

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.06.2021

Coram :

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No. 3081 of 2014

1. Jambukeswari
 2. Badmavathi
 3. Vadivel
 4. Senthilkumar
 5. Subbulakshmi
- .. Appellants

Versus

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
12, Ramakrishna Road,
Salem – 7.

.. Respondent

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Order and Decreetal order dated 18.04.2005 made in MCOP No.775 of 2003 on the file of the Motor Accident Claims Tribunal, (I Additional District Judge), Salem.

For Appellants : Mr.K.Kuppusamy

For Respondent : Mr.D.Raghu

JUDGMENT

This appeal has been filed by the appellants/claimants challenging the quantum of compensation awarded by the Tribunal in and by the award dated 18.04.2005 made in MCOP No.775 of 2003 on the file of the Motor Accident Claims Tribunal, (I Additional District Judge), Salem.

2. The appellants/claimants are the wife, children and mother of the deceased Sadasivam. The case of the appellants/claimants before the Tribunal is that on 16.04.2003 at about 3p.m, when the deceased was walking at the road side near Konganapuram Union Office, the bus bearing registration No.TN-27-N-0521 belonging to the respondent/Transport Corporation came in the backside of the deceased in a rash and negligent manner and hit the deceased, due to which, the deceased Sadasivam sustained severe fracture injuries all over the body and immediately he was taken to Edapadi Government Hospital for treatment, but he died on the way to hospital and hence, the appellants/claimants claimed a sum of Rs.10,00,000/- as compensation.

3. The claim petition filed by the appellants/claimants was resisted by the respondent herein/Transport Corporation disputing the liability, manner of accident and age, occupation and income of the deceased and also disputed the quantum of compensation sought by the claimants.

4. In order to prove the claim, on the side of the claimants, first claimant was examined as PW.1. and Exs.P1 to P7 were marked on the side of claimants. On the side of Transport Corporation, the driver of the offending bus was examined as RW.1 and no documentary evidence was adduced.

5. The Tribunal, after analysing the entire evidence available on record, came to the conclusion that the accident was due to the rash and negligent driving of the driver of the transport corporation bus. The Tribunal, by taking the monthly income of the deceased at Rs.3,000/- and deducting Rs.600/- towards his share to the family members and towards his personal expenses, arrived at a sum of Rs.2,400/- as monthly loss of income to the dependents and adopting multiplier 11, passed an award for a sum of **Rs.3,43,000/- with interest at 9% p.a.,** under the following heads:

Sl.No	Head under which the amount is awarded	Amount awarded by the Tribunal(in Rs.)
1	Loss of dependency (2400 x 12 x 11)	3,26,800
2	Transportation	1,000
3	Funeral Expenses	5,000
4	Consortium to first claimant	10,000
	Total	3,42,800 (Rounded to Rs.3,43,000) with 9% interest

6. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come forward with the present appeal seeking enhancement of compensation.

7. The learned counsel for the appellants contended that in the accident, the deceased sustained fracture injuries and other grievous injuries all over the body and on the way to hospital, he died. It is further contended that the deceased, at the time of accident, was a lorry driver and earned a sum of Rs.5,000/- per month, but the Tribunal has taken only a sum of Rs.3,000/- as his monthly income. It is also contended that the Tribunal has awarded a very meagre sum under the head 'loss of consortium' and the Tribunal has not

awarded any amounts towards 'future prospects' and 'loss of love and affection' to the children and mother of the deceased. Hence, the learned counsel prayed for enhancement of compensation.

8. Per contra, learned counsel for the respondent/Transport Corporation would submit that the Tribunal, after considering the age of the deceased and his avocation, awarded a correct compensation and the same requires no interference by this Court.

9. Insofar as the liability is concerned, considering the oral and documentary evidence, this Court concurs with the finding of the Tribunal that the accident was due to the rash and negligent driving of the driver of the Transport Corporation bus and the respondent/Transport Corporation is liable to pay compensation.

10. Insofar as the quantum of compensation is concerned, the Tribunal awarded a sum of **Rs.3,43,000/-** as compensation, by taking the monthly income of the deceased at Rs.3,000/- and deducting Rs.600/- towards his share

to the family members and towards his personal expenses. Considering the age and avocation of the deceased as a lorry driver and also the year of the accident, this Court is of the view that the monthly income fixed by the Tribunal is on the lower side and hence, the same requires interference by this Court. Accordingly, this Court is of the opinion that fixing monthly income of the deceased at Rs.4,500/- would be just and reasonable. Since there are five dependents in the family of the deceased, $1/5^{\text{th}}$ amount ie. Rs.900/- is deducted towards personal expenses of the deceased. Accordingly, the monthly contribution to the family by the deceased is Rs.3,600/- and the yearly contribution is $\text{Rs.3,600/-} \times 12 = \text{Rs.43,200/-}$. Since the age of the deceased at the time of accident was 54 years, proper multiplier is 11. Therefore, the loss of income to the dependents is $\text{Rs.43,200} \times 11 = \text{Rs.4,75,200/-}$,

11. The Tribunal has not awarded any sum towards future prospectus. If the deceased is alive, there should be hike in his income. Accordingly, this Court takes 10% of his income as future prospects of the deceased and awards Rs.47,520/- as loss of future prospects to the family.

12. The Tribunal has awarded a sum of Rs.10,000/- under the head 'loss of consortium' to the first claimant, which in the considered opinion of this Court is very meagre and the same is enhanced as Rs.40,000/-.

13. The Tribunal has not awarded any sum towards 'loss of love and affection' to the children and mother of the deceased. This Court awards a sum of Rs.40,000/- each towards 'loss of love and affection' to the children and mother of the deceased.

14. The Tribunal has awarded a sum of Rs.1,000/- towards transportation and Rs.5,000/- towards funeral expenses, the same are meagre and are hereby enhanced to Rs.2,000/- and Rs.10,000/- respectively.

15. Accordingly, the award passed by the Tribunal, in comparison with the amounts now awarded by this Court, is tabulated hereunder:

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<i>Sl. No</i>	<i>Head under which the amount is awarded</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1	Loss of dependency	3,26,800	4,75,200
2	Loss of future prospects	NIL	47,520
3	Transportation	1,000	2,000
4	Funeral Expenses	5,000	10,000
5	Consortium to wife of the deceased	10,000	40,000
6	Loss of love and affection to children and mother of the deceased	NIL	1,60,000 (40,000 x 4)
	Total	3,42,800 (Rounded to Rs.3,43,000)	7,34,720 (Rounded to Rs.7,35,000)

16. In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the amount of compensation awarded by the Tribunal from **Rs.3,43,000/-** to **Rs.7,35,000/-** (Rupees Seven Lakhs and Thirty Five Thousand only) payable by the respondent/Transport Corporation with interest at 9% p.a on **Rs.3,43,000/-** and at 7.5% per annum on enhanced amount from the date of claim petition till the date of deposit, except for the default period, if any. No costs in this CMA. Out of the said amount, the first appellant/first

claimant/wife of the deceased is entitled to Rs.3,35,000/- with accrued interest thereon and costs of the MCOP and appellants 2 to 5/claimants 2 to 5 are entitled to Rs.1,00,000/- each with accrued interest thereon.

17. The respondent/Transport Corporation is directed to deposit the award amount, as assessed by this Court, together with interest at 9% p.a on **Rs.3,43,000/-** and at 7.5% per annum on enhanced amount from the date of MCOP till the date of realisation with costs of MCOP, except for the default period if any, less the amount already deposited, to the credit of MCOP No.775 of 2003 on the file of the Motor Accident Claims Tribunal, (I Additional District Judge), Salem, within a period of four 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 directly to the respective bank accounts of the claimants/appellants herein, through NEFT/RTGS, within a period of two weeks thereafter.

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Index : yes/no

Internet : yes/no

Speaking/Non-speaking order

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S.KANNAMMAL, J

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To

1. I Additional District Judge
Motor Accident Claims Tribunal
Salem.
2. The Managing Director
Tamil Nadu State Transport Corporation Limited
12, Ramakrishna Road
Salem – 7.
3. The Section Officer
Vernacular Records Section
High Court, Madras.

CMA. No. 3081 of 2014

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