IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1793 of 2020

1.Jothi
2.Elumalai
3.Pandiyan
4.Minor.Ramya
(Minor is represented by her guardian/
next friend/mother 1st appellant Jothi)
..Appellants/Petitioners

Vs.

The General Manager,
TamilNadu State Transport Corporation
(Villupuram) Limited,
Tiruvannamalai Region,
Tiruvannamalai. ..Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.10.2018 made in M.C.O.P. No.285 of 2017, on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Tiruvannamalai.

For Appellants:M/s.A.Subadra
for M/s.I.Malar

For Respondent:Mr.C.S.K.Sathish

J U D G M E N T

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

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 06.10.2018 made in M.C.O.P. No.285 of 2017, on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Tiruvannamalai.

2.By consent of the learned counsel appearing for the appellants as well as the respondent, the appeal is taken up for final disposal at the admission stage itself.

3.The appellants/claimants filed M.C.O.P.No.285 of 2017, on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Tiruvannamalai, claiming a sum of Rs.40,00,000/- as compensation for the death of one Venkatesan who died in the accident that took place on 12.01.2017.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent driving by driver of the Bus owned by the respondent-Transport Corporation and directed the respondent to pay a sum of Rs.14,56,000/- as compensation to the appellants.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 06.10.2018 made in M.C.O.P. No.285 of 2017, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that at the time of accident, the deceased Venkatesan was aged 20 years, studying II Year B.E. (Mechanical Engineering) at S.K.P. Engineering College and also working as an Agricultural Coolie and earning a sum of Rs.15,000/- per month. The Tribunal erred in fixing only a meagre sum of Rs.12,000/- per month as notional income of the deceased Venkatesan, without considering the accident of the year 2017. The Tribunal ought not to have deducted 50% towards personal expenses of the deceased, when the appellants are dependents of the deceased. The amounts awarded by the Tribunal towards funeral expenses, loss of estate and loss of love and affection are meagre and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the Tribunal considering the educational qualification of the deceased Venkatesan and following the judgment of this Court, fixed a sum of Rs.12,000/- per month as notional income, which is not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

9.It is the case of the appellants that the deceased Venkatesan was studying II year B.E (Mechanical Engineering) at S.K.P. Engineering College and was also earning a sum of Rs.15,000/- per month working as an Agricultural Coolie in part time. They filed mark sheets of the deceased to prove his educational qualification, but failed to prove his avocation and income by documentary evidence. In the absence of any evidence, the Tribunal fixed a sum of Rs.12,000/- per month as notional income of the deceased. The monthly income fixed by the Tribunal is meagre. The accident is of the year 2017. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Had the deceased completed his studies, he would have got decent job with good income. Hence, considering the year of accident, age and educational qualification of the deceased, a sum of Rs.13,000/- per month is fixed as notional income of the deceased Venkatesan. The deceased was a Bachelor aged 20 years at the time of accident. The Tribunal having rightly applied the multiplier '18' and deducted 50% towards personal expenses of the deceased, failed to grant any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to 40% enhancement towards future prospects of the deceased. Thus, fixing the monthly income at Rs.13,000/-, granting 40% enhancement towards future prospects, applying multiplier '18' and after deducting 50% towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.19,65,600/- {Rs.13,000/- + Rs.5,200/- (40% of Rs.13,000/-)] x 12 x 18 x ½}. This Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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 income	12,96,000/-	19,65,600/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of love and affection to appellants 1 and	80,000/-	80,000/-	Confirmed

	2			
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection to appellants 3 and 4	50,000/-	50,000/-	Confirmed
	Total	14,56,000/-	21,25,600/-	Enhanced by Rs.6,69,600/-

10.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.14,56,000/- is enhanced to Rs.21,25,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-Transport Corporation is directed to deposit 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.285 of 2017. On such deposit, the appellants 1 to 3 are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor 4th appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant, mother of the minor 4th appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 4th appellant. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.6,69,600/-, enhanced by this Court as per the order of this Court dated 23.11.2020, made in C.M.P. No.12111 of 2020 in C.M.A. SR.2639 of 2020. No costs.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

gsa

To

1.The Special Subordinate Judge,
(Motor Accidents Claims Tribunal),
Tiruvannamalai.

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

+1 CC to M/s.M. Malar, Advocate sr 21239.

C.M.A.No.1793 of 2020

SVI(CO)
SP(24/11/2021)