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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.736 of 2017

1.Fathima
2.Irudhaya SelvarajAppellants/Claimants

Vs

The Managing Director,
State Express Transport Corporation Ltd.,
Anna 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 12.04.2012 made in M.C.O.P.No.467 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Vellore.

For Appellants : Mr.K.Varadha Kamaraj

For Respondent : Mr.K.Kathiresan

J U D G M E N T

(This case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and the respondent.

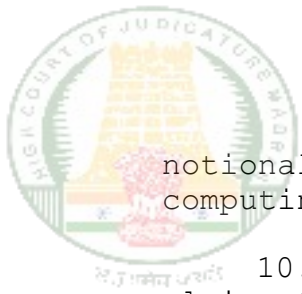
2.It is the case of fatal accident, where the claimant being not satisfied with the quantum of compensation awarded by the Tribunal has preferred this appeal seeking enhancement of compensation.

3.On 19.03.2007, while Arul Selvam the driver of the Eicher Van bearing Registration No.TN-33-Q-7774 was proceeding from Chennai to Bangalore near Konavattam, opposite to G.S.Mahal, the Tamilnadu Transport Corporation bus bearing Registration No.TN-01-N-6662 coming from the opposite direction dashed against the Eicher Van, as a result, Arul Selvam sustained grievous head injury and died on the spot. A case was registered against the



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9. The Tribunal has fixed negligence on the part of the Corporation bus driver based on the criminal prosecution launched against him by the police, after due investigation. Therefore, the defense of contributory negligence on the part of the deceased has to be rejected. Regarding the income of the deceased, the very fact that the accident occurred while he was driving the van and he was engaged by the owner of the van as a driver is a fact speak for itself. The Tribunal has rightly fixed the notional income of Rs.4,500/- per month though there was no evidence for his income taking into consideration the notional income of a freelance driver driving in the year 2007. However, while fixing the notional income, the Tribunal has omitted to take note of the future prospects. Hence, 40% of the



notional income is added towards the future prospects for computing the loss of income.

10. Likewise, the Tribunal has taken the average age of the claimants for fixing the multiplier. This issue has been subsequently settled by the Hon'ble Supreme Court and the age of the deceased alone is taken into account for ascertaining the multiplier instead of the average age of the claimants. The deceased in this case was 35 years at the time of accident, therefore multiplier "16" is applied instead of "13". Accordingly, the award passed by the Tribunal is enhanced as below:

Compensation under Various Heads	Award passed by this Court
Loss of income (4500+1800)X16X12X1/2)	Rs. 6,04,800/-
Loss of love and affection (Rs.20,000/- each)	Rs. 40,000/-
Funeral expenses	Rs. 5,000/-
Total	Rs. 6,49,800 /-

11. Accordingly, the award of Rs.4,03,000/- is enhanced to Rs.6,49,800/- with 7.5% p.a. The appeal against the award has been filed with a delay of 1349 days and the subsequent delay of 427 days and 144 days in representation. The award of the Tribunal dated 12.04.2012 has been challenged in C.M.A. belatedly and numbered after five years. The delay is caused by the claimants. So, the Corporation cannot be burdened with payment of interest for the delay period caused by the claimants. Hence, the claimants are entitled for interest only for the period from 16.08.2011 to 12.04.2012 and from 03.03.2017 till date of deposit. The award amount shall be deposited by the Transport Corporation within a period of 12 weeks from the date of receipt of copy of the order. On such deposit, the claimants/appellants 1 and 2 are permitted to withdraw the award amount and apportion equally among themselves.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



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To

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The Motor Accidents Claims Tribunal,
Additional District and Sessions Judge,
Fast Track Court,
Vellore.

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.1287
+1cc to Mr.K.Kathiresan, Advocate, S.R.No.1172

CMA No.736 of 2017

NMI (CO)
CB(27/08/2021)