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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.301 of 2017
[video conferencing]

1.Kokilalakshmi

2.Minor C.Rohit
(Minor 2nd appellant represented
by the next friend/Mother
Kokilalakshmi, 1st appellant herein)

3.Aarayee ...Appellants/ Petitioners

Vs.

1. Saminathan
(R1 remained ex-parte before Tribunal.
Hence, notice to R1 is dispensed with)

2. Tamil Nadu State Transport Corporation
(Coimbatore Division) Limited,
Rep. by its Managing Director,
Having office at Chennimalai Road,
Erode - 11. ...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 26.02.2015 made in M.C.O.P.No.179 of 2013, on the file of the Motor Accidents Claims Tribunal / Sub Court, Perundurai.

For Appellants : Mr.M.Guruprasad

For R1 : Set Ex-parte before the Tribunal

For R2 : Mr.K.J.Sivakumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed, challenging the award passed in M.C.O.P.No.179 of 2013, dated 26.02.2015, on



the file of the Motor Accidents Claims Tribunal, Subordinate Court, Perundurai.

2.The appellants are the claimants in M.C.O.P.No.179 of 2013, on the file of the Motor Accidents Claims Tribunal, Tribunal, Subordinate Court, Perundurai. They have filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Chidambaram, who died in the accident that took place on 25.02.2013.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred due to rash and negligent driving by the driver of the bus, 1st respondent herein and directed the 2nd respondent/Transport Corporation to pay a sum of Rs.5,95,400/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants/claimants have come out with the present Civil Miscellaneous Appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants/claimants contended that, at the time of accident, the deceased was a Plumber working in National Plumbing Works, aged about 30 years and was earning a sum of Rs.15,000/- per month. But, the Tribunal has fixed a meagre sum of Rs.3,000/- per month as notional income of the deceased and taking 30% future prospects, which is very meagre. The Tribunal has not awarded any amount towards transportation and loss of estate and the same may be awarded. The total compensation awarded by the Tribunal is very meagre and hence, the learned counsel prayed for enhancement of compensation. In support of his contentions, the learned counsel for the appellants relied on the ruling of this Court reported in 2014 (1) TN MAC 613 [Branch Manager, ICICI Lombard General Insurance Co., Ltd., vs. N.Ramalingam].

6.Per contra, Mr.K.J.Sivakumar, learned counsel appearing for the 2nd respondent/Transport Corporation contended that the appellants have failed to prove the avocation and income of the deceased by producing valid documents. In the absence of any material evidence with regard to avocation and income, the sum of Rs.3,000/- per month fixed by the Tribunal as notional income of the deceased and taking 30% future prospects, is excessive. The Tribunal, considering the entire materials available on record, has awarded a sum of Rs.5,95,400/- as compensation to the appellants under various heads, which is highly excessive. Therefore, the appellants are not entitled for any enhancement and hence, he prayed for dismissal of the appeal.



7. Heard the learned counsel appearing for the appellants/claimants as well as the learned counsel appearing for the 2nd respondent/Transport Corporation and perused the entire materials placed on record.

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8. It is the case of the appellants/claimants that, at the time of accident, the deceased was a Plumber working in National Plumbing Works, aged about 30 years and was earning a sum of Rs.15,000/- per month. The appellants/claimants have not proved the avocation and income of the deceased by producing valid document. In the absence of any valid document with regard to avocation and income, the Tribunal, fixed a sum of Rs.3,000/- per month as notional income of the deceased, which is meagre and the same is hereby enhanced to Rs.10,000/- per month. The Tribunal has rightly applied multiplier '17' as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TN MAC 1 (SC), [Sarla Verma & others Vs. Delhi Transport Corporation & another]. The Tribunal has awarded 30% towards future prospects. The deceased was aged about 27 years at the time of accident and as per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are entitled to 40% amount towards future prospects. There are three dependants of the deceased and the Tribunal has rightly deducted 1/3rd towards personal expenses. Thus, the compensation awarded by the Tribunal towards loss of earning capacity is modified to Rs.19,04,000/- {Rs.14,000/- [Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] X 12 X 17 X 2/3 }.

9. The Tribunal has awarded a meagre sum of Rs.25,000/- towards loss of consortium to the 1st appellant, and hence the same is enhanced to Rs.40,000/-. The Tribunal has awarded a sum of Rs.30,000/- towards loss of love and affection to the appellants 2 and 3, who are the minor child and mother of the deceased, which is very meagre. The appellants 2 and 3 are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses, which is meagre and hence, the same is hereby enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards transportation and loss of estate. This Court is of the considered view that the appellants are entitled to compensation towards transportation and loss of estate and hence, Rs.15,000/- each is hereby granted towards transportation and loss of estate, respectively.

10. It is well settled that the Tribunal and the Courts have to award "just compensation". Though the claimants have claimed lesser compensation, the Courts have power to grant "just compensation" more than the amount claimed by the claimants. 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 earnings	Rs.5,30,400/-	Rs.19,04,000/-	Enhanced
2.	Funeral expenses	Rs.10,000/-	Rs.15,000/-	Enhanced
3.	Loss of love and affection	Rs.30,000/-	Rs.80,000/-	Enhanced
4.	Transportation	---	Rs.15,000/-	Granted
5.	Loss of estate	---	Rs.15,000/-	Granted
6.	Loss of Consortium to the 1 st appellant	Rs.25,000/-	Rs.40,000/-	Enhanced
	Total	Rs.5,95,400/-	Rs.20,69,000/-	Enhanced by Rs.14,73,600/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.5,95,400/- is hereby enhanced to Rs.20,69,000/- [Rupees Twenty Lakhs and Sixty Nine Thousand only] 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, as awarded by the Tribunal 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.179 of 2013, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Perundurai. On such deposit, the appellants 1 & 3 are permitted to withdraw their respective shares of the total award amount now determined by this Court, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, as awarded by the Tribunal, less the amount if any, already withdrawn, by making necessary applications before the Tribunal. The share of the minor/2nd appellant is directed to be deposited in any one of the Nationalized Banks, in any interest bearing Fixed Deposit Scheme till the minor/2nd appellant attains majority. On such deposit, the 1st appellant, being the mother of the minor/2nd appellant, is permitted to withdraw the accrued interest once in three months for the welfare of the minor/2nd appellant. The appellants are directed to pay the necessary Court fee if any, for the enhanced amount of compensation. In other respects, the Award of the



Tribunal shall stand confirmed. There shall be no order as to costs in this appeal.

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Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To:

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Perundurai.
2. The Section Officer,
VR Section,
High Court of Madras.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.66350

C.M.A.No.301 of 2017

CG-II(CO)
RGA(26/05/2022)