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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1141 of 2021

1.Murugesan

2.Kolanjinathan

3.Dhanam

4.Anandhan

5.Minor Arun

6.Minor Akash

7.Minor Aarthi

(Appellants 5 to 7 rep by their next friend
Father Anbalagan)

.. Appellants

Vs.

The Manager,
Tamil Nadu State Epress Transport Corporation,
No.2, Pallavan Salai,
Chennai - 600 002.

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 24.06.2020 made in M.C.O.P. No.569 of 2017 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur.

For Appellants : Mr.S.P.Yuvaraj

For Respondent : Mr.K.J.Sivakumar



J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

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This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 24.06.2020 made in M.C.O.P. No.569 of 2017 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur.

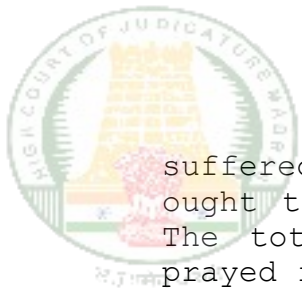
2.By consent of the learned counsel appearing for the appellants as well as the respondent, the appeal is taken up for final disposal at the admission stage itself.

3.The appellants/claimants filed M.C.O.P.No.569 of 2017 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur, claiming a sum of Rs.30,00,000/- as compensation for the death of one Valliyammai who died in the accident that took place on 07.08.2017.

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 owned by the respondent and directed the respondent-Transport Corporation to pay a sum of Rs.1,20,000/- as compensation to the appellants.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 24.06.2020 made in M.C.O.P. No.569 of 2017, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that at the time of accident, the deceased Valliyammai was doing Agricultural work and was earning a sum of Rs.15,000/- per month. The Tribunal fixed only a meagre sum of Rs.3,000/- per month as notional income without considering the year of accident and erroneously deducted 50% towards personal expenses of the deceased, instead of deducting $1/5^{th}$ as there are 7 dependents of the deceased. The Tribunal failed to grant any amount towards loss of consortium and loss of love and affection to the appellants. The Tribunal ought to have considered the fact that the death of Valliyammai was not instantaneous and she



suffered pain and suffering. The Tribunal considering the same, ought to have awarded compensation towards pain and sufferings. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.

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7. Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that in the absence of any evidence by the appellants to prove the avocation and income of the deceased Valliyammai, the Tribunal fixed a sum of Rs.3,000/- per month as notional income and the same is not meagre. The total compensation awarded by the Tribunal is not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

9. It is the case of the appellants that at the time of accident, the deceased Valliyammai was aged 65 years, doing Agricultural work and owning milk cows and was earning a sum of Rs.15,000/- per month. They did not file any document to prove the same. In the absence of any evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the deceased Valliyammai. The accident is of the year 2017. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Considering the year of in the accident, age and nature of work done by the deceased, the notional income fixed by the Tribunal is enhanced to Rs.6,500/- per month. As per Ex.P12 - Aadhar card, the age of the deceased is 72 years at the time of accident. The Tribunal having rightly applied the multiplier '5', erroneously deducted 50% towards personal expenses, when there are 7 dependents of the deceased. Considering the facts and circumstances of the case, this Court is of the considered view that it will be appropriate to deduct $\frac{1}{3}^{\text{rd}}$ towards personal expenses of the deceased. Hence fixing the monthly income at Rs.6,500/-, applying multiplier '5' and after deducting $\frac{1}{3}^{\text{rd}}$ towards personal expenses of the deceased, the amounts granted by the Tribunal towards loss of dependency is modified to Rs.2,60,000/- [$\text{Rs.6,500/-} \times 12 \times 5 \times \frac{2}{3}$]. The Tribunal failed to award any amount towards loss of consortium to the 1st appellant. The 1st appellant being husband of the deceased Valliyammai is entitled to a sum of Rs.40,000/- towards loss of



consortium. This Court is of the considered view that 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	90,000/-	2,60,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	-	40,000/-	Granted
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	1,20,000/-	3,30,000/-	Enhanced by Rs.2,10,000/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,20,000/- is enhanced to Rs.3,30,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-Transport Corporation is directed to deposit the award amount, now determined by this Court, along with interest and costs, 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.569 of 2017. On such deposit, the appellants 1 to 4 are permitted to withdraw their respective share of the award amount, now determined by this Court, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor appellants 5 to 7 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The father of the minor appellants 5 to 7 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 5 to 7. No costs.

Sd/-

Deputy Registrar (ADMN III)

//True Copy//

Sub Assistant Registrar

gsa



To

1. The Principal District Judge,
(Motor Accident Claims Tribunal),
Perambalur.

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

+1CC to Mr.K.J.Sivakumar, Advocate, Sr.No.19471

C.M.A.No.1141 of 2021

SSN (CO)
K.RK. (12.11.2021)