.C.O.P.No.139 of 2016 on the file of Motor Accident Claims Tribunal, Mannarkudi.

For Appellant : Mr.G.Venkatachalam

For Respondents: Mr.S.Sekar

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

[Heard through Video Conference]

Questioning the quantum of compensation awarded by Motor Accident Claims Tribunal, Mannargudi, in M.C.O.P.No.139 of 2016

dated 09.08.2018, appellant State Transport Corporation has filed the present appeal.

2. The brief facts of the case is as follows:

Respondents are the wife, minor children and mother of the deceased Syed Ali. On 01.06.2014 at about 4.15 p.m., while the deceased was riding his motorcycle on the Thanjavur - Nagapattinam main road, a bus bearing registration No.TN-49-N-1633, belonging to appellant transport corporation came in a rash and negligent manner and dashed against the deceased, as a result of which the deceased died, despite treatment. Seeking compensation in a sum of Rs.50,00,000/-, respondents/claimants have filed M.C.O.P.No.139 of 2016 on the file of Motor Accident Claims Tribunal, Mannargudi. The said compensation was claimed on the basis that the deceased was working as a clerk-cum-driver at Dubai and was earning a sum of Rs.60,000/- p.m. Therefore, there is a loss to the tune of Rs.60,000/- p.m. on the death of the deceased.

3. The appellant transport corporation filed a counter resisting the claim made by respondents/claimants.

4. Before the Tribunal, to prove their case, on the side of respondents/claimants, first respondent was examined as PW-1 and one Shahul Hameed was examined as PW-2 and nine exhibits were marked. On behalf of the appellant transport corporation neither oral evidence was adduced nor documents were marked. On appreciation of materials, the Tribunal, found that the accident had occurred only due to the rash and negligent driving of the bus belonging to appellant Transport Corporation. Further, the Tribunal, in the absence of any documentary evidence to prove the income of the deceased, on the basis of Ex.P6 - Passport and visa of the deceased, Ex.P7 - Driving license of the deceased issued at Dubai and Ex.P8 - Identity Card issued by United Arab Emirates, arrived at a conclusion that the deceased would have earned a sum of Rs.20,000/- p.m. by working as a Clerk-cum-Driver and awarded compensation as follows:

Sl.No .	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income [(20000+40%-1/4)*12*16]	40,32,000/-
2.	Loss of consortium [R1]	40,000/-
3.	Loss of love and affection [R2 to R4]	15,000/-
4.	Transport expenses	10,000/-
5.	Funeral expenses	15,000/-

Sl.No	Compensation awarded under the head	Amount (in Rs.)
	Total	41,12,000/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of petition till the date of deposit. Questioning the quantum of compensation, appellant transport corporation has filed the present appeal.

5. Heard learned counsel appearing for appellant transport corporation and learned counsel appearing for respondents/claimants. Perused the materials on record.

6. Learned counsel appearing for appellant transport corporation submits that though it is the case of respondents/claimants that the deceased was working at Dubai and earning a sum of Rs.60,000/- p.m., except marking the passport, visa, driving license and identity card of the deceased, no documentary proof has been filed to prove the income of the deceased. In such circumstance, fixing of Rs.20,000/- as the monthly income of the deceased is extremely on the higher side. Submitting as above, learned counsel prays for allowing the appeal.

7. Countering the submission of learned counsel appearing for appellant transport corporation, learned counsel appearing for respondents/claimants submits that Ex.P6 - passport and visa of the deceased, Ex.P7 - driving license and Ex.P8 - identity card of the deceased, would clearly prove that the deceased was working at Dubai. Though it is the case of respondents/claimants that the deceased was earning a sum of Rs.60,000/- p.m., the Tribunal has fixed only a notional sum of Rs.20,000/- as the monthly income. In such circumstance, absolutely there is no need to interfere with the award passed by the Tribunal. Submitting as above, learned counsel prays for dismissal of the appeal.

8. This Court has considered the rival submissions. Since only the quantum of compensation is challenged, this Court is not dealing with the aspect of 'rash and negligence'.

9. As rightly contended by learned counsel appearing for appellant transport corporation, this Court finds that except marking of passport, visa, driving license and identity card, no crucial documents such as salary certificate, bank passbook were marked. In such circumstance, fixing of Rs.20,000/- as the monthly income of the deceased is on the higher side. Hence, this Court finds it appropriate to fix a sum of Rs.18,000/- as

the monthly income of the deceased to arrive at a just and proper compensation. Accordingly, a sum of Rs.18,000/- is fixed as the monthly income of the deceased, 40% is added towards future prospects, as the dependents are four in number 1/4 is deducted towards personal expenses and as the deceased was aged 35 at the time of accident, multiplier '16' is adopted. Considering the fact that the minor children have lost their father at their tender age and the mother of the deceased lost her son at his young age, this Court enhances compensation payable under the head 'loss of love and affection' from Rs.15,000/- to Rs.1,50,000/- (Rs.50,000/- each to respondents 2 to 4). The amount awarded under other heads remains unaltered. Accordingly, the modified compensation payable would be:

Sl.No .	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income [(18000+40%-1/4)*12*16]	36,28,800/-
2.	Loss of love and affection [R2 to R4]	1,50,000/-
3.	Loss of consortium [R1]	40,000/-
4.	Transport expenses	10,000/-
5.	Funeral expenses	15,000/-
	Total	38,43,800/-

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.41,12,000/- awarded by Tribunal is hereby reduced to Rs.38,43,800/-. Appellant transport corporation is directed to deposit the said amount, less that already deposited, together with interest at 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of this judgment. Respondents 1 and 4 are entitled to receive their respective share with interest, as apportioned by Tribunal, on due application. The share of respondents 2 and 3/minors shall be deposited in any nationalized bank in fixed deposit till they attain majority. First respondent/mother of minors is entitled to withdraw interest once in three months. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gm

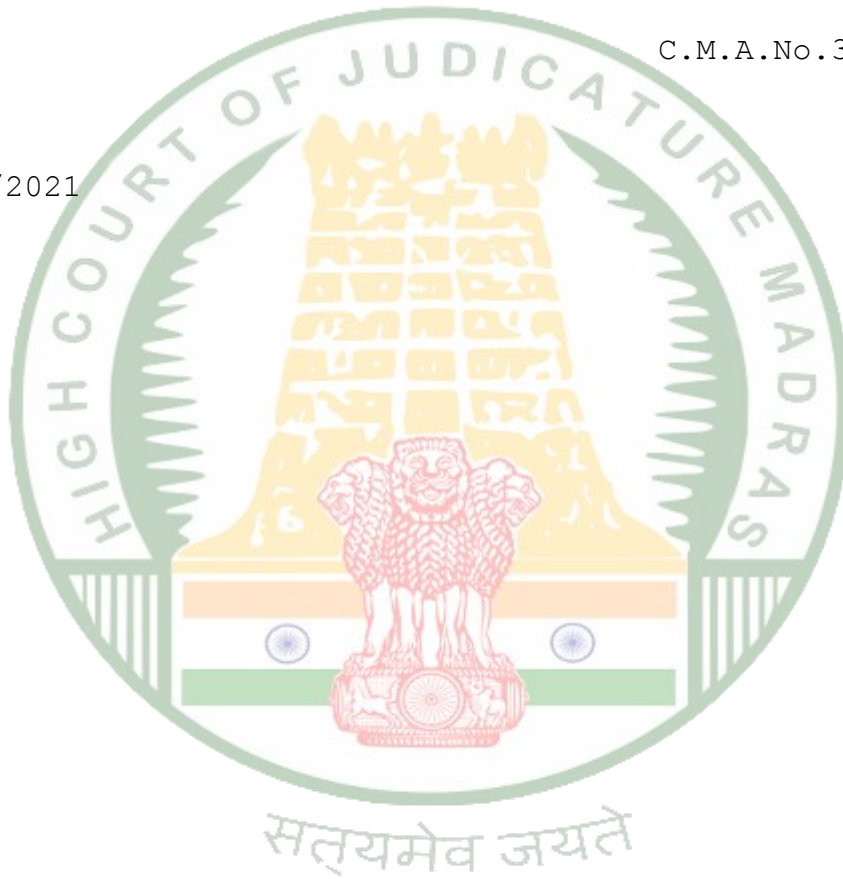
To

The Motor Accident Claims Tribunal,
Mannarkudi.

+lcc to M/s.S.Sekar, Advocate Sr.25272

C.M.A.No.3931 of 2019

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