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C.M.A.(MD)No.1 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.10.2021

Delivered On : 15.11.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.1 of 2014

1 PHILOMINAL (DIED)

2 Praveenkumar

... Appellant/Claimants

Vs

1 THE GENERAL MANAGER,
TN STATE TRANSPORT CORPORATION VIRUDHUNAGAR
DIVISION BYE-PASS ROAD MADURAI.

2 IRUTHAYA TANISLOUS,

... Respondents 1 &
2/ Respondents

3 SANTHIYAI IRUDHAYARAJ

4 A. SAHAYAM

S/O. AGUSTIN NO. 19/1 ARULANANTHAR KOVIL
STREET SUBRAMANIPURAM TIRUCHIRAPPALLI.

[RESPONDENTS 3 AND 4 ARE BROUGHT ON RECORD
AS LRS OF THE DECEASED 1ST APPELLANT]

... Respondents 3& 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award amount in M.A.C.O.P.No.130 of 2009 order dated 09.11.2011 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Ramanathapuram.

For Appellant	: Mr.K.Kumaravel
For 1 st Respondent	: Mr.M.Kayalarasan
For Respondents 3 and 4	: Mr.M.Sridharan
For 2 nd Respondent	: No Appearance

ORDER

This Civil Miscellaneous Appeal has been filed against the judgment and decree passed in M.A.C.O.P.No.130 of 2009 dated 09.11.2011 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Ramanathapuram.

2.The appellants herein are the claimants and the respondents 1 and 2 herein are the respondents in the claim petition. The appellants herein have filed a claim petition in M.A.C.O.P.No.130 of

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2009, claiming compensation for the death of one Jesintha, in an accident that took place on 13.09.2007. The Tribunal has awarded a sum of Rs.4,02,000/- (Rupees Four Lakhs and Two Thousand only) as compensation. Against which, the appellants have filed the present appeal.

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3.A brief substance of the claim petition in M.A.C.O.P.No.130 of 2009 is as follows:

On 13.09.2007, at about 09.45 a.m., when the deceased was walking along the left side of the road, a bus bearing registration No.TN-67-N-0239 was driven by its driver in a rash and negligent manner and dashed against the deceased. The deceased was taken to Government Rajaji Hospital, Madurai and she died on 14.09.2007. The deceased was working as a Tailoring Teacher and was earning Rs.300/- per month and she worked as a Librarian and was earning Rs.500/- per month. The deceased was an divorcee. The petitioners are dependants of the deceased and they claim a sum of Rs.6,00,000/- (Rupees Six Lakhs only) as compensation.

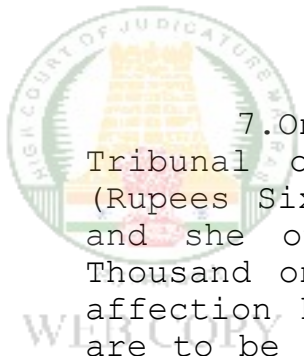
4.Brief substance of the counter filed by the first respondent herein is as follows:

The first respondent driver drove the vehicle in slow and cautious manner. When the bus was nearing the bus stop, another bus was stationed in the bus stop and passengers were boarding the bus. The first respondent driver after giving signal overtook the stationed bus, at that time, the deceased suddenly crossed the road and she dashed against the bus. The deceased herself is responsible for the accident. The first respondent is not liable to pay compensation.

5.Brief substance of the counter filed by the second respondent herein is as follows:

The second respondent is the brother of the deceased and he brought her up and educated her. He spent a sum of Rs.1,00,000/- for the marriage of the deceased. After divorce, the deceased was taken care of by the second respondent. The second respondent was aged about 55 years and he was depending on the income of the deceased. The second respondent admitted the injured in the hospital and spent for the medical expenses. The father of the deceased died after the death of the deceased. The second respondent has to be allotted a share in the compensation.

6.On the side of the claimants, two witnesses were examined and six documents were marked. On the side respondents in the claim petition, two witnesses were examined and three documents were marked. After considering both the sides, the Tribunal has awarded a sum of Rs.4,02,000/- (Rupees Four Lakhs and Two Thousand only) as compensation to be paid by the first respondent therein. Against which, the appellant has preferred this appeal for enhancement of compensation.



7. On the side of the appellants, it is stated that the Tribunal ought to have fixed the monthly income as Rs.6,000/- (Rupees Six Thousand only). The deceased was employed as a teacher and she ought to have earned more than Rs.6,000/- (Rupees Six Thousand only) per month. The amount awarded for loss of love and affection has to be enhanced. The award under various other heads are to be enhanced. The second respondent is not the legal heir of the deceased. He is not a dependant. He is not entitled for any compensation.

8. On the side of the appellants, it is stated that the deceased was 38 years old and she was working as a tailoring teacher. In support of this contention, a judgment of this Court in the case of **Bhuvaneshwari v. Mani and another** reported in **2020 (2) TN MAC 389** is cited, wherein this Court has discussed the importance of Homemaker and this Court has fixed the monthly income as Rs.9,000/- (Rupees Nine Thousand only) along with 40% future prospects.

9. The learned counsel for the appellants would rely upon a judgment of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd., v. Pranay Sethi and Others** reported in **2017(2) TNMAC 609**, wherein the Hon'ble Supreme Court has applied multiplier '16' and awarded Rs.6,00,000/- (Rupees Six Lakhs only) as compensation. It is stated that the Court can enhance the compensation.

10. The learned counsel for the appellants would rely upon another judgment of the Hon'ble Supreme Court in the case of **Ramla and Others v. National Insurance Co. Ltd.**, reported in **2018 (2) TNMAC 721**.

11. On the side of the first respondent, it is stated that the amount claimed is Rs.6,00,000/- (Rupees Six Lakhs only). The Tribunal has awarded Rs.4,02,000/- (Rupees Four Lakhs and Two Thousand only). The appeal was filed only for a sum of Rs.1,98,000/- (Rupees One Lakh and Ninety Eight Thousand only). The award at that time is reasonable. The notional income to be fixed as Rs.3,000/- (Rupees Three Thousand only) per month. In support of this contention, a judgment of the Hon'ble Supreme Court in the case of **Lata Wadhwa and others v. State of Bihar and others** reported in **2001 ACJ 1735**.

12. On the side of the second respondent, it is stated that the father and mother of the deceased pre-deceased her. The second respondent is entitled for share in the compensation.

13. The learned counsel for the appellants would rely upon another judgment of the Hon'ble Supreme Court in the case of **Rajendra Singh and Others v. National Insurance Co. Ltd.**, reported



in **2021 (1) TNMAC 135**, wherein it is held that the monthly salary was fixed as Rs.5,000/- (Rupees Five Thousand only).

14. There is no dispute regarding the liability. It is seen that the appellants as the claimants in the claim petition claim that the deceased was earning only Rs.750/- to Rs.800/- per month. The Tribunal has taken the monthly income as Rs.3,000/- (Rupees Three Thousand only). There was no evidence on the side of the appellants to prove that the deceased was working as a Tailoring teacher or as a Librarian. The notional income fixed by the Tribunal at that time is reasonable. After deducting 1/3rd for her own expenses, the deceased might have contributed Rs.2,000/- (Rupees Two Thousand only) per month to her family. After applying multiplier '16', the loss of income is calculated as Rs.3,84,000/- (Rupees Three Lakhs and Eighty Four Thousand only), which is reasonable. As per **Praney Sethi** case, the appellants are entitled to Rs.70,000/- (Rupees Seventy Thousand only) towards conventional charges. In total, a sum of Rs.4,54,000/- (Rupees Four Lakhs and Fifty Four Thousand only) is awarded as compensation.

15. The claim of the second respondent is that he was dependant of the deceased, which is unsustainable. The second respondent is only a brother and he is not entitled for any compensation. The same strategy is applicable to the legal heirs of the first appellant.

16. In the above circumstances, this Civil Miscellaneous Appeal is partly allowed. The second appellant is entitled to a sum of Rs.4,54,000/- (Rupees Four Lakhs and Fifty Four Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

17. The first respondent is directed to deposit the above said amount if not deposited earlier, within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the second appellant is permitted to withdraw the award amount, after deducting any amount received by him earlier. Excess amount, if any, deposited shall be refunded to the first respondent. No Costs.

Sd/-

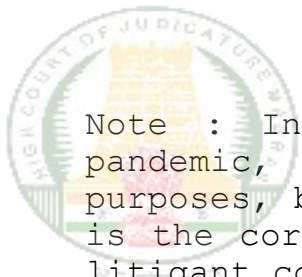
Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

MRN



Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To

- 1.The Motor Accident Claims Tribunal,
Principal District Judge,
Ramanathapuram.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K. KUMARAVEL, Advocate (SR-34510[F] dated 15/11/2021)

C.M.A. (MD)No.1 of 2014
15.11.2021

SJ(CO)
KB(17.02.2022) 5P 5C