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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.575 OF 2021

AND

CMP.NO.3564 OF 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram (Division - II),
Rangapuram, Vellore - 9. .. Appellant/Respondent

..Vs..

G.Kumar .. Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.10.2020 made in M.C.O.P.No.197 of 2018 on the file of the Sub Court, (Motor Accidents Claims Tribunal), Vaniyambadi.

For Appellant : Mr.K.J.Sivakumar
For Respondent : Mrs.A.Subadra

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode)

This Civil Miscellaneous Appeal has been filed by the appellant-Transport Corporation challenging the quantum of compensation granted by the Tribunal in the award dated 12.10.2020 made in M.C.O.P.No.197 of 2018 on the file of the Sub Court, (Motor Accidents Claims Tribunal), Vaniyambadi.

2.The appellant is the respondent in M.C.O.P.No.197 of 2018 on the file of the Sub Court, (Motor Accidents Claims Tribunal), Vaniyambadi. The respondent/claimant filed the said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one Samuvel who died in the accident that took place on 14.09.2018.

3.According to the respondent, on the date of accident, when the deceased Samuvel was riding his Motorcycle bearing Registration No.TN-23-AY-4771 on the extreme left side of the



road in opposite direction, slowly and cautiously, near Perumal Temple at Thendral Nagar, Pakkirithakka, Vaniyambadi to Tirupattur, the driver of the Bus drove the same in a rash and negligent manner and dashed against the deceased Samuvel and thus, the accident occurred. In the accident, the deceased Samuvel sustained fatal injuries and hence the respondent filed the claim petition claiming compensation against the appellant as owner of the Bus involved in the accident.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Bus owned by the appellant-Transport Corporation and fixed 15% contributory negligence on the part of the deceased Samuvel for not wearing helmet at the time of accident. The Tribunal awarded a sum of Rs.23,33,000/- as compensation and directed the appellant to pay a sum of Rs.19,83,000/-, being 85% of the compensation awarded to the respondent.

5.Questioning the quantum of compensation granted by the Tribunal in the award dated 12.10.2020 made in M.C.O.P.No.197 of 2018, the appellant - Transport Corporation has come out with the present appeal.

6.The learned counsel appearing for the appellant-Transport Corporation contended that the respondent failed to prove the age, avocation and income of the deceased by any oral and documentary evidence. In the absence of any evidence, the Tribunal ought not to have fixed the monthly income of the deceased as Rs.14,000/-, which is excessive. The amount awarded by the Tribunal towards loss of love and affection is excessive and prayed for reducing the compensation granted by the Tribunal.

7.Per contra, the learned counsel appearing for the respondent contended that at the time of accident, the deceased was an Agriculturist and was earning a sum of Rs.10,000/- per month. The Tribunal considering the cost of inflation index for the year 2018-2019, fixed the notional income of the deceased as Rs.14,000/- and granted 50% enhancement towards future prospects, considering the age of the deceased. The Tribunal failed to award any amount towards loss of estate. The total compensation awarded by the Tribunal is not excessive, warranting interference and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant-Transport Corporation as well as the respondent and perused the materials available on record.

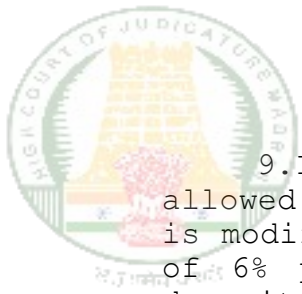
9.It is the case of the respondent that at the time of



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accident, the deceased was working as an Agriculturist and was earning a sum of Rs.10,000/- per month. He did not file any document to prove the same. In the absence of any material evidence to prove the income of the deceased, the Tribunal considering the inflation index for the year 2018-2019, fixed a sum of Rs.14,000/- per month as notional income and granted 50% enhancement towards future prospects. Considering the age, nature of work and date of accident, the monthly income is fixed at Rs.13,000/- and granted 40% enhancement towards future prospects. The deceased was a bachelor aged 22 years at the time of accident. The Tribunal rightly applied the multiplier '18' and deducted 50% towards personal expenses. Hence, by fixing Rs.13,000/- per month as notional income, granting 40% enhancement towards future prospects, deducting 50% towards personal expenses of the deceased and applying the multiplier '18', the amount awarded by the Tribunal towards loss of dependency is modified to Rs.19,65,600/- {[Rs.13,000/- +Rs.5,200/- (40% of Rs.13,000/-)] x 12 x 18 x $\frac{1}{2}$ }. The Tribunal has awarded a sum of Rs.50,000/- towards loss of love and affection to the respondent/father of the deceased Samuel, which is excessive and hence the same is reduced to Rs.40,000/-. The Tribunal failed to award any amount towards loss of estate. The respondent is entitled to a sum of Rs.15,000/- towards loss of estate. The amounts awarded by the Tribunal towards funeral expenses 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.	Loss of dependency	22,68,000/-	19,65,600/-	Reduced
2.	Loss of estate	-	15,000/-	Granted
3.	Loss of love and affection	50,000/-	40,000/-	Reduced
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	23,33,000/-	20,35,600/-	Reduced
	85% of the compensation	19,83,050/-	17,30,260/-	by Rs.2,52,790/- (Rs.19,83,050 -Rs.17,30,260)



9. In the result, this Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal at Rs.23,33,000/- is modified to Rs.20,35,600/- together with interest at the rate of 6% per annum from the date of petition till the date of deposit. The appellant-Transport Corporation is directed to deposit a sum of Rs.17,30,260/-, being 85% of the 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.197 of 2018. On such deposit, the respondent is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant-Transport Corporation is permitted to withdraw the excess amount, lying in the deposit to the credit of M.C.O.P. No.197 of 2018, if any already deposited by them. It is made clear that if the respondent has already withdrawn the award amount, the appellant-Transport Corporation is not entitled to recover the same from the respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

gsa

To

1. The Subordinate Judge,
(Motor Accident Claims Tribunal),
Vaniyambadi.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.16333

C.M.A.No.575 of 2021
and
CMP.No.3564 of 2021

RSI (CO)
CS/05/10/2021