



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.02.2021

Pronounced on : 21.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2644 of 2012

1.A.Seramani
2.S.Sankar
3.S.Prakash
4.S.Sridhar

(Minors 2 & 3 are represented by
next friend father A.Seramani, 1st appellant herein)

.. Appellants

Vs.

The Tamil Nadu State Express Transport Corporation,
Rep. by its Managing Director,
Central Office, Pallavan Salai,
Chennai.

(Amended vide Court Order dated.07.02.2020
made in C.M.P.No.27608 of 2019
in C.M.A.No.2644 of 2012)

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.04.2007 in M.C.O.P.No.295 of 2006 on the file of the Motor Accident Claims Tribunal, the District and Session Court, Nagapattinam.

For Appellants : M/s.S.T.P.Kuilmozhi

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

The Civil Miscellaneous Appeal had been filed by the appellants seeking enhancement of compensation granted by the Tribunal in the award dated 27.04.2007 in M.C.O.P.No.295 of 2006 on the file of the Motor Accident Claims Tribunal, the District and Session Court, Nagapattinam.



2.The appellants are claimants before the Tribunal in M.C.O.P.No.295 of 2006 on the file of the Motor Accident Claims Tribunal, the District and Session Court, Nagapattinam. They filed the said claim petition claiming a sum of Rs.18,50,000/- as compensation for the death of one Rajeswari, who died in the accident that took place on 12.01.2004.

3.The Tribunal, after considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the bus, belonging to the respondent and directed respondent/Transport Corporation to pay a sum of Rs.3,00,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5. According to the learned counsel for the appellants, M/s.Kuilmozhi, the claimants before the Tribunal, Nagapattinam had preferred this appeal seeking enhancement. The claimants are the husband and children of the deceased Rajeswari who died in an accident involving head on collision when the bus belonging to the respondent/Transport Corporation collided head on with a car proceeding from the opposite direction. The Tribunal failed to appreciate the evidence placed before the Tribunal regarding the fact of running a shop by the deceased Rajeswari and her earning at Rs.8,000/- per month. The deceased Rajeswari spent money towards education of her three children, etc., The award of the Tribunal is not found proper, and to be enhanced. Hence the appeal filed by the claimants.

6.The learned counsel for the respondent/Transport Corporation had submitted his arguments. As per his submissions, the learned Tribunal had appreciated the evidence properly and had assessed that the deceased Rajeswari was not earning since she had no source of income. Therefore, the Tribunal had not granted huge amount as compensation. This appeal by the claimant lacks merits and is to be dismissed.

Point of consideration:

Whether the claimant/Appellant is entitled to enhancement of compensation?

7.Perused the case records in C.M.A.No.2644 of 2012, claim petition, Counter filed by the second respondent/Insurance Company, Order in M.C.O.P.No.295 of 2006, decreetal order in M.C.O.P.No.295 of 2006 and the memorandum of grounds of appeal.

8.On perusal of the records produced from the learned

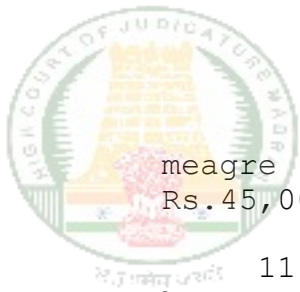


Tribunal, it is found that the learned Tribunal had appreciated the evidence properly before awarding the compensation. P.W.1 who is the husband of the deceased was examined and marked twelve documents. On perusal of the same, it is found that the notice to furnish the details of income had been marked the same may not be the real picture. Therefore, the learned Tribunal, Nagapattinam had fixed the notional income at Rs.2,500/- per month since the documents marked under Exs.P5, P6, P7, P8 and P9 had not furnished the details regarding the income of the deceased. Therefore, the claim of the appellants that the learned Tribunal failed to appreciate the evidence properly in proper perspective is found to be unreasonable and unacceptable.

9.On perusal of the compensation allotted to each head, it is found that in the absence of documentary proof, the learned Judge fixed Rs.2,500/- per month. However, this Court is of the opinion that fixation of monthly income of the deceased is too low and it is to be enhanced and as such, this Court fix the same as Rs.6,000/- per month. After deducting towards personal expenses and after taking note of the number of dependents, viz., are husband and three sons and by adding 25% towards future prospects, loss of dependency is arrived at as follows:

Monthly Income fixed	::	Rs.6,000/-
Less: 1/3 rd towards Personal expenses	::	Rs.6,000/- x 1/3 = Rs.2,000/-
Monthly Contribution to the family	::	(Rs.6,000 - Rs.2,000/-) = Rs.4,000/-
Add:		
25% towards future prospects	::	Rs.6,000 X 25% = Rs.1,500/-
	(i.e.)	Rs.4,000/- + Rs.1,500/-
The correct multiplier is '13'	=	Rs.5,500/- X 12 X 13
Loss of dependency is	=	Rs.8,58,000/-

10.The Tribunal has awarded only a sum of Rs.10,000/- towards transportation and funeral expenses. This Court separately awarded a sum of Rs.10,000/- towards Transportation and Rs.15,000/- towards funeral expenses. The amount granted by the Tribunal for loss of consortium to the 1st appellant is just and reasonable and the same is confirmed by this Court. The Tribunal awarded a sum of Rs.15,000/- (Rs.5,000/- X 3) towards loss of love and affection to the appellants 2 to 4, which is



meagre and the same is hereby enhanced by this Court at Rs.45,000/- (Rs.15,000/- X 3).

11.It is well settled that the Tribunals 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	2,60,000	8,58,000	Enhanced
2.	Loss of love & affection to the appellants 2 to 4	15000	45000	Enhanced
3.	Loss of consortium to the 1 st appellant	15000	15000	Confirmed
4.	Transportation and Funeral expenses	10000	-	-
5.	Transportation		10000	Granted
6.	Funeral expenses		15000	Granted
	Total	Rs.3,00,000/-	Rs.9,43,000/-	Enhanced by Rs.6,43,000/-

12.Points for consideration is answered in favor of the appellants/claimants and in the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,00,000/- is hereby enhanced to Rs.9,43,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the Court fee, if any on the enhanced amount of compensation. The respondent/Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of



receipt of a copy of this judgment. On such deposit, the appellants 1 and 4 are permitted to withdraw their respective share of the enhanced award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minors, namely the appellants 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minors/appellants 2 and 3 attain majority. On such deposit, the first appellant, being the father of the minors, appellants 2 and 3, is permitted to withdraw the accrued interest once in three months for the welfare of the minors/appellants 2 and 3. No costs.

Sd/-
Deputy Registrar (Accounts)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The District and Session Judge,
Motor Accident Claims Tribunal,
Nagapattinam.
2. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.K.Kathiresan, Advocate, S.R.No.24330

+1cc to M/s.S.T.P.Kuilmozhi, Advocate, S.R.No.23787

C.M.A.No.2644 of 2012

RLD (CO)
SU (23/11/2021)