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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.3.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.1316 of 2013

1. Mohammed Gani

2. Meharjohn ... Petitioners / Appellants / Petitioners

..Vs..

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division, No.3/137, Salamedu,
Valudharareddy, Villupuram.

... Respondent/Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 29.12.2009 made in M.C.O.P.No.302 of 2008 on the file of Principal District Court (Motor Accidents Claims Tribunal), Villupuram.

For Appellant : Mr.R.Arundattan

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

JUDGMENT

Brief facts of the claimant's case is as follows:

It is the case of the claimant that on 17.01.2008 at about 5.30 p.m, one Ansar Ali was riding a unregistered two wheeler viz., TVS XL Super came from Villupuram towards Aayanthoor in the place of Mampazhappattu near Ayyappan temple, the respondent Corporation bus bearing registration No.TN-32 N 2360 driven by its driver from opposite direction, in a rash and negligent manner and hit the petitioner. Immediately, he fell down and sustained fatal injuries and died on the spot. The parent of the deceased have filed a claim petition before the tribunal, claiming a sum of Rs.20,00,000/- as compensation from the respondent/Transport Corporation for the death of their son in the said accident.



2. On the side of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 to P6 were marked. On the side of the respondents, R.W.1 was examined and no document was marked.

3. The Tribunal, based on the oral and documentary evidence, has fixed negligence on the part of the deceased as well as the driver of the bus and awarded Rs.1,58,500/- as 50% of the compensation amount to the appellants along with interest at the rate of 7.5% p.a from the date of petition till realization. The total compensation awarded by the tribunal are as follows:

Heads	Amount in Rs.
Loss of income 2000 x 12 x 13	3,12,000/-
Funeral expenses	5,000/-
Total :	3,17,000/-

4. Heard the learned counsel appearing for the claimants/appellants, the learned counsel appearing for the respondent/Transport Corporation and perused the materials available on record.

5. The present appeal is preferred against the contributory negligence fixed by the tribunal as well as the quantum of compensation awarded by the tribunal.

6. Considering the oral and documentary evidence, the tribunal has fixed the monthly income of the deceased as Rs.3000/- per month and after deducting 1/3rd towards his personal expenses, Rs.2000/- contributed to his family. The tribunal adopted 13 multiplier and calculated the compensation towards loss of income the deceased that he would have contributed to his family is Rs.2000 x 12 x 13 = Rs.3,12,000/- and awarded Rs.5000/- towards funeral expenses. Thus, the tribunal has fixed Rs.3,17,000/- as total compensation and in view of the contributory negligence fixed by the tribunal, the tribunal has awarded 50% of the award amount i.e. Rs.1,58,500/- to the appellants. Challenging the said award, the claimants are before this Court.

7. According to the appellants, the tribunal has wrongly adopted multiplier method and fixed compensation amount to the appellants. According to the appellants, there is no evidence to prove negligence on the part of the deceased while riding his motorcycle to fix 50% contributory negligence on the part of the deceased. Insofar as the quantum of compensation, the tribunal has erred in fixing Rs.3000/- as monthly income of



the deceased and awarded Rs.3,12,000/- towards loss of income. The deceased would have earned Rs.15,000/- per month. Under the other conventional heads also, like pain and sufferings, Love and affection, Transport to hospital, no amount was awarded by the tribunal. For funeral expenses, tribunal has awarded meagre amount of Rs.5000/-. Therefore, the learned counsel appearing for the appellants seeks enhancement of compensation awarded by the tribunal.

8. Learned counsel appearing for the respondent/Transport Corporation submitted that the monthly income of the deceased as fixed by the tribunal is well founded and in fact, there is no material to prove that the deceased would have earned Rs.3000/- per month. Tribunal upon considering oral and documentary evidence, has rightly awarded a compensation. Thus, there is no ground to interfere with the award of the tribunal.

9. On perusal of the award, Conductor of the bus was examined as R.W.1 who speaks only about the accident, admittedly, he has not seen the occurrence to prove the negligence on the part of the deceased. It is also recorded by the tribunal that Conductor was giving tickets to the passengers at the time of accident. Ex.P1 F.I.R. clearly shows that accident occurred on that day due to rash and negligence driving by the driver of the bus. There is no contra evidence or material placed before the Court to prove contributory negligence on the part of the deceased. Hence, this Court is unable to agree with the 50% contributory negligence as against the deceased.

10. The next ground raised in the appeal is that the deceased would have earned Rs.15,000/- per month. Tribunal has held that there is no documentary evidence to prove the income of the deceased and therefore, rightly fixed the monthly income of the deceased as Rs.3000/-. Hence, the contention of the learned counsel appearing for the appellants on this ground is rejected. However, multiplier adopted by the tribunal is not correct as the same is contrary to the decision of the Hon'ble Supreme Court in Sarala Varma case. As per Sarala Varma case, when the age of the deceased was 27 years at the time of accident, 17 multiplier has to be adopted. Therefore, it is appropriate for this Court to adopt 17 multiplier. Further, the appellants are entitled 40% increase in the monthly income of the deceased towards future prospects. Accordingly, the monthly income of the deceased can be safely fixed as Rs.3000/- + 40% (Rs.1200/-) = Rs.4200/-. As the deceased was a bachelor, 50% should be deducted towards personal expenses. By adopting 17 multiplier i.e. Rs.2100/- x 12 x 17 = Rs.4,28,400/-, the claimants are entitled compensation towards loss of dependency.



Insofar as non pecuniary heads like Love and affection, loss of estate, tribunal has not awarded any compensation. Therefore, under the non pecuniary heads also, the appellants are entitled to compensation.

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11. In view of the aforesaid discussion, the award passed by the tribunal is modified as under:

Heads	Compensation awarded by the tribunal Rs.	Compensation enhanced/ Awarded by this Court Rs.
Loss of dependency 2100 x 12 x 17	3,12,000/-	4,28,400/-
Love & affection Rs.10,000/- each	--	20,000/-
Loss of estate	--	15,000/-
Funeral expenses	5,000/-	15,000/-
Total :	3,17,000/-	4,78,400/-

12. Accordingly, the compensation awarded by the tribunal is enhanced from Rs.1,58,500/- to Rs.4,78,400/-. The respondent/ Transport Corporation is directed to deposit the enhanced award amount before the tribunal within a period of twelve weeks from the date of receipt of copy of the judgment, less the amount if any already deposited before the tribunal. On such deposit being made by the respondent/Transport Corporation, the claimants/appellants are permitted to withdraw the amount by filing appropriate application.

13. In fine, the Civil Miscellaneous Appeal is partly allowed to the aforesaid extent. No costs.

Sd/-
Assistant Registrar (SSA)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal District Court
(Motor Accident Claims Tribunal),
Villupuram.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.

Civil Miscellaneous Appeal
No.1316 of 2013

BR(CO)
SU(09/11/2021)