

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.04.2021

CORAM

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

C.M.A. No.1258 of 2021

1. A.Sarasu
 2. Minor A.Nishanthini
 3. Minor A.Chandru
 4. Minor A.Deena .. Appellants/Petitioner
- [Minor appellants are represented by their mother
and guardian, the first petitioner herein]

Versus

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

.. Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 24.10.2019 made in MCOP.No.3975 of 2016 on the file of the Motor Accident Claims Tribunal / Special Sub Judge, Cuddalore.

For appellant : Mrs.Ramya V. Rao
For respondents : Mr.K.J.Sivakumar

J U D G M E N T

(The Judgment of the Court was delivered by R.SUBBIAH, J)

The appeal is heard through video conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal / Special Sub Judge, Cuddalore, in MCOP.No.3975 of 2016, dated 24.10.2019, this appeal has been filed by the claimants for enhancement of the compensation amount.

3. The claimants are the wife and 3 minor children of the deceased Ayyanar. It is the case of the claimants before the Tribunal that on 24.08.2016 at about 2.00 am, while the deceased was standing on the extreme left side of the ECR Road,

near Annumandhai Toll Gate, a Bus bearing Registration No.TN 32 N 3703, belonging to the respondent Corporation, came in a rash and negligent manner and hit the deceased and as a result of which, the deceased had sustained grievous injuries and died on the spot.

4. It is the further case of the claimants that the deceased was working as bore well rig operator and earning a sum of Rs.23,000/- per month. The deceased was the sole breadwinner of the family and due to his sudden demise, the claimants are suffering for their livelihood. Hence, they filed a claim petition claiming a sum of Rs.25,00,000/- as compensation.

5. The claim petition was resisted by the Transport Corporation by filing a counter denying the manner of accident as projected by the claimants in the claim petition. They also denied the avocation and income mentioned in the claim petition. Thus, they sought for dismissal of the claim petition.

6. In order to prove the claim on the side of the claimants, the first claimant/wife of the deceased examined herself as PW1, besides examining PW2, an eye witness to the accident and Exs.P1 to P4 were marked. On the side of the Transport Corporation, neither any oral evidence was adduced nor document was marked.

7. The Tribunal after analysing the entire evidence came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the respondent-Corporation and passed an award for a sum of Rs.13,30,000/- as compensation. The break-up details of the amount awarded by the Tribunal under various heads are as follows:

S. No.	Compensation awarded by the Tribunal under the heads	Amount in Rs.
1	Loss of Dependency	12,60,000
2	Loss of Estate	15,000
3	Loss of Consortium	40,000
4	Funeral Expenses	15,000
	Total	13,30,000

8. Now, it is the contention of the learned counsel for the appellants / claimants that the deceased was earning a sum of Rs.23,000/- by working as a bore well rig operator, whereas the Tribunal had taken only a sum of Rs.8,000/- as monthly income of the deceased. Thereafter, by applying multiplier method, the Tribunal arrived at a sum of Rs.12,60,000/- $[(8,000 + 2000) \times 12 \times 14 \times \frac{3}{4}]$ under the head "Loss of dependency", which is extremely on the lower side. Hence, by fixing at least a sum of Rs.20,000/- as monthly income of the deceased, the amount awarded by the Tribunal under the head "Loss of dependency" may be enhanced.

9. It is the further contention of the learned counsel for the appellants / claimants that the Tribunal failed to award any amount under the head "Loss of Love and Affection". The deceased left behind three minor children at their tender age, while so, a sum of Rs.40,000/- may be awarded to each of the children under such head.

10. Countering the said submissions, the learned counsel for the respondent/Transport Corporation submitted that though the claimants have stated that the deceased was earning a sum of Rs.23,000/- per month, absolutely no documentary evidence was produced before the Tribunal to substantiate the same. In the absence of any documentary evidence, the Tribunal has rightly fixed the notional income of the deceased at Rs.8,000/- per month. Hence, there is no need to enhance the compensation amount. Thus, he sought for dismissal of this appeal.

11. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record.

12. We find that as contended by the learned counsel for the respondent/Transport Corporation, no documentary evidence was produced by the claimants, such as salary slip, salary certificate or bank statements to prove that the deceased was earning a sum of Rs.23,000/- per month. Hence, we are not inclined to fix a sum of Rs.20,000/- as monthly income of the deceased. However, we find that considering the cost of living prevalent at the time of the accident, i.e., in year 2016, the sum of Rs.8,000/- fixed as notional income of the deceased is extremely on the lower side, which resulted in awarding an inadequate compensation. Hence, by fixing a sum of Rs.15,000/- per month as notional income of the deceased, calculation could be made to arrive at a just and proper compensation.

13. Thus, if a sum of Rs.15,000/- is taken as monthly income of the deceased and 25% of the same is added towards future prospects, it works out to Rs.18,750/- [15,000 + 3,750]. Since the dependents are 4 in number, if 1/4 of the amount is deducted towards personal expenses, the amount comes to Rs.14,063/- [18,750 - 4,687]. Considering the age of the deceased being 45 years at the time of the accident, if multiplier "14" is applied, the "Loss of Dependency" comes to Rs.23,62,584/- [14,063 x 14 x 12]. Hence, a sum of Rs.12,60,000/- awarded by the Tribunal under the head "Loss of Dependency" is enhanced to a sum of Rs.23,62,584/-

14. Further, we find that the Tribunal has not awarded any amount under the head "Loss of Love and Affection" to the minor children of the deceased / claimants 2 to 4 and hence, a sum of Rs.1,20,000/- is awarded under such head by awarding a sum of Rs.40,000/- to each of the minor claimant.

15. The amounts awarded by the Tribunal under all the other heads are just and proper and hence the same are confirmed.

16. The total compensation is re-determined as below:

S. No.	Heads under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Dependency	12,60,000	23,62,584
2	Loss of Estate	15,000	15,000
3	Loss of Consortium	40,000	40,000
4	Funeral Expenses	15,000	15,000
5	Loss of Love and Affection	-	1,20,000
	Total	13,30,000	25,52,584 rounded of to 25,52,600

17. Thus, the total sum of Rs.13,30,000/- awarded by the Tribunal towards compensation is hereby enhanced to Rs.25,52,600/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The claimants shall pay necessary Court fee, on the enhanced compensation. The respondent / Transport Corporation is directed to deposit the total compensation now awarded by this Court, before the Tribunal together with interest and costs if any, after adjusting the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant is permitted to withdraw her entire share. Insofar as the minor claimants 2 to 4 are concerned, their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Bank and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother once in three months. The apportionment of shares fixed by the Tribunal to the claimants is hereby confirmed.

18. With the above observations and directions, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-IV)

To

1. The Special Sub Judge,
The Motor Accident Claims Tribunal /
Cuddalore.

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.23415

+2cc to Mr.AN.Viswanatha Rao, Advocate SR.No.23525

C.M.A. No.1258 of 2021

SVI (CO)
GMY (13/05/2021)



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