

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 24.07.2020

Judgment Delivered on : 31.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3702 of 2019

1. Lokeswari, W/o Late Kumaravel

2. Minor Balamurugan

3. Minor Dhileepan

(Minor appellants are represented by
Guardian/mother Lokeswari)

Annamalai (died)

4. Rathinammal, W/o Annamalai

.. Appellants/Petitioners 1 to 3 & 5

Vs.

The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan Salai, Chennai-2.

.. Respondent

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act against the order and decree dated 21.07.2016
made in M.C.O.P.No.336 of 2014 on the file of the Motor
Accidents Claims Tribunal/Special District Court, Salem.

For appellants : Mr.C.Thangaraju

For respondents : Mr.K.J.Sivakumar

JUDGMENT

R.SUBBIAH, J

The appeal is heard through video-conferencing.

2. Not being satisfied with the quantum of compensation
awarded by the Tribunal, the present appeal is filed by the
claimants.

3. The appellants/claimants are wife and two minor
children and the father and mother of the deceased. The father
of the deceased died during the course of trial before the
Tribunal.

4. The case of the appellants/claimants is that on
04.02.2014 at about 2 hours, while the deceased Kumaravel was
driving a lorry bearing Registration No.TN-30-AW-2208 on the

Masinaickenpatty- Seelanaickenpatty NH Road, a bus bearing Registration No.TN-01-AN-0380 belonging to the respondent-Corporation, came from opposite direction being driven by its driver in a rash and negligent manner at a hectic speed and dashed against the lorry and thus caused the accident, in which, the deceased sustained grievous injuries all over the body and died on the spot itself. Hence, the claimants made a claim of compensation before the Motor Accidents Claims Tribunal for a sum of Rs.25 lakhs as against the respondent-Transport Corporation for the death of the said Kumaravel.

5. The claim of the claimants was resisted by the respondent-Transport Corporation by filing a counter statement denying the negligence on the part of the driver of the bus bearing Registration No.TN-01-AN-0380 belonging to the respondent-Transport Corporation.

6. In order to prove the claim, on the side of the appellants/claimants, the wife of the deceased was examined as P.W.1, besides examining one Govindaraj as P.W.2, who was an eye-witness to the accident and one Mani as P.W.3 and Exs.P-1 to P-7 were marked on the side of the claimants.

7. On the side of the respondent-Transport Corporation, the driver of the Transport Corporation was examined as R.W.1, but no documentary evidence was produced before the Tribunal.

8. The Tribunal, on the basis of the oral and documentary evidence adduced, fixed the negligence on the part of the driver of the Transport Corporation bus and awarded a total compensation of Rs.11,35,000/- under the following heads:

Sl.No.	Head under which the amount was awarded by the Tribunal	Amount
1	Loss of future income (60,000 x 16)	9,60,000
2	Loss of consortium to the first claimant-wife of the deceased	40,000
3	Loss of love and affection to the second and third claimants for the death of their father, the deceased	1,00,000
4	Funeral expenses	25,000
5	Loss of love and affection to the fifth claimant being the mother of the deceased	10,000
	Total	11,35,000

9. Now, it is the contention of the learned counsel appearing for the appellants/claimants that while calculating the amount of compensation under the head "loss of income", the

Tribunal had taken only a meagre sum of Rs.7,500/- as the monthly income of the deceased, as against the claim of the claimants that the deceased was earning a sum of Rs.20,000/- per month from his avocation as lorry driver and also doing coconut business. In this regard, the learned counsel appearing for the appellants/claimants submitted that in order to prove the income earned by the deceased, on their side, the owner of the lorry, who was the employer of the deceased, was examined as P.W.3. He had deposed in his evidence that the deceased was working as driver under him and on the date of accident, he drove the lorry carrying load on the terrace of the lorry on the Salem-Ulundurpet bye-pass road and at that time, the Transport Corporation bus which came from the opposite direction, hit the lorry driven by the deceased and thus caused the accident, in which the deceased died on the spot itself. He further deposed that the deceased was earning a sum of Rs.20,000/- p.m. as his salary. In spite of the evidence of P.W.3, the Tribunal fixed only a sum of Rs.7,500/- p.m. as the earning of the deceased. Hence, the learned counsel for the appellants/claimants submitted that by fixing a sum of Rs.20,000/- as the monthly income of the deceased, the amount of compensation awarded by the Tribunal has to be enhanced.

10. Per contra, it is the submission of the learned counsel appearing for the respondent-Transport Corporation that though P.W.3 has deposed that the deceased was receiving Rs.20,000/- as salary from him, no documentary evidence was produced before the Tribunal to substantiate the same. Under such circumstances, there is no need to fix the sum of Rs.20,000/- as the monthly income of the deceased for the purpose of calculating the compensation amount and thus, the learned counsel appearing for the respondent-Transport Corporation prayed for dismissal of the appeal.

11. Keeping in mind the submissions made on either side, we have carefully examined the materials available on record.

12. Since the appeal is only challenging the quantum of compensation, we are not traversing into the other aspects of the Award of the Tribunal.

13. Though it is the case of the claimants that the deceased was working as driver and earning a sum of Rs.20,000/- per month, in order to prove the same, the claimants have examined the employer of the deceased as P.W.3. Though P.W.3 had deposed that the deceased was earning a sum of Rs.20,000/-, the claimants have not produced any documentary evidence to substantiate the same. Hence, we are not inclined to accept the submission made by the learned counsel for the appellants/claimants that by fixing a sum of Rs.20,000/- as monthly income of the deceased, the amount awarded under the head "loss of income" has to be enhanced.

14. However, the evidence on record shows that the deceased was a lorry driver by avocation. The accident had

happened in the year 2014. Therefore, by considering the cost of living prevailing at the relevant point of time, by fixing a sum of Rs.15,000/- as the monthly income of the deceased, the amount awarded under the head "loss of income" can be calculated to arrive at a just and proper compensation. If a sum of Rs.15,000/- is fixed as the monthly income of the deceased, and if 40% is added towards his future prospects, the monthly income works out to Rs.21,000/- (Rs.15,000 + 40% of Rs.15,000). If 1/4 is deducted towards personal expenses, the amount works out to Rs.15,750/- (Rs.21,000 - 1/4 of 21,000), which is the actual monthly contribution of the deceased to his family. If the multiplier 16 is applied, the annual loss of income works out to Rs.30,24,000/- (15,750 x 16 x 12). Hence, a sum of Rs.9,60,000/- awarded by the Tribunal under the head "loss of income" is hereby enhanced to Rs.30,24,000/-.

15. The amount awarded by the Tribunal at Rs.25,000/- towards funeral expenses, appears to be on the higher side and as such, the same is reduced to Rs.15,000/-.

16. Considering the fact that the minor children had lost their father at their tender age, the amount of Rs.1,00,000/- awarded by the Tribunal towards love and affection for the two minor children, is hereby enhanced to Rs.1,50,000/- (at Rs.75,000/- to each of the two minor children).

17. The amount awarded by the Tribunal at Rs.40,000/- towards loss of consortium to the first claimant-wife of the deceased, being just and reasonable, is hereby confirmed.

18. The amount of Rs.10,000/- awarded by the Tribunal to the fifth claimant-mother of the deceased is hereby set aside.

19. Consequently, the break-up details of the compensation awarded are as follows:

Sl. No.	Head under which the amount is awarded	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of income	9,60,000	30,24,000
2	Funeral expenses	25,000	15,000
3	Loss of consortium to the first claimant-wife of the deceased	40,000	40,000
4	Loss of love and affection to the two minor children of the deceased	1,00,000	1,50,000
5	Loss of love and affection to the fifth claimant for the death of her son	10,000	--
	Total	11,35,000	32,29,000

20. Thus, the entire compensation awarded by the Tribunal at Rs.11,35,000/- is hereby enhanced to Rs.32,29,000/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of payment. The claimants shall pay necessary Court fee, if any on the enhanced compensation. Out of the above said compensation of Rs.32,29,000/-, the first claimant-wife of the deceased Kumaravel, is entitled to Rs.10,00,000/-. The second and third claimants being the minor children of the deceased Kumaraval, are each entitled to Rs.9,00,000/-. Since the father of the deceased Kumaravel died pending the claim petition, the mother of the deceased Kumaravel is entitled to the remaining Rs.4,29,000/-. The Transport Corporation shall deposit the aforesaid amount of Rs.32,29,000/- with interest as stated above, within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amounts if any already deposited. As far as the share of the minor claimants 2 and 3 are concerned, the same shall be deposited by the Tribunal in any nationalised Bank in any interest bearing Fixed Deposit scheme/Account till they attain majority and the interest thereon shall be withdrawn by the first claimant-mother once in three months.

21. With the above observations and directions, the appeal is partly allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

CS

To

1. The Special District Judge,
Motor Accidents Claims Tribunal,
Special District Court, Salem.

2. The Section Officer,
V.R.Section, High Court, Madras.

+2cc to Mr.C.Thangaraju, Advocate, S.R.No. 28566

C.M.A.No.3702 of 2019

BR(CO)
GN(18/01/2021)