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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A. No.2792 of 2011

1.Vaiyapuri
2.Lakshmi
3.Vennila
4.Minor Selvaraj
(rep. by next friend and natural
guardian father 1st Petitioner) .. Appellants

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Salem. .. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.11.2009, made in M.C.O.P. No. 266 of 2008, on the file of the Sub Court, Tiruchengode

For Appellant : Mr.Kulanthaivel

For Respondents : Mr.D.Raghu

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the claimants against the judgment and decree dated 25.11.2009, made in M.C.O.P. No.266 of 2008, on the file of the Sub Court, Tiruchengode for enhancement of compensation.

2.The appellants are claimants in M.C.O.P. No.266 of 2008, on the file of the Sub Court, Tiruchengode have filed the claim petition before the tribunal, claiming a sum of Rs.5,00,000/- , restricted to Rs.3,00,000/-as compensation for the death of Seethammale him in the accident that took place on 11.07.2004.



3. Brief facts of the case is that on 11.07.2004 at about 4.10pm, the deceased Sithammal, her husband Vaiyapuri and her daughter Vennila went to Muthu Maligai Shop for purchasing grocery items. After purchase, when they were standing in front of the above said shop, at the time the driver of the respondent Corporation bus bearing Reg.No. TN27 N 0976, who came from Tiruchengode to Anangur, drove the same in a rash and negligent manner, without observing traffic rules, hit the said Sithammal and ran over the body of the said Sithammal. Due to the said accident, the said Sithammal died in the spot itself. The accident had occurred only due to rash and negligent driving of the driver of the Transportation Corporation Bus, hence the appellants, being the legal heirs of the deceased Sithammal have filed the claim petition, claiming a sum of Rs.5,00,000/-, restricted to Rs.3,00,000/-. The tribunal after considering the oral and documentary evidence, has fixed the liability on the driver of the respondent Corporation Bus and directed to pay a sum of Rs.3,00,000/- as compensation by the respondent Corporation. Aggrieved by the said award passed by the tribunal, the claimants/appellants herein have preferred the present appeal.

4. The learned counsel appearing for the appellants/claimants submitted that the tribunal ought to have awarded the entire compensation amount of Rs.4,88,000/- determined as per the evidence and ought not to have restricted the award as claimed by the claimants. The learned counsel for the appellants further submitted that the tribunal ought to have been awarded a proper, just and reasonable compensation for the death of the deceased if the tribunal came to the conclusion that the claimants are entitled the amount more than the claim amount, though the claimants restricted their claim at the time of filing the claim petition. Hence prayed for enhancement of compensation.

5. On the other hand, the learned counsel appearing for the transport corporation submitted that the tribunal after considering the oral and documentary evidence, has rightly awarded the entire compensation amount of Rs.3,00,000/- as restricted by the claimants. Therefore, the claimants cannot make grounds for additional compensation and the appeal is liable to be dismissed.

6. Having regard to the rival submissions made by the learned counsel appearing for the appellants and transport corporation and on perusal of materials available on record, this Court needs to answer the following point;

Whether the claimants are entitled for additional compensation. If so, what amount?



7. Before the tribunal, the claimants examined 3 witnesses P.W.1 to PW3 and marked 8 documents as Exs.A1 to A8. On the side of the respondent corporation one Jayaprakash was examined as RW1 and no documents were marked on their side.

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8. Insofar as the compensation determined by the tribunal, the claimants without any proof, have claimed the monthly income of the deceased at Rs.10,000/-, but the tribunal has fixed the monthly income at Rs.4500/- by observing that the deceased could have earned Rs.150/- per day. By adopting multiplier 13 and deducting 1/3 towards personal and living expenses, has calculated the loss of income at Rs.4,68,000/-, which according to this Court is reasonable. Further the compensation awarded by the tribunal for Funeral expenses at Rs.5,000/- and for Loss of Love and Affection at Rs.15,000/- are also found reasonable and the claimants are entitled for the said compensation.

9. The main contention of the learned counsel for the appellants/claimants is that the tribunal ought to have been awarded a proper, just and reasonable compensation for the death of the deceased when the claim under the relevant provisions of the Motor Vehicles Act is not required the strict rule of pleadings and evidence as decided by the various rulings of the Hon'ble Apex Court.

10. The learned counsel for the appellants relied upon the judgment delivered by the Hon'ble Division Bench of this Court reported in 2020(1)TNMAC 449 (DB) in the case of Manikandan Vs P.Palani. The relevant portion is extracted below;

31. Apart from that, this Court has to consider the beneficial nature of the legislation. Chapter X to XII of the Motor Vehicles Act, 1938 were incorporated by the Parliament for the benefit of innocent motor accidents victims. The beneficial nature of the Act has been declared by the Hon'ble Supreme Court in a number of cases including in National Insurance Co. Ltd. v. Swaran Singh and others, 2004 (1) TN MAC 104 (SC) : 2004 (2) SCC 297 (IV Judges Bench), in Ningamma and another v. United India Insurance Co. Ltd., 2009 (2) TN MAC 169 (SC) : 2009 ACJ 2020 and in Sohan Lal Passi v. P. Sesh Reddy, AIR 1996 SC 2627. This Court is duty bound to keep in mind the social welfare and beneficial legislation, while dealing with claims under the act. Technicalities should be divorced when deciding the matter arising out of Motor Vehicles Act claims and justice should be rendered completely. The compensation awarded should be fair and reasonable and should not be arbitrary or very low. In an endeavour to render justice only, this Court awards compensation more than



claimed by the claimants in the Petition.

32. This Court under Section 173 of the Motor Vehicles Act can re-appreciate the whole evidence to decide the matter. This Court draws support for the aforesaid proposition from the Apex Court judgment in Smt. Thokchom Onger Sangeetha v. Oriental Insurance Co., 2008 (1) TN MAC 59 (SC): AIR 2008 SC 245. It is settled law that an Appeal is the continuation of original proceedings and this Court can decide the matter independently and award "Just compensation".

33. Under Order 41, Rule 33 read with section 151 of Civil Procedure Code, in order to render justice this Court can award more compensation based on the evidence. The power and the discretion are vested with this Court to enhance the amount according to the facts of the case, if the compensation awarded by the Tribunal is not "just". Even in the absence of any Appeal/Cross-Appeal by the claimants, this Court can enhance the compensation in this Appeal preferred by the Insurer. The aforesaid proposition has been settled by the Hon'ble Supreme Court in -

(1) Nagappa v. Gurudayal Singh And Others, 2004

(2) TN MAC 398 (SC) : 2003 (2) SCC 274.

(2) Mahant Dhangir And Another v. Madan Mohan And Others, AIR 1938 SC 54.

(3) State Of Punjab v. Bakshish Singh, 1998 (8) SCC 222.

(4) The APSRTC And Another v. Rama Devi And Others, 2008 (1) TN MAC 234 (SC).

(5) M.D., Pallavan Transport Corporation Ltd. v. Kalavathi, 1988 ACJ 151.

(6) M.D., Thanthai Periyar Transport Corporation Ltd. v. Sundariammal, 1999 (2) CTC 560.

(7) M.D., Annai Sathya Corporation LTD. v. Janardhanan, 2000 (2) CTC 272."

11. In the said case, the Hon'ble Division Bench by relying upon the discussions and observations made by the Hon'ble Supreme Court, has concluded that the under Section 173 of the Motor Vehicles Act, the Court can re-appreciate the whole evidence to decide the matter. Accordingly, enhanced the



compensation based on the evidence in the said case. It is also observed by the Hon'ble Division Bench that even in the absence of any Appeal/Cross Appeal by the claimants, the Court can enhance the compensation.

12. On the facts of the present case on hand, as discussed above, the tribunal after detailed consideration of oral and documentary evidence, has rightly determined the compensation of Rs.4,88,000/- payable to the claimants/appellants herein. This Court also confirms the said compensation determined by the tribunal. Since the compensation was claimed by the claimants/appellants for only at Rs.3,00,000/-, the tribunal had awarded the said amount as compensation. With regard to the contentions raised by the claimants /appellants herein that they were entitled to the benefit of enhanced compensation which was denied to them, in view of the judgements of the Hon'ble Supreme Court and this Court cited supra and under the MV Act, there is no restrictions that the Tribunal/Court cannot award compensation amount exceeding the claim amount. The duty of the Tribunal/ Court is to award just compensation which is reasonable on the basis of evidence produced on record. Therefore, this Court is of the firm opinion that the appellants/claimants are entitled for the additional compensation of Rs.1,88,000/-, which had been determined by the tribunal based on the evidences and documents.

13. In the result, this Civil Miscellaneous Appeal is allowed and the compensation of sum of Rs.3,00,000/- awarded by the tribunal is enhanced to Rs.4,88,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

14. The respondent /Transport Corporation is directed to deposit the entire compensation amount modified by this Court along with interest at 7.5% per annum within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants /claimants are permitted to withdraw the compensation as modified by this Court along interest and costs as per the apportionment orderd by the tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay court fee, if any, for the enhanced amount of compensation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. Motor Accidents Claims Tribunal,
The Subordinate Judge,
Tiruchengode

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Copy to:

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

+1cc to Mr.Kulanthaivel, Advocate, S.R.No.4115

+1cc to Mr.D.Raghu, Advocate, S.R.No.3979

C.M.A. No.2792 of 2011

RP (CO)
GMY (02/09/2021)