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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.361 of 2021

1.E.Haja Mohideen
2.H.Nazira Begum

.. Appellants/Claimants

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
3/137, Salamedu, Vazhuthareddy,
Villupuram.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 13.12.2019 made in M.C.O.P.No.1879 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

For Appellants : Ms.Ramya V.Rao
For Respondent : Mr.C.S.K.Sathish

J U D G M E N T

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

(Judgment of the Court was delivered by S.KANNAMMAL, J)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 13.12.2019 made in M.C.O.P.No.1879 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

2.The appellants are the claimants in M.C.O.P.No.1879 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore. The claimants are the parents of the deceased filed the above said claim petition, claiming a sum of Rs.40,00,000/- (claim amount amended vide order of this Court dated 02.02.2021 made in C.M.P.No.1347 of 2021 in C.M.A.SR.No.7743 of 2021) as compensation for the death of their son viz., H.Abdul Rahman, who died in the accident that took place on 27.12.2016.



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 belonging to respondent-Transport Corporation and directed the respondent-Transport Corporation to pay a sum of Rs.12,79,600/- as compensation to the appellants.

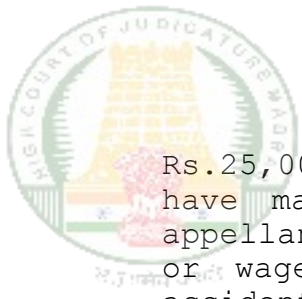
4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that at the time of accident the deceased was aged 20 years, working as Mechanic at Balaji Force, Kondur and was earning a sum of Rs.25,000/- per month. To prove the avocation, the appellants have marked the ID Card of the deceased as Ex.P6. But, the Tribunal erroneously fixed a sum of Rs.8,000/- per month as notional income of the deceased. The accident is of the year 2016 and the notional income fixed by the Tribunal is meagre. The Tribunal ought to have considered Ex.P5/ITI Examination Certificate of the deceased issued by the Mahalakshmi ITI Industrial School, Cuddalore and fixed a sum of Rs.20,000/- per month as notional income of the deceased. The Tribunal has not awarded any amount towards loss of love and affection and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the respondent-Transport Corporation contended that the appellants have not proved the income of the deceased by producing documents like salary certificate or wage register. In the absence of any document with regard to income, a sum of Rs.8,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. Hence, the appellants are not entitled to compensation towards loss of dependency by fixing a sum of Rs.20,000/- per month as notional income of the deceased. The Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium and hence, the appellants are not entitled to any amount towards loss of love and affection. The Tribunal considering the entire materials on record, has awarded a sum of Rs.12,79,600/- as compensation to the appellants, which is not meagre and prayed for dismissal of the appeal.

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

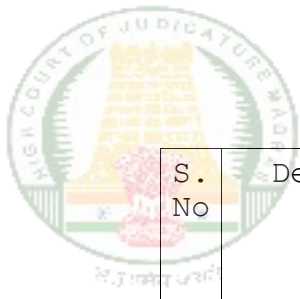
8.From the materials available on record, it is seen that at the time of accident, the deceased was aged 20 years, working as Mechanic at Balaji Force, Kondur and was earning a sum of



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Rs.25,000/- per month. To prove the avocation, the appellants have marked the ID Card of the deceased as Ex.P6. But the appellants have not filed any documents like salary certificate or wage register to prove the income of the deceased. The accident is of the year 2016 and the cost of living has increased enormously. Therefore, a sum of Rs.8,000/- per month fixed by the Tribunal as notional income of the deceased is meagre. Considering the year of accident and nature of work done by the deceased, a sum of Rs.12,500/- per month is fixed as notional income of the deceased. As per Ex.P3/Postmortem certificate and Ex.P5/ITI Examination Certificate of the deceased issued by the Mahalakshmi ITI Industrial School, Cuddalore, the deceased was aged 20 years at the time of accident. The Tribunal applied multiplier '18' which is proper as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another]'. The Tribunal following the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], rightly granted 40% enhancement towards future prospects. The deceased was a bachelor at the time of accident and the Tribunal rightly deducted 50% towards personal expenses from the income of the deceased. The Tribunal erroneously awarded a sum of Rs.40,000/- towards loss of consortium to the appellants, who are the parents of the deceased. The appellants are not entitled to any amount towards loss of consortium for the death of their son. Hence, the amount awarded by the Tribunal towards loss of consortium is liable to be set aside and it is hereby set aside. The Tribunal has not awarded any amount towards loss of love and affection. The appellants are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The amounts awarded by the Tribunal towards funeral expenses and loss of estate 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 dependency	12,09,600/-	18,90,000/-	Enhanced
2.	Loss of consortium	40,000/-	-	Set aside
3.	Loss of love and affection	-	80,000/-	Granted
4.	Funeral expenses	15,000/-	15,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
5.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.12,79,600/-	Rs.20,00,000/-	Enhanced by Rs.7,20,400/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,79,600/- is hereby enhanced to Rs.20,00,000/- 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, less the amount already deposited, if any, 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.1879 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore. On such deposit, the appellants are permitted to withdraw their respective share 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, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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To

- 1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Cuddalore.
- 2.The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.361 of 2021

RSV(CO)
CB(08/09/2021)