IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.366 of 2021

1.Radhamani
2.Sasikala
3.Jeyaprakash
4.Sellammal ... Appellants /Petitioners

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam, Region at Pudukottai,
Pudukottai District.

2.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.12, Ramakrishna Road,
Salem 7. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.07.2020, made in M.C.O.P. No.1731 of 2017, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem.

For Appellants : Mr.T.S.Arthanareeswaran

For Respondents : Mr.D.Venkatachalam (For R1)
Mr.D.Raghu (For R2)

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 award dated 06.07.2020, made in M.C.O.P. No.1731 of 2017, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem.

2.The appellants filed M.C.O.P. No.1731 of 2017, on the file of the Special District Court, (Motor Accident Claims Tribunal), Salem, claiming a sum of Rs.90,00,000/- as compensation for the death of one Velappagounder, who died in the accident that took place on 27.01.2017.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Bus owned by the 1st respondent-Transport Corporation and directed the 1st respondent to pay a sum of Rs.27,01,288/- as compensation to the appellants. The Tribunal dismissed the claim petition as against the 2nd respondent.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 06.07.2020, made in M.C.O.P. No.1731 of 2017, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the deceased Velappagounder was working as a Conductor in the Tamil Nadu State Transport Corporation, Kumbakonam Region at Pudukottai and was earning a sum of Rs.33,900/- per month. They have filed salary slips of the deceased for the months of January 2015, June 2015, July 2015, October 2016, November 2016 and December 2016 as Ex.P8. The Tribunal erroneously fixed the meagre amount of Rs.26,000/- per month as income of the deceased. There are four dependants of the deceased. The Tribunal deducted 1/3rd towards personal expenses of the deceased, instead of 1/4th. The Tribunal failed to grant any compensation for loss of love and affection and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 1st respondent-Transport Corporation contended that the deceased was getting allowances and the gross salary of the deceased was only Rs.26,000/- per month. The Tribunal rightly fixed the income of the deceased and granted compensation. The Tribunal did not deduct any amount for Income Tax. The Tribunal has awarded compensation for loss of dependency and loss of consortium. The appellants 2 to 4 are not entitled for loss of love and affection. The deduction of 1/3rd towards personal expenses of the deceased is proper. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.The learned counsel appearing for the 2nd respondent made submissions in support of the award of the Tribunal and prayed for dismissal of the appeal against the 2nd respondent.

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

9.It is the case of the appellants that at the time of accident, the deceased Velappagounder was working as a Conductor in the TNSTC and was earning a sum of Rs.33,900/- per month. To substantiate the said claim, the appellant examined one Ravindran as P.W.3 and marked Ex.C1- copy of pay slip for the month of January 2017, copy of attendance register and Service history of the deceased. The Tribunal considering Exs.P8 and C1, fixed the monthly income of the deceased, based on the salary slip for the month of January 2015. The accident occurred in the month of January 2017. The appellants have filed the salary slips up to December 2016. The Tribunal failed to consider Exs.P8 – salary slip for the month of December 2016. The appellants are entitled to compensation as per the salary slip of the deceased for the month of December 2016. From the December 2016-salary slip, it is seen that the deceased has received a sum of Rs.12,100/- as Basic Pay, Rs.2,000/- as Grade Pay, Rs.18,612/- as D.A and Rs.880/- as HRA. Hence, the gross monthly income of the deceased comes to Rs.33,592/-, rounded off to Rs.33,600/-. There are four dependents. Considering the age of the deceased, the Tribunal has rightly granted 15% enhancement towards future prospects. Hence, the annual income of the deceased comes to Rs.4,63,680/- {[Rs.33,600/- + Rs.5,040/- (15% of Rs.33,600/-)] x 12}. During the financial year 2016-2017, upto Rs.2,50,000/- there is nil tax.

Income Tax Slab for financial year 2016-2017

Upto Rs.2,50,000/- ... Nil
From Rs.2,50,001/- to Rs.5,00,000/-, 10%

Taxable Income is
(Rs.4,63,680 – Rs.2,50,000/-) ...Rs.2,13,680/-

10% on Rs.2,13,680/- ...Rs. 21,368/-

Annual Income after
deducting income tax ... Rs. 4,42,312/-
(Rs.4,63,680 – 21,368)

The deceased was aged 55 years at the time of accident. The Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased, instead of 1/4th. The Tribunal rightly granted 15% enhancement towards future prospects and applied multiplier '11'. Hence, deducting 1/4th towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.36,49,074/- [Rs.4,42,312/- x 11 x ¾]. The Tribunal has granted a sum of Rs.40,000/- towards loss of consortium to the 1st appellant, wife of the deceased, but failed to award any amount towards loss of love and affection to the appellants 2 to 4 who are the children and mother of the deceased Velappagounder. The appellants 2 to 4 are entitled to a sum of Rs.40,000/- towards loss of love and affection. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed.

10.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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	26,31,288/-	36,49,074/-	Enhanced

2.	Loss of consortium to 1st appellant	40,000/-	40,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection to appellants 2 to 4	-	40,000/-	Granted
	Total	27,01,288/-	37,59,074/-	Enhanced by Rs.10,57,786/-

11.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.27,01,288/- is enhanced to Rs.10,57,786/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st respondent is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, 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.1731 of 2017. On such deposit, the appellants are permitted to withdraw their respective shares of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appeal is dismissed as against the 2nd respondent-Transport Corporation. The appellants are directed to pay the necessary court fee on the enhanced award amount. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

gsa

To

1.The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Salem.

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

+1cc to Mr.T.S.Arthanareeswaran, Advocate SR.16694
+1cc to Mr.D.Venkatachalam, Advocate Sr.16477
+1cc to Mr.D.Raghu, Advocate Sr.16342

C.M.A.No.366 of 2021

srg 06/01/2022