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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.06.2021

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A. No.3844 of 2019

1. V.Malar
2. V.Sanjay Kumar (minor)
3. Saranraj (minor)
4. S.Saroja

*[petitioners 2 and 3 are minors rep. by their
mother and natural guardian Malar]

...Appellants/Petitioners

Versus

PSB Poly Technic College,
Kelambakkam, Thriuporur,
Chengalpattu, Kanchipuram District

....Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order and decree dated 08.08.2019 made in MCOP.No.6384 of 2018 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For appellants : Ms.Ramya V. Rao
For respondent : No Appearance

J U D G M E N T

(The Judgment of the Court was delivered by R.SUBBIAH, J)

The appeal is heard through video conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Tribunal, the present appeal has been filed by the claimants in MCOP.No.6384 of 2018 on the file of the Motor Accident Claims Tribunal/Chief Judge, Court of Small Causes, Chennai.

3. The appellants 1 to 4, who are the wife, minor children and the mother of the deceased Viswanathan, are the claimants before the Tribunal. It is the case of the claimants that on



28.03.2018 at about 20.15 hours, while the deceased was boarding a bus bearing Registration No.TN32 N 1164, belonging to the respondent-College, the driver of the said Bus, started the Bus suddenly without care and caution, as a result of which, the deceased lost balance and fell down and sustained fatal injuries and died on the spot. Hence, the claimants made a claim for a sum of Rs.40,00,000/- as compensation.

4. The respondent was set ex-parte before the Tribunal.

5. In order to prove the claim before the Tribunal, the first claimant/wife of the deceased examined herself as PW1, besides examining two other witnesses as PW2 and PW3 and marked Exs.P1 to P11.

6. The Tribunal after analysing the entire evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the respondent's Bus and the respondent being the owner of the vehicle is liable to pay compensation to the claimants. By coming to such conclusion, the Tribunal has passed an award for a sum of Rs.12,59,000/-.The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

S. No.	Compensation awarded by the Tribunal under the heads	Amount in Rs.
1.	Towards Loss of Dependency	11,34,000
2.	Towards Funeral Expenses	15,000
3.	Towards Loss of Love and Affection	80,000
4.	Towards Loss of Consortium	30,000
	Total	12,59,000

7. The grievance of the appellants/claimants in this appeal is that at the time of the accident, the deceased was working as a Security in CIS Bureaus Facility Services Pvt. Ltd., and earning a sum of Rs.9,678/- as monthly income, but the Tribunal without any basis had taken only a sum of Rs.9,000/- as monthly income of the deceased and hence, Rs.9,678/- has to be fixed as monthly income of the deceased. Further, the Tribunal has not added any amount towards future prospects. Hence, considering the age of the deceased being 45 years at the time of the accident, 25% of the monthly income has to be added towards future prospects. Thus, the amount awarded under the head "Loss of Dependency" has to be enhanced. Further, the learned counsel for the appellants has contended that the amounts awarded under the conventional heads also need proper enhancement.



8. Though notice served on the respondent and their name being printed in the cause list, none appeared for them.

9. This Court considered the submissions of the learned counsel for the appellants/claimants and perused the materials available on record.

10. Though the claimants marked Ex.11, salary certificate, which shows that the deceased was receiving a sum of Rs.9,678/- as monthly income, the Tribunal without any basis had taken only a sum of Rs.9,000/- as monthly income of the deceased and made calculation. Hence, the sum of Rs.9,678/- is taken as monthly income of the deceased.

11. Further, the Tribunal failed to add any amount towards future prospects. Hence, considering the age of the deceased, who was 45 years at the time of the accident, 25% of the monthly income has to be added towards future prospects. If so added, the amount comes to Rs.12,098/- [9,678 + 2,420], which is rounded off to Rs.12,100/-. Since there are 4 dependents, 1/4 of the amount is deducted towards personal expenses, which comes to Rs.9,075/- [12,100 - 3,025]. Considering the age of the deceased being 45 years at the time of the accident, the correct multiplier to be applied is "14" and if so applied, the amount comes to Rs.1,27,050/-. Then, the total "Loss of Dependency" comes to Rs.15,24,600/- [1,27,050 x 12]. Thus, the sum of Rs.11,34,000/- awarded by the Tribunal under the head "Loss of Dependency" is enhanced to Rs.15,24,600/-.

12. Further, the Tribunal has awarded only a sum of Rs.30,000/- under the head "Loss of Consortium" to the first claimant/wife of the deceased, instead of awarding Rs.40,000/- under such head. Hence, the sum of Rs.30,000/- awarded by the Tribunal under the head "Loss of Consortium" is set aside, instead a sum of Rs.40,000/- is awarded.

13. The Tribunal has awarded only a sum of Rs.80,000/- under the head "Loss of Love and Affection". As per the oft-quoted judgment of National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680], a sum of Rs.40,000/- has to be awarded to each of the legal heirs of the deceased towards "Loss of Love and Affection". Hence, if so awarded, the amount comes to Rs.1,20,000/-, by awarding a sum of Rs.40,000/- to each of the claimants 2 to 4. Thus, the sum of Rs.80,000/- awarded by the Tribunal under the head "Loss of Love and Affection" is set aside, instead a sum of Rs.1,20,000/- is awarded under such head.



14. Further, the Tribunal has not awarded any amount towards "Loss of Estate" and hence, a sum of Rs.15,000/- is awarded under such head.

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15. The amount awarded by the Tribunal under the head "Funeral Expenses" is just and fair and hence, the same is confirmed. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

S. No .	Compensation awarded by the Tribunal under the heads	Amounts awarded by the Tribunal in Rs.	Amounts awarded by the Tribunal in Rs.
1 .	Towards Loss of Dependency	11,34,000	15,24,600
2 .	Towards Funeral Expenses	15,000	15,000
3 .	Towards Loss of Love and Affection	80,000	1,20,000
4 .	Towards Loss of Consortium	30,000	40,000
5 .	Towards Loss of Estate	-	15,000
	Total	12,59,000	17,14,600

16. Thus, the total compensation of Rs.12,59,000/- awarded by the Tribunal is hereby enhanced to Rs.17,14,600/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The respondent-College is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The apportionment of shares fixed by the Tribunal to the claimants is hereby confirmed. On such deposit, the claimants 1 and 4 are permitted to withdraw their respective shares. Insofar as the minor claimants 2 to 3 are concerned, their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Bank and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/ her mother once in three months. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation.



17. With the above observations and directions, the Civil Miscellaneous Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

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-s/d-

Assistant Registrar (CS-II)

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Sub-Assistant Registrar

pvs
To

1. The Motor Accident Claims Tribunal /
Chief Judge, Court of Small Causes,
Chennai
2. PSB Poly Technic College,
Kelambakkam, Thriuporur,
Chengalpattu, Kanchipuram District

Copy to
The Section Officer,
V.R. Section, High Court,
Madras.

C.M.A. No.3844 of 2019

AJS (CO)
SP(11/08/2021)