



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.697 of 2021

1.Perumayi
2.Tamilarasi
3.Saroja
4.Nirmala
5.Kennedy

... Appellants/Petitioners

Vs.

1.Krishnan
2.The Managing Director,
Tamilnadu State Transport Corporation Limited,
No.12, Ramakrishna Road,
Salem - 636 007.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order in M.C.O.P.No.1294 of 2018, dated 17.02.2020 on the file of the Motor Accidents Claims Tribunal / Special District Court, Salem.

For Appellants : Mr.T.S.Arthanareeswaran

R2 : Mr.D.Raghu

J U D G M E N T

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

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 17.02.2020 made in M.C.O.P.No.1294 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

3.The appellants are the claimants in M.C.O.P.No.1294 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. They filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death



of one Kasilingam, who died in the accident that took place on 11.02.2018.

4.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 the 2nd respondent and directed the 2nd respondent-Transport Corporation to pay a sum of Rs.2,70,040/- as compensation to the appellants.

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

6.The learned counsel appearing for the appellants contended that at the time of accident the deceased was aged 75 years, working as Commission Agent in buying & selling groundnuts to his customers and was earning a sum of Rs.32,000/- per month. But, the Tribunal failed to consider the same and fixed a meagre sum of Rs.5,000/- per month as notional income of the deceased. The Tribunal ought to have fixed a sum of Rs.32,000/- as monthly income of the deceased as claimed by the appellants and awarded compensation. The Tribunal erred in deducting 1/3rd towards personal expenses of the deceased, while calculating loss of income. As per the decision of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], when the number of dependents are 4 to 6, ¼ is to be deducted towards personal expenses of the deceased. The Tribunal failed to award any amount towards medical bills, attendant charges, transport expenses to the hospital and parental consortium and prayed for enhancement of compensation.

7.Per contra, learned counsel appearing for the 2nd respondent-Transport Corporation contended that the appellants did not file any document to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the deceased and the same is not meagre. The amounts awarded by the Tribunal towards loss of dependency, loss of consortium, loss of estate and funeral expenses are not meagre. The total compensation awarded by the Tribunal is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Transport Corporation and perused the entire materials on record.



9. It is the case of the appellants that at the time of accident the deceased was aged 75 years, working as Commission Agent in buying and selling groundnuts to his customers and was earning a sum of Rs.32,000/- per month. They did not file any material documents to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal considering the age and occupation of the deceased fixed a sum of Rs.5,000/- per month as notional income of the deceased. The accident is of the year 2018. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. The deceased was aged 75 years at the time of accident. The Tribunal, following 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], rightly applied multiplier '5'. There are five dependants of the deceased and the Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased instead of 1/4th. Thus, by fixing the monthly income as Rs.10,000/- and deducting 1/4th towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.4,50,000/- {Rs.10,000/- X 12 X 5 X 3/4}. 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	2,00,040/-	4,50,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.2,70,040/-	Rs.5,20,000/-	Enhanced by Rs.2,49,960/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,70,040/- is hereby enhanced to Rs.5,20,000/- together with interest at the rate of 7.5% per annum from the date of petition



till the date of deposit. The 2nd respondent-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.1294 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. 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(CO)

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Salem.

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

+1cc to M/s.D.Raghu, Advocate Sr.15801

+2cc to Mr.T.S.Arthanareeswaran, Advocte Sr.16162

C.M.A.No.697 of 2021

rp[co]
srg 07/10/2021