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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.2.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.2672 of 2013
and
M.P.No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Region, 37, Mettupalayam Salai,
Coimbatore 641 043. ... Respondent/Appellant

..Vs..

1. Kalpana
2. K.Raghu
3. K.Vanitha
4. Valliammal ... Petitioners/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 25.2.2013 made in M.C.O.P.No.499 of 2009 on the file of Principal District Court (Motor Accidents Claims Tribunal), Erode.

For Appellant : Mr.Sundaravadhanam

For Respondent No. 1 to 4 : Ms.Revathy for
Mr.R.Nalliappan

JUDGMENT

Brief facts of the claimants' case is as follows:

On 25.05.2009 at about 5.00 a.m., the deceased Kumarasamy was engaged in selling milk and when he was proceeding in his bicycle towards Vijayapuram to Tiruppur from east to west direction on the left side of the road in cautious manner, at Nallur Ottanthar thottam, opposite to Senthil Andavar Electric shop, the appellant Corporation bus bearing registration No.TN 33 N 2202 came from behind in rash and negligent manner and hit against the deceased Kumarasamy, thereby caused accident, resulting in the deceased succumbed to fatal injuries. The deceased was taken to Government hospital,



Tiruppur and thereafter, shifted to Coimbatore Medical College hospital, Coimbatore where he underwent treatment as inpatient and died on the same day. A case in Cr.No.978 of 2009 under Sec.279, 337 and 304(A) of I.P.C. has been registered by Tiruppur Rural Police Station. The wife, son, daughter and mother of the deceased have filed a claim petition before the tribunal claiming Rs.15,00,000/- as compensation from the appellant Corporation.

2 The appellant Corporation has contested the claimants' case by filing counter wherein it is stated that on seeing the deceased while riding bicycle, the driver of the bus blown horn and drove the bus in very low speed and overtake the cyclist on the right side of the road and given sufficient space. However, due to negligent riding of the deceased, the cycle hit the left side of the bus and fell down and sustained injuries and he died on the same day due to the injuries. The deceased was solely responsible for the accident. The compensation claimed by the claimants is excessive.

3. On the side of the claimants, P.W.1 to 3 were examined and Ex.P1 to 15 were marked. No witness was examined or any documents marked on the side of the appellants. The Tribunal, based on the oral and documentary evidence and the arguments advanced by both sides, has awarded Rs.6,62,500/- as total compensation along with interest at the rate of 7.5% p.a from the date of petition till realization. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Amount in Rs.
Compensation for loss of dependency	6,00,000/-
Loss of consortium to 1st Respondent	25,000/-
Loss of Love and affection	25,000/-
Transport charges	5,000/-
Funeral expenses	5,000/-
Loss of estate	2,500/-
Total	6,62,500/-

4. Heard the learned counsel appearing for the Respondent/ appellant Corporation and the learned counsel appearing for the claimants/ respondents and perused the materials available on record.



5. According to the learned counsel appearing for the appellant, the monthly income of the deceased fixed by the tribunal is unacceptable as there is no supporting materials placed before the tribunal. Further, it is contended that the multiplier adopted by the tribunal is not in consonance with the decision of the Hon'ble Supreme Court in Sarala Varma case. Therefore, the tribunal erroneously passed the award and the same requires modification.

6. Ms.Revathi, learned counsel appearing for the claimants/ respondents while rebutting the contention of the appellant, would seek enhancement of compensation to the claimants. According to the learned counsel appearing for the respondents, claim petition has been filed by four claimants, viz., wife, son, daughter and mother of the deceased. Tribunal failed to take note of the evidence of P.W.3, who was working as Manager in S.P. Processing Company, where the deceased was working and earning Rs.9,000/- per month, and wrongly rejected the claim of the respondents, by fixing Rs.5000/- as monthly income of the deceased. To that extent, P.W.3 deposed before the Court below that the deceased was working in the said company and drawing salary of Rs.9000/- per month. Therefore, she seeks enhancement of compensation awarded by the tribunal.

7. The main contention of the learned counsel appearing for the appellant Corporation is that the notional income of the deceased as fixed by the tribunal is excessive. There is no supporting materials to prove that the deceased was earning Rs.5000/- per month. On perusal of the award passed by the tribunal, by way of producing documents marked as Ex.P11, 12 and 13 made an attempt to establish that apart from selling milk, he was working in the aforesaid company and drawing salary of Rs.9000/- per month. However, the tribunal rejected the aforesaid materials by stating that the relevant documents like attendance register, acquittance register, Provident Fund account etc. were not produced to prove that the deceased was working in the aforesaid company and was drawing a salary of Rs.9000/- per month. Therefore, the tribunal has rightly fixed the notional income of the deceased as Rs.5,000/- per month. However, this Court accepted the contention of the learned counsel appearing for the appellant Corporation that since the age of the deceased is 45 years, as per Sarala Varma case, the tribunal ought to have adopted 14 multiplier instead of 15. Insofar as the contribution towards personal expenses, as rightly pointed out by the learned counsel appearing for the respondents/claimants, the tribunal ought to have deducted 1/4th towards his personal expenses. Accordingly, after deducting 1/4th towards personal expenses, contribution of the deceased to his family comes to $\text{Rs.}3,750/- \times 12 \times 14 = \text{Rs.}6,30,000/-$. Insofar as other heads are concerned, it is appropriate for



this Court to determine just and fair compensation to the claimants as follows:

Heads	Compensation awarded by the tribunal Rs.	Compensation enhanced/ awarded by this Court (Rs.)
Loss of dependency	6,00,000/-	6,30,000/-
Loss of consortium to 1st Respondent	25,000/-	25,000/-
Loss of Love and affection 2nd, 3rd and 4th Respondent respectively	25,000/-	15,000/- 15,000/- 10,000/-
Transport charges	5,000/-	5,000/-
Funeral expenses	5,000/-	10,000/-
Loss of estate	2,500/-	15,000/-
Total	6,62,500/-	7,25,000/-

8. Accordingly, the respondents/claimants are entitled for Rs.7,25,000/- (Rupees seven lakhs and twenty five thousand only) along with interest at the rate of 7.5% p.a. from the date of petition till realization. The appellant/transport Corporation is directed to deposit Rs.7,25,000/- along with interest at the rate of 7.5% p.a. from the date of petition till realization, within a period of six weeks from the date of receipt of copy of the judgment, after deducting the amount if any, already deposited before the tribunal. On such deposit being made by the appellant/transport Corporation, the respondents/ claimants are entitled to withdraw the amount by filing appropriate application. The claimants are directed to pay necessary court fee on the enhanced amount of compensation determined by this Court.

9. In the result, the Civil Miscellaneous Appeal is disposed of with the above modification. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CCC)

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Sub Assistant Registrar



To

1. The Principal District Judge,
(Motor Accidents Claims Tribunal)
Erode.

Copy to:
The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.

+1cc to Mr.A.Sundaravadhanan, Advocate, S.R.No.10662

Civil Miscellaneous Appeal No.2672 of 2013

BR(CO)
SU(24/02/2022)