

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 4839 of 2019

1. Rajeswari  
2. Minor J. Leela  
3. Minor J. Suji  
    Amma Ponnu (died)  
(Minor appellants rep. By their mother  
and natural guardian 1<sup>st</sup> appellant) .. Appellants/Petitioners

Vs.

The Managing Director,  
Tamil Nadu State Transport Corporation Limited,  
Kancheepuram. .. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 07.01.2016, made in M.C.O.P.No. 180 of 2011, on the file of the Principal Sub Judge, (Motor Accident Claims Tribunal), Chengalpattu, Kancheepuram District.

For Appellants : Mr. M. Sivakumar

For Respondent : Mr. K.J. Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the award dated 07.01.2016, made in M.C.O.P.No. 180 of 2011, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Chengalpattu, Kancheepuram District.

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2.The appellants and one Ammaponnu are the claimants in M.C.O.P.No. 180 of 2011, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Chengalpattu. They filed the said claim petition, claiming a sum of Rs.14,00,000/- (amended as per the Court order dated 04.11.2019 made in C.M.P. No. 20460 of 2019 in C.M.A. SR. No. 102918 of 2019) as compensation for the death of one K. Jayapaul, who died in the accident that took place on 16.07.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation and directed the respondent-Transport Corporation to pay a sum of Rs.8,83,000/- as compensation to the appellants 1 to 3/claimants 1 to 3.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 07.01.2016, made in M.C.O.P.No. 180 of 2011, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the deceased was working as a Sales Manager in a Provisions Store and earning a sum of Rs.8,000/- per month. The Tribunal has fixed a meagre sum of Rs.5,000/- as monthly income of the deceased and awarded a sum of Rs.10,13,000/- towards loss of dependency. The Tribunal has calculated a sum of Rs.10,83,000/- as compensation for loss of dependency, but erroneously awarded the quantum of compensation as Rs.8,83,000/- and awarded decree for the same. The Tribunal has not awarded any amount towards loss of estate. The amounts awarded by the Tribunal towards funeral expenses is meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the respondent contended that the Tribunal considering the fact that the appellants have not proved the income of the deceased, has rightly fixed the notional income at Rs.5,000/- per month. The amounts awarded by the Tribunal under other heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the respondent and perused the materials available on record.

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8. From the materials on record, it is seen that the appellants have contended that the deceased was working as a Sales Manager in Provisions Stores and was earning a sum of Rs.8,000/- per month. The appellants have not substantiated the income of the deceased. Hence, the Tribunal has fixed a sum of Rs.5,000/- per month as notional income of the deceased. The accident is of the year 2011. The notional income fixed by the Tribunal is meagre. Considering the nature of work and the year of accident, the notional income of the deceased is fixed at Rs.6,500/- per month. The deceased was aged 38 years at the time of accident. The Tribunal has granted 50% enhancement towards future prospects. The appellants are entitled to only 40% enhancement towards future prospects. There are four dependants of the deceased at the time of filing the claim petition. Pending copy of the award, the 4<sup>th</sup> claimant viz., Ammaponnu died. Subsequently, by order dated 24.01.2016 in I.A. No. 44 of 2016, the Tribunal modified the award granting compensation only to the claimants 1 to 3 on the ground that the 4<sup>th</sup> claimant died. There is nothing on record to show that 4<sup>th</sup> claimant died after passing of the award. In view of the same, the deduction of 1/4<sup>th</sup> made by the Tribunal towards personal expenses of the deceased is not correct. There are three dependants on the date of passing of the award. The Tribunal ought to have deducted 1/3<sup>rd</sup> instead of 1/4<sup>th</sup> towards personal expenses of the deceased. Hence, granting 40% enhancement towards future prospects, deducting 1/3<sup>rd</sup> towards the personal expenses of the deceased and applying multiplier '15', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs. 10,92,000/- { [Rs.6,500/- + Rs. 2,600/- (40% of Rs.6,500/-)] x 12 x 15 x 2/3 }. The Tribunal has awarded a meagre sum of Rs. 20,000/- towards loss of consortium. The 1<sup>st</sup> appellant being wife of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium. The Tribunal has awarded a meagre sum of Rs.10,000/- towards funeral expenses. The appellants are entitled to a sum of Rs.15,000/- towards funeral expenses. The appellants 2 and 3 are only entitled to compensation for loss of love and affection. The amount granted by the Tribunal for loss of love and affection is modified as Rs.40,000/- to the appellants 2 and 3. 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. | Loss of dependency                                                                   | 10,13,000/- | 10,92,000/- | Enhanced                  |
| 2. | Funeral expenses                                                                     | 10,000/-    | 15,000/-    | Enhanced                  |
| 3. | Loss of love and affection to claimants 2 to 4                                       | 40,000/-    |             |                           |
|    | 4 <sup>th</sup> claimant died. Hence, loss of love and affection to appellants 2 & 3 |             | 40,000/-    | Confirmed                 |
| 4. | Loss of consortium to 1 <sup>st</sup> appellant                                      | 20,000/-    | 40,000/-    | Enhanced                  |
|    | Total                                                                                | 10,83,000/- |             |                           |
|    | Award granted                                                                        | 8,83,000/-  | 11,87,000/- | Enhanced by Rs.3,04,000/- |

The Tribunal arrived at a sum of Rs.10,83,000/- as compensation, but granted only a sum of Rs.8,83,000/- to the appellants.

9. In the result, the appeal is partly allowed and amount awarded by the Tribunal at Rs.8,83,000/- is enhanced to Rs.11,87,000/- along with interest and costs. Out of the enhanced award amount, the 1<sup>st</sup> appellant is entitled to a sum of Rs.4,20,334/- and the minor appellants 2 and 3 are entitled to a sum of Rs.3,83,333/- each along with proportionate 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. 180 of 2011. On such deposit, the 1<sup>st</sup> appellant is permitted to withdraw her share of the award amount along with interest and costs, as per the ratio of apportionment fixed above, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Banks,

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till the minors attain majority. The 1<sup>st</sup> appellant, mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.3,04,000/-. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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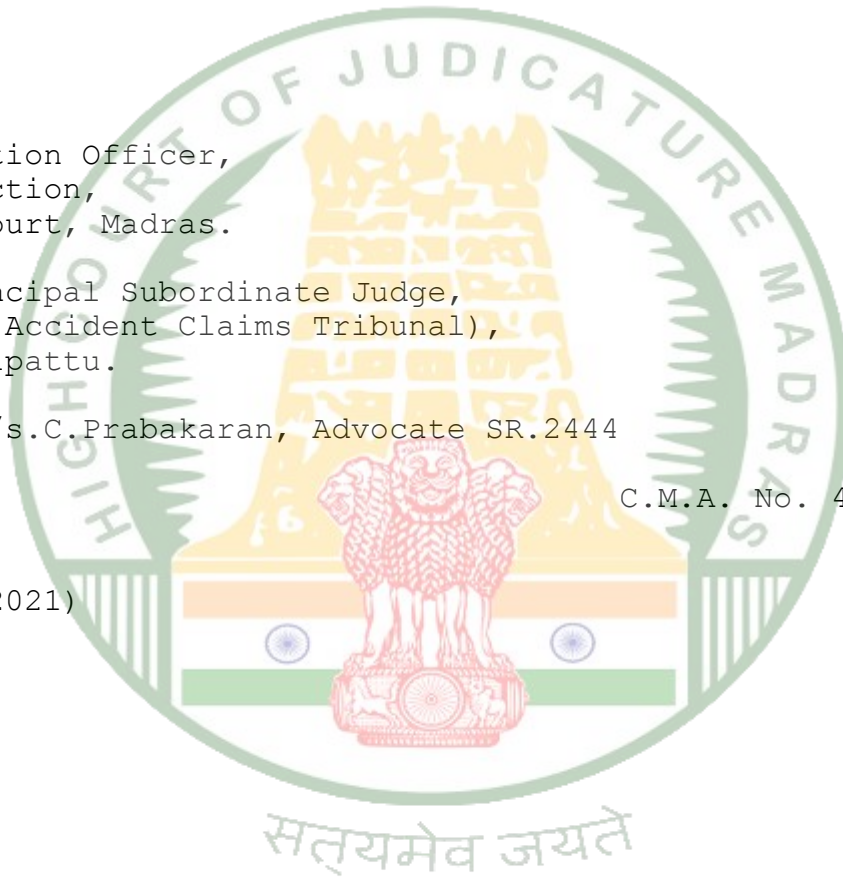
1.The Section Officer,  
V.R Section,  
High Court, Madras.

2.The Principal Subordinate Judge,  
(Motor Accident Claims Tribunal),  
Chengalpattu.

+1cc to M/s.C.Prabakaran, Advocate SR.2444

C.M.A. No. 4839 of 2019

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