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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.344 of 2017

1.P.Irudhaya Jayaseeli
2.P.Rogin Pradheep (Minor)
3.V.Rosali Mariya Gracy
4.E.G.Albert ...Appellants/Claimants
(Minor rep by his mother and
next friend P.Irudhaya Jayaseeli)

Vs

State Express Transport Corpn.
Rep. by its Managing Director,
Pallavan Salai,
Chennai 600 002. ...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.06.2013 made in M.C.O.P.No.207 of 2009 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellants : M/s.Ramya V.Rao
For Respondents : Mr.K.Kathiresan

J U D G M E N T

(The case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and the learned counsel for the respondent Transport Corporation.

2.The appeal is filed for enhancement of compensation.

3. Facts of the case is that on 07.02.2008 at about 07.30 hours at GST Road Acharapakkam junction, while the deceased Paulraj was riding his motor cycle bearing Registration No.TN 21



S 0794 proceeding towards Chennai, the State Express Transport Corporation Bus bearing Registration No.TN 01 N 6445 proceeding from Madurai to Chennai rash and negligently dashed against the two wheeler. In the said accident, rider of the two wheeler Paulraj died on the spot. Widow, minor child and parents of the deceased have filed a claim petition seeking Rs.18,00,000/- as compensation, since the deceased was earning Rs.10,000/- per month through his foot wear business in the name and style of "Malai Matha Foot ware and Iceland" at Acharapakkam.

4. The State Transport Corporation filed counter stating that the accident occurred due to the negligence of the deceased, who had no valid driving license to ride two wheeler and the claim of compensation is excessive and exorbitant.

5.The Tribunal, after considering the evidence let in by the claimants and the pleadings of the respondent Transport Corporation notionally fixed the earning of the deceased at Rs.6,000/- and after deducting 1/4 towards personal expenses of the deceased and by applying multiplier 14, computed the loss of income at Rs.7,56,000/-. Besides, a sum of Rs.90,000/- was awarded towards loss of consortium, funeral expenses and loss of love and affection. Totally, a sum of Rs.8,46,000/- was awarded as compensation.

6. The claimants have preferred the appeal seeking enhancement of compensation on the ground that in the year 2008, the deceased was earning nearly Rs.10,000/- per month from his business. Therefore, the Tribunal ought not to have fixed the notional income at Rs.6,000/-. Further, the learned counsel for the appellant also submitted that the Tribunal has not taken note of the future prospects of the deceased, who has left behind his wife, minor child and aged parents. Whereas countering the said submission, the learned counsel for the respondent Transport Corporation submitted that the Tribunal had failed to take note of the fact that the deceased had no valid driving license and invited the accident due to his negligence. Hence, the Transport Corporation filed appeal against the award as early as 2014 but however, due to some administrative reason, the appeal could not be numbered and still at SR stage.

7. On considering the rival submissions, this Court finds that the Transport Corporation has not taken any steps to



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establish the fact that the deceased had no valid driving license,. No doubt, there is no document to prove that the deceased had valid driving license, it does not lead to the presumption that he had not valid driving license. To draw adverse presumption that the deceased had no valid driving license, the transport corporation ought to have taken steps to collect material evidence from the RTO office or called for production of the driving license of the deceased from the claimants. Having failed to do so, it is not appropriate for the court to consider the contention raised by the respondent transport corporation counsel.

8. As far as the quantum of compensation awarded by the Tribunal, this Court finds that in the absence of documentary evidence, fixation of Rs.6000/- as notional income is fair and appropriate. Only point to be taken note is that after the Constitution Bench Judgment, the claimants are entitled for additional compensation towards future prospects, which is omitted in the award. Hence, the award is modified as below.

9.The notional income of the deceased is fixed at Rs.6000 and 25% of the same is added towards future prospects. For his personal expenditure, 1/4 deducted and multiplier 14 applied for computation of loss of income at Rs.9,45,000/- (6000+1500X3/4X14X12). As a result, the award of compensation is enhanced as below in tune with the guidelines of the Supreme Court.

Compensation under Various Heads	Award passed by this Court
Loss of Income	Rs. 9,45,000/-
Loss of consortium to the first claimant/wife	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-
Loss of love and affection to the claimants 2 to 4 (Rs.20,000 each)	Rs. 60,000/-
Loss of estate	Rs. 15,000/-
Total	Rs.10,75,000/-

9. Accordingly, the award is enhanced to Rs.10,75,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation. The said amount shall be



deposited by the respondent transport corporation within a period of twelve weeks from the date of receipt of a copy of this judgment. The claimants are entitled to apportion the award as below:

Claimants	Apportionment of compensation
1 st Claimant/Wife	Rs.6,00,000/-
2 nd Claimant/Minor son	Rs.3,00,000/-
Claimants 3 and 4/parents	Rs. 87,500/- each

The compensation awarded to the minor claimant shall be deposited till he attains majority in the Post Office under a Scheme, which provides for payment of interest every six months and the said interest shall be utilised for the welfare of the minor. The first claimant is entitled to withdraw the interest until the minor claimant attains majority. The claimants 1, 3 and 4 are permitted to withdraw their respective share on appropriate application.

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

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To
The VI Judge,
Motor Accidents Claims Tribunal
V Court of Small Causes,
Chennai.

+1CC to M/s.K.Kathiresan, Advocate, SR.No. 252
+1CC to Mr.A.N.Viswanathan Rao, Advocate, SR.No. 409

CMA NO.344 of 2017

SSI(CO)
B.VC (01/09/2021)