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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.77 of 2016
and Cros. Obj. No.4 of 2016
and C.M.P.No.708 of 2016

C.M.A.No.77 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Division I, Madurai. ...Appellant/ 2nd Respondent

vs.

1.Veluchamy

2.Deivathal .. Respondents 1 & 2/ Petitioners

3.Thiruvengadam(Given up) ...3rd Respondent/ 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in MCOP.No.1069 of 2002 dated 16.07.2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Dharapuram.

For Appellant : Mr.D.Venkatachalam

For Respondents : Mr.M.Lokesh for R1 and R2
for Mr.Ma.P.Thangavel

R3 - Given up

Cros. Obj. No.4 of 2016

1.Veluchamy

2.Deivathal

...Cross Objectors

vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Division I, Madurai.

2.Thiruvengadan

(The 2nd respondent remained set ex-parte before the Tribunal, hence 2nd respondent is given up in this Cross Appeal)

...Respondents

Prayer: Cross Objection filed under Order 41 Rule 22 of C.P.C., against Decree and Judgment in M.C.O.P.No.1069 of 2002 dated 16.07.2007 on the file of MACT, Sub Judge at Dharapuram.



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For Cross Objectors : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

For Respondents : Mr.D.Venkatachalam
R2 - ex-parte

COMMON JUDGMENT

(This appeal was heard through Video Conferencing)

This appeal has been filed by the Transport Corporation challenging the quantum of compensation awarded by the Tribunal under the impugned Award dated 16.07.2007 passed by the Motor Accident Claims Tribunal, (Sub Judge), Dharapuram in MCOP.No.1069 of 2002.

2.The respondents/claimants have filed Cross Objection No.4 of 2016 seeking for enhancement of compensation unsatisfied with the quantum of compensation fixed by the Tribunal.

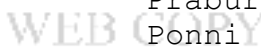
3.Heard Mr.D.Venkatachalam, learned counsel for the Appellant and Mr.M.Lokesh, learned counsel for the respondents 1 and 2.

4.The Appellant has challenged the impugned Award on the ground that the Tribunal has erroneously fixed the monthly income of the deceased at Rs.4,000/- and has also erroneously failed to consider that the dependency will be reduced in case of a bachelor and hence higher salary fixed by the Tribunal is not correct.

5.The Tribunal under the impugned Award has directed the Appellant Transport Corporation to pay the respondents/claimants who are the dependants of the deceased who was a bachelor a compensation of Rs.4,36,000/- together with interest and costs as detailed hereunder:

Sl.No .	Head	Amount awarded by the Tribunal
1	Loss of Income (Rs.4,000 x 12 x 2/3 x 13)	Rs.4,16,000
2	Funeral expenses	Rs.5,000
3	Loss of love and affection	Rs.10,000
4	Transportation expenses	Rs.5,000
	Total	Rs.4,36,000/-

6.Before the Tribunal, the respondents/claimants have filed 14 documents which were marked as Exs.A1 to A14 and three witnesses were examined on their side namely, Tmt.Deivathal, the mother of the deceased and PW2 and PW3 are the only witnesses to the accident. On the side of the



7.While assessing the monthly income of the deceased Praburaj aged 28 years and was employed as Junior Engineer at Ponni Sugar Mills Limited, the Tribunal has taken into consideration the salary slip filed by the respondents/claimants before the Tribunal which was marked as Ex.P10 which discloses that the deceased was earning Rs.5,374.75/- at the time of the accident. However, the Tribunal on its own without any basis has fixed the notional monthly income of the deceased at Rs.4,000/- ignoring the salary slip Ex.P10 filed before the Tribunal.

9. The Tribunal has erroneously fixed the loss of dependency at 1/3rd as the deceased was only a bachelor at the time of the accident. In accordance with the settled law, the personal expenses of the deceased will have to be fixed at 50% for a bachelor. Therefore, this Court deducts 50% towards personal expenses of the deceased instead of 1/3rd fixed by the Tribunal.

11. Further, in the impugned Award, the Tribunal has failed to Award any compensation to the respondents/claimants for the loss of future prospects which they are legally entitled to as per the Constitution Bench judgement of Hon'ble Supreme Court in the case of National Insurance Co. Ltd. vs. Pranay Sethi reported in 2017 16 SCC 680. In accordance with the said judgment, the respondents/claimants are entitled to 50% towards loss of future prospects after giving due consideration to the nature of employment of the deceased at the time of the accident.

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love and affection and transport expenses are concerned also low and they are not in accordance with the settled law. Accordingly, the loss of parental consortium/love and affection is enhanced to Rs.80,000/- from Rs.10,000/- fixed by the Tribunal and similarly, the compensation awarded towards transport expenses is enhanced to Rs.10,000/- by this Court. The Tribunal has also failed to Award any compensation towards loss of estate which the respondents/claimants are legally entitled to. Accordingly, this Court fixes the same at Rs.15,000/-.

13.In the result, this Court enhances the compensation awarded by the Tribunal from Rs.4,36,000/- to Rs.9,42,426/- in the following manner:

Sl.No	Head	Modified /enhanced Amount
1	Loss of Income (Rs.5,375 +2,688 = 8,063 x 12 x $\frac{1}{2}$ x 17)	Rs.8,22,426
2	Loss of parental consortium/Love and affection	Rs.80,000
3	Funeral expenses	Rs.15,000
4	Loss of estate	Rs.15,000
5	Transportation expenses	Rs.10,000
	Total	Rs.9,42,426/-

14.For the foregoing reasons, this Court is of the considered view that there is no merit in this appeal. Accordingly, the appeal is dismissed and the Cross Objection filed by the respondent is partly allowed. The Appellant Transport Corporation is directed to deposit the modified amount of Rs.9,42,426/- awarded by this Court, after deducting the amount already deposited if any, together with interest at the rate of 7.5% p.a. from the date of the claim till the date of realization to the credit of M.C.O.P.No.1069 of 2002, on the file of the Motor Accidents Claims Tribunal (Sub Judge), Dharapuram, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the Award amount along with accrued interest lying to the credit of M.C.O.P.No.1069 of 2002 to the bank account of respondents/claimants, through RTGS, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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To

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1.The Motor Vehicles Accident Claims Tribunal,
Sub Judge, Dharapuram.

2.The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.28172

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.28310

C.M.A.No.77 of 2016

PM(CO)
SB(22/11/2021)