



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.298 OF 2021

1.Pattu
2.Minor. Ranjith
3.Minor. Kokila
4.Minor. Gunasekaran
(Minor appellants 2 to 4 are represented by
their mother, Pattu, 1st appellant herein)
5.Annammal (Died) .. Appellants/Petitioner

Vs.

1.A.M.Munuswamy Mudaliar
2.United India Insurance Company Limited,
D.O. At No:14, Whites Road,
Chennai - 600 014.
3.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram Division - III,
Kancheepuram. .. Respondents

(R1 remained exparte before Tribunal and
Decree is not passed against 3rd respondent.
Hence, notice to RR1 & 3 dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.09.2019 made in M.C.O.P.No.548 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Court (FTC), Kancheepuram.

For Appellants : Mr.Amar D.Pandiya
for Mr.N.Manoharan

For R2 : Mr.C.Paranthaman

For R3 : Mr.K.J.Sivakumar



J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 30.09.2019 made in M.C.O.P.No.548 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Court (FTC), Kancheepuram.

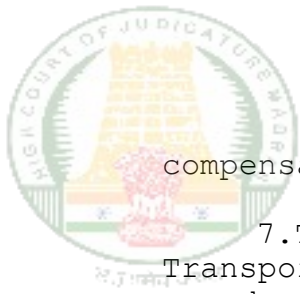
2.The appellants are the claimants in M.C.O.P.No.548 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Court (FTC), Kancheepuram. They filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one S.Gopal, who died in the accident that took place on 30.11.2007.

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 bearing Registration No.AP 03 W 7575 belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.15,82,000/- as compensation to the appellants 1 to 4 and dismissed the claim petition as against the 5th appellant.

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 35 years and the appellants who are the wife, children and mother of the deceased have lost their only bread winner of the family. The Tribunal failed to award any amount towards parental consortium and filial consortium. The appellants 2 to 4, who are the minor children of the deceased have lost their father's love and affection. The Tribunal failed to award any amount transportation, conventional damages and loss of love and affection. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any material evidence with regard to avocation and income, the Tribunal has fixed the monthly income of the deceased at Rs.7,500/- as claimed by the appellants in the claim petition and awarded a sum of Rs.15,12,000/- towards loss of dependency, which is excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.15,82,000/- as compensation to the appellants which is not meagre and the appellants have not made out any case for enhancement of



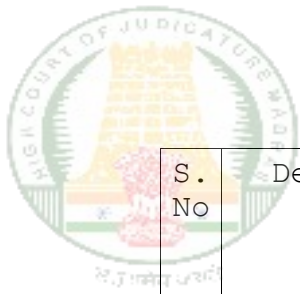
compensation and prayed for dismissal of the appeal.

7. The learned counsel appearing for the 3rd respondent-Transport Corporation made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellants through video conferencing as well as the learned counsel appearing for the 2nd respondent-Insurance Company and the learned counsel appearing for the 3rd respondent-Transport Corporation and perused the entire materials on record.

9. From the materials available on record it is seen that it is the case of the appellants that they are the wife, children and mother of the deceased and they have lost their only bread winner of the family i.e., S.Gopal, who died in the accident that took place on 30.11.2007. The Tribunal considering the claim made by the appellants in the claim petition that the deceased was earning a sum of Rs.6,000/- to Rs.7,500/- per month, fixed a sum of Rs.7,500/- per month as claimed by them as the notional income of the deceased, granted 40% enhancement towards future prospects, applied multiplier '16', deducted 1/4th towards personal expenses of the deceased and awarded a sum of Rs.15,12,000/- towards loss of dependency. The deceased was aged 35 years at the time of accident and the multiplier '16' applied and 40% enhancement granted towards future prospects are proper. There are five dependants of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased. The appellants 2 to 4, who are the minor children have lost their father at their young age and the Tribunal failed to award any amount towards loss of love and affection. The death of father at the young age of the children cannot be compensated monetarily. Therefore, a sum of Rs.30,000/- each is awarded to the appellants 2 to 4 towards loss of love and affection. The Tribunal failed to award any amount towards transportation. The appellants are entitled to a sum of Rs.10,000/- towards transportation. The amounts awarded by the Tribunal under other heads 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	15,12,000/-	15,12,000/-	Confirmed
2.	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
3.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection to appellants 2 to 4	-	90,000/-	Granted
6.	Transportation	-	10,000/-	Granted
	Total	Rs.15,82,000/-	Rs.16,82,000/-	Enhanced by Rs.1,00,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,82,000/- is hereby enhanced to Rs.16,82,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company 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 six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.548 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Court (FTC), Kancheepuram. On such deposit, the 1st appellant is permitted to withdraw her 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. The share of the minor appellants 2 to 4 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 to 4 attain majority. On such deposit, the 1st appellant, being the mother of the minor appellants 2 to 4 is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants 2 to 4. This appeal is dismissed as against the 5th appellant. No costs.

Sd/-
Assistant Registrar

//True Copy//

krk

Sub Assistant Registrar



To

WEB COPY

1. Motor Accident Claims Tribunal Judge,
The Additional District Court (FTC),
Kancheepuram.

Copy To

The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.KJ.Sivakumar, Advocate, S.R.No.9239
+1cc to Mr.N.Manoharan, Advocate, S.R.No.8754
+1cc to Mr.C.Paranthaman, Advocate, S.R.No.9035

C.M.A.No.298 of 2021

VG II (CO)
PM/15/09/2021