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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.4482 OF 2019

AND

C.M.P.NO.25348 OF 2019

The Managing Director
Tamil Nadu State Transport
Corporation (Coimbatore) Limited
No.37, Mettupalayam Road
Coimbatore.

... Appellant/Respondent

Vs.

1.A.Bagyalakshmi

2.Minor Selvarshini

3.Minor Bhavana
(Minors 2 and 3 represented by their natural
guardian and mother 1st respondent)

4.P.Nachiyar

... 1 to 4 Respondents/Petitioners

5.S.Rajkumar

.. 5th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 15.02.2019 made in M.C.O.P.No.540 of 2015 on the file of Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.



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For Appellant : Mr.K.J.Sivakumar

For R1 to R4 : Ms.V.Revathi
for Mr.R.Nalliyappan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Transport Corporation to set aside the award dated 15.02.2019 made in M.C.O.P.No.540 of 2015 on the file of Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

2.The appellant/Transport Corporation is 2nd respondent in M.C.O.P.No.540 of 2015 on the file of Motor Accident Claims Tribunal, Sub Court, Sathyamangalam. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Annadurai, who died in the accident that took place on 04.08.2015.

3.According to the respondents 1 to 4, on the date of accident, i.e., on 04.08.2015 at about 11.45 p.m., while one Rajkumar was driving a TATA Indica car along with the deceased Annadurai, Arul Subramani, Rama Subramani and Soorya Kumar on Ottanchathiram - Dharapuram Road, near Ambilikkai Indira nagar colony, from North to South direction, on the extreme left side of the road, the driver of the bus belonging to the appellant/Transport Corporation, who was coming in the opposite direction, from South to North direction, drove the same in a rash and negligent manner, dashed against the right side of the car in which the deceased travelled and caused the accident. In the accident, the said Annadurai sustained fatal injuries and died in the hospital on 05.08.2015. Therefore, the respondents 1 to 4 filed the above claim petition claiming compensation as against the 5th respondent and the appellant/Transport Corporation.

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 appellant/Transport Corporation and directed the appellant to pay a sum of Rs.18,84,400/- as compensation to the respondents 1 to 4.



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5. To set aside the said award dated 15.02.2019 made in M.C.O.P.No.540 of 2015, the appellant/Transport Corporation has come out with the present appeal.

6.Though the learned counsel appearing for the appellant/Transport Corporation raised grounds with regard to negligence fixed on the driver of the bus, at the time of arguments, he restricted his arguments only with regard to quantum of compensation awarded by the Tribunal and contended that the respondents 1 to 4 have failed to produce valid documents to prove the age, avocation and income of the deceased. According to the respondents, the deceased was working as an agricultural coolie and compounder and was earning a sum of Rs.10,000/- per month at the time of accident. In the absence of any material evidence, the Tribunal erroneously fixed monthly income of the deceased at Rs.9,000/-, which is on the higher side. The deceased was aged 40 years at the time of accident. The Tribunal erred in applying multiplier '16'. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

7.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the deceased Annadurai was earning a sum of Rs.10,000/- per month at the time of accident. The Tribunal fixed only a meagre sum of Rs.9,000/- per month as notional income of the deceased. The Tribunal has not awarded any compensation towards loss of consortium and loss of estate. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant/Transport Corporation as well as the learned counsel appearing for the respondents 1 to 4 and perused the entire materials on record.

9.It is the contention of the respondents 1 to 4 that the deceased Annadurai was working as an agricultural coolie and compounder and was earning a sum of Rs.10,000/- per month at the time of accident. The respondents 1 to 4 examined one Ramar as P.W.3 to prove their contention. The Tribunal rejected the evidence of P.W.3 as respondents failed to examine the alleged employer, considering the age of the deceased, fixed a sum of



Rs.9,000/- per month as notional income of the deceased. The accident is of the year 2015 and the notional income fixed by the Tribunal is not excessive. The deceased was aged 40 years at the time of accident. The Tribunal applied multiplier '16', which is not correct. As per the judgment of the Hon'ble Apex reported in 2009 (2) TNMAC 1 SC (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is '15'. The Tribunal granted 40% enhancement towards future prospects and deducted 1/4th towards personal expenses, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.17,01,000/- (Rs.9,000/- + 3600 [Rs.9,000/- X 40%] X 12 X 15 X 3/4). A sum of Rs.45,000/- awarded by the Tribunal towards loss of love and affection is excessive and hence, the same is hereby reduced to Rs.40,000/-. The Tribunal has not awarded any compensation towards loss of consortium to the 1st respondent and loss of estate. Hence, Rs.40,000/- and Rs.15,000/- are awarded towards loss of consortium to the 1st respondent and loss of estate respectively. The amounts awarded by the Tribunal towards funeral expenses and transportation 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 or reduced
1.	Loss of dependency	18,14,000	17,01,000	Reduced
2.	Funeral expenses	15,000	15,000	Confirmed
3.	Transportation	10,000	10,000	Confirmed
4.	Loss of love and affection	45,000	40,000	Reduced



5.	Loss of consortium to the 1 st respondent	-	40,000	Granted
6.	Loss of estate	-	15,000	Granted
	Total	18,84,000	18,21,000	Reduced by Rs.63,000/-

10. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.18,84,000/- awarded by the Tribunal is hereby reduced to Rs.18,21,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/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. On such deposit, the respondents 1 and 4 are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minor respondents 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minors attain majority. The 1st respondent being mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 and 3. The appellant/Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.540 of 2015 on the file of Motor Accident Claims Tribunal, Sub Court, Sathyamangalam, if any, already deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar

Kj



To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Sathyamangalam.

2. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.11639

C.M.A.No.4482 of 2019
and
C.M.P.No.25348 of 2019

SPD(CO)
RLP(25/10/2021)