

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.589 of 2014

1. T. Banumathi
2.Minor T. Srihari
3.C.Thangammal
4.V.R. Chinnasamy
5.Minor T. Harishni
(Minors 2&5 rep.by their next friend
and guardian mother T.Banumathi)

...Appellants/Petitioners

Vs

1.N. Chidambaram
2.The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division),
No.37, Mettupalayam Road,
Coimbatore - 43

..... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed to enhance the compensation awarded dated 4/3/2013 made in M.C.O.P.No.235 of 2012 on the file of the Motor Accident Claims Tribunal/I Additional District Court, Erode.

For appellant : Mr.V.P. Sengottuvel

For respondent-1 : No Appearance

For Respondent-2 : Mr.K.J. Shivakumar

J U D G M E N T

This appeal has been filed by the appellants/claimants seeking enhancement of the compensation awarded in M.C.O.P.No.235 of 2012 on the file of the Motor Accident Claims Tribunal/I Additional District Court, Erode.

2. It is the case of the appellant that on 25.02.2012 when the deceased(V.C. Thiagarajan) was riding his motor cycle bearing Registration No. TN 33- AF-1560 along Erode to Karur main road from north to South direction, a Transport Corporation bus bearing Registration No. TN-33-N-1992 came from opposite direction in a rash and negligent manner and dashed against the

two wheeler of the deceased. Due to the impact, the deceased sustained head injuries and succumbed to the injuries. The accident occurred only due to the rash and negligent act of the driver of the bus. Hence, the legal heirs of the deceased filed a claim petition before the Tribunal, seeking compensation of Rs.60,000,000/- and the Tribunal considering the materials available on record awarded Rs.16,10,000/- as compensation with 7.5% from the date of petition.

3. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come forward with this appeal before this Court.

4. In order to prove the claim before the Tribunal, on the side of the appellant five witnesses were examined viz., P.W.1 to P.W.5 and twenty eight documents viz., Ex.P1 to Ex.P28 were marked. On the side of the respondent, no witness was examined and no evidence was adduced.

5. The learned counsel for the appellants would submit that the Tribunal has taken only the business income of the deceased to arrive the income under the head loss of dependency. But, the deceased was doing business and agriculture, but the agricultural income was not taken note of. Hence, he prays to consider the agricultural income to quantify the income under the head loss of dependency and also enhance the amounts awarded under other heads also.

6. Per contra, the learned counsel appearing for the second respondent/ Transport Corporation submitted that the deceased was not doing any agricultural work. He further submitted that the driver of the bus drove the same very cautiously and observing the traffic rules and also stated that the F.I.R was also filed belatedly. The learned counsel also denies that in the absence of any documentary proof the award of the Tribunal is on higher side.

7. Heard the learned counsel for the appellant as well as the respondent/Insurance company and also perused the materials available on record before this Court.

8. With regard to negligent aspect, the wife of the appellant examined herself as P.W.1 before the Tribunal and deposed that the accident has occurred due to the negligent attitude of the driver of the bus. P.W.2 is the only eye witness to the accident, who deposed that the accident occurred due to the rash and negligent act of the bus driver. Ex.P.1/First Information Report also supports of the case of the appellants. In any case, the deposition of the eye witness to the occurrence will be given paramount importance. Hence the Tribunal, relying upon the same and also considering other materials arrived at a conclusion that the driver of the bus is the cause for the accident. To controvert the same, no new facts or grounds are forth coming by either of the parties. Hence, this Court is not

inclined to interfere with the findings rendered on the negligence aspect and the same is confirmed as such.

9. With regard to quantum, based on the income tax return filed by the deceased for the assessment year 2011-2012, Rs.1,40,000/- was taken as annual income, after deducting $1/4^{\text{th}}$ ($\text{Rs.1,40,000} \times 1/4 = \text{Rs.35,000/-}$) towards his personal expenses and considering the age (44) of the deceased, applied '14' multiplier and quantified Rs.14,70,000/- ($\text{Rs.1,05,000} \times 14 = \text{Rs.14,70,000/-}$) as loss of dependency. The wife of the deceased has lost his companion. Hence Rs.30,000/- was awarded towards loss of consortium. Second and third Petitioners lost their loveable father and third and fourth petitioners lost their affectionate son. Hence Rs.1,00,000/- was awarded towards love and affection and for funeral expenses Rs.10,000/- was awarded. Thus, the Tribunal awarded Rs.16,10,000/- as compensation.

10. The Court below, considering the income tax return filed during the assessment year 2011-2012 has arrived his annual income as Rs.1,40,000/- whereas the accident has taken place on 25.02.2012. Hence, this Court is inclined to interfere with the said finding and modify the same. Considering the income tax statements filed during the past 3 assessment years, before the death of the deceased, amounts to Rs.9,24,514/-. Hence, the average income of the deceased is arrived at Rs.3,00,000/- ($\text{Rs.9,24,514}/3 = \text{Rs.3,08,171/-}$ rounded off to Rs.3,00,000/-) and considering the age of the deceased 25% ($\text{Rs.3,00,000} \times 25/100 = \text{Rs.75,000/-}$) is added towards future prospects and deducting $1/4^{\text{th}}$ ($\text{Rs.3,75,000} \times 1/4 = \text{Rs.93,750/-}$) towards personal expenses and applying the multiplier '14' ($\text{Rs.2,81,250} \times 14 = \text{Rs.39,37,500/-}$). Thus, Rs.39,37,500/- is awarded towards loss of dependency. The Tribunal has not awarded any amount towards the head loss of amenities hence, Rs.8,000/- is being awarded towards the same. The amount awarded under all other heads remains unaltered. Thus, the compensation awarded by this Court is as follows:

S.No.	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of dependency	Rs.14,70,000/-	Rs.39,37,500/-
Loss of Consortium to the 1 st petitioner	Rs.30,000/-	Rs.30,000/-
Loss of Love and affection for petitioners 1 to 5	Rs.1,00,000/-	Rs.1,00,000/-
Funeral Expenses	Rs.10,000	Rs.10,000/-
Loss of Amenities	-Nil-	Rs.8,000/-
Total	Rs.16,10,000/-	Rs.40,85,500/-

11. With the above said modification the award amount is enhanced to Rs.40,85,500/- from Rs.16,10,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed. The appellants are directed to pay the additional Court for the enhanced amount. The second respondent-Transport Corporation is directed to deposit the enhanced award amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization, 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 being made the appellants are permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn. First, third and fourth appellants are directed to disburse the amount as per the ratio of apportionment fixed by the Tribunal. The share amount allotted to the minor appellants (second and fifth appellants) are directed to be deposited in any one of the nationalized bank till they attain majority and the first appellant/ mother of the minor appellants shall withdraw the accrued interest once in three months. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn

To

1.The Motor Accidents Claims Tribunal,
I Additional District Court, Erode.

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

+1cc to Mr.V.P.Sengottuvel, Advocate SR.4424

+1cc to Mr.K.J.Sivakumar, Advocate SR.4313

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SPD(CO)
CB(10/11/2020)

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