

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated: 22.02.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLICMA(MD)No.524 of 2016

1.M.Periyakkal

2.M.Meenal

3.Minor M.Nirosha

4.Minor M.Asha

5.Minor M.Anusha

Appellants 3 to 5 are minors
represented through theirmother M.Periyakkal 1st appellant)

: Appellants/Petitioners

Vs.

Tamil Nadu State Transport Corporation Limited
represented through the Managing Director,
having Divisional Office at
Tirunelveli Region,
Tirunelveli.

: Respondent/Respondent

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award, dated 02.12.2015 made in MCOP No.503 of 2015 on the file of the Motor Accident Claims Tribunal (VI Additional District Court), Madurai.

For Appellants
For Respondent: Mr.M.Sarangan
: Mr.P.Prabhakaran**J U D G M E N T**

This Civil Miscellaneous Appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (VI Additional District Court), Madurai, dated 02.12.2015 made in MCOP No.503 of 2015.

2.The short facts of the case is that on 10.11.2014 at about 4.15 am, when the deceased Malaisamy was travelling from Dharmapuri to Thiruppur as a passenger in TNSTC Bus TN-29-N-2544 belonged to Dharmapuri Division and the front tyre of the said bus got punctured and hence, the driver of the bus parked the vehicle on the left side of the road and changing the tyre and the deceased Malaisamy and others were standing near the punctured bus, at that time, the bus TN-72-N-1840 came in a rash and negligent manner on the same road from north to south direction and hit on the back side of the punctured bus rolled down into the pond. Due to the accident, the



deceased Malaisamy was thrown away on the road and sustained serious injuries and died on the spot. The legal heirs of the deceased filed a claim petition seeking compensation of Rs.25,00,000/- for the death of the deceased due to the accident.

3.The claimants have stated that the deceased was 47 years at the time of accident and he was doing Government Sub-Contractor and Agriculturist, thereby he was earning Rs.5,00,000/- per year.

4.In the counter filed by the Transport Corporation, they disputed the manner of accident and their liability to pay compensation.

5.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle (TN-72-N-1840) has caused the accident and awarded compensation of Rs.9,62,000/- together with interest @ 7.5% p.a.

6.Heard both sides and perused the materials available on record.

7.The manner of the accident and the finding on negligence are not in dispute and the appeal is confined only to quantum of compensation awarded by the Tribunal.

8.The learned counsel for the appellants/claimants mainly argued that the tribunal erred in awarding lesser quantum of compensation to the claimants and failed to award a fair compensation and the tribunal ought to have adopted correct multiplier and erred in not taking into account the future monetary benefits and erred in arriving at the lesser monthly income for the deceased and the award of the tribunal under the conventional heads are also on the lower side, hence, the award of the tribunal has to be enhanced.

9.On the other hand, the learned counsel for the respondent submitted that the award is reasonable, which does not warrant any interference of this court.

10.It is not in dispute that the deceased died at the age of 47 years. Since no reliable document has been filed on the side of the claimants to prove the income of the deceased, the tribunal has fixed the monthly income of the deceased at Rs.6000/-. By applying multiplier '13' and after deducting 1/4th from the salary of the deceased for his personal expenses, the tribunal has awarded Rs.7,02,000/- towards loss of dependency. Further, the tribunal has awarded Rs.5,000/- towards transportation; Rs25,000/- for funeral expenses; Rs.30,000/- towards loss of consortium to the 1st claimant; Rs.1,50,000/- towards loss of love and affection to the claimants and Rs.90,000/- towards loss of future prospects and loss of expectation of life. In total, the tribunal has awarded

Rs.9,62,000/- to the claimants along with interest @ 7.5% p.a.

11. Perusal of the records would reveal that the deceased was doing Sub Contractor work in the Government Department and also doing agricultural work, there he was earning Rs.3,00,000/- per annum. Since no reliable document has been produced to prove the income of the deceased, the tribunal has fixed the monthly income of the deceased as Rs.6,000/-. In this case, even though, no document has been produced on the side of the claimants, considering the fact that the deceased was healthy and health at the time of the accident and keeping in view of the decision of the Hon'ble Apex Court in the case of **Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd., (2014(1) TN MAC 459 (SC))**, this court fixed the notional income of the deceased at Rs.6,500/- per month.

12. It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 25% of the established income should be the warrant where the deceased was between the age 40 to 50 years. In the instant case, the tribunal has not added any amount towards future prospects. Hence, this court is of the considered view that 25% has to be added towards future prospects to calculate the income of the deceased, as per the decision of the Hon'ble Supreme Court reported in **2017(6) CTC 493 (National Insurance Company Limited vs. Pranay Sethi and others)**. By doing so, the monthly loss of income of the deceased is calculated at Rs.8,125/- (Rs.6,500/- + Rs.1,625/-). After deducting 1/4th towards his personal and living expenses, the monthly income is arrived at Rs.6,094/- (Rs.8,125/- x 3/4). By applying proper multiplier 13, this court awards **Rs.9,50,664/-** (Rs.6,094/- x 12 x 13) towards loss of income. In addition to that, as per the decision in **Pranay Sethi's case**, this Court awards Rs.40,000/- towards loss of consortium to the 1st claimant; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.10,20,664/-** together with interest @ 7.5% p.a.

13. In the result, this Civil Miscellaneous Appeal is partly allowed. The award is enhanced to **Rs.10,20,664/-** from Rs.9,62,000/-. The respondent Transport Corporation is directed to deposit the modified award amount together with interest @ 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the 1st claimant is entitled to withdraw Rs.5,20,664/- and the 2nd claimant is entitled to withdraw Rs.1,10,000/- with accrued interest and costs without filing any formal petition before the tribunal. The minor claimants 3 to 5 are entitled to Rs.1,30,000/- each. Insofar as the share of the minor claimants is concerned, the Tribunal is directed to deposit their share in any one of the Nationalised Banks, in a fixed deposit scheme initially for a period of three years renewable thereafter till they attain majority. The 1st claimant/being the mother and guardian of minors is permitted to withdraw the accrued interest once in three months directly from the Bank for the welfare



of the minor children. The claimants shall pay the additional court fee for the enhanced amount. No costs.

Sd/-

Assistant Registrar (P&A)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

er

To,

1.The Motor Accident Claims Tribunal/
VI Additional District and Sessions Court,
Madurai.

Copy to

The Record Keeper, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-6349[F] dated 22/02/2021)

+1 CC to M/s.M.SARANGAN, Advocate (SR-6750[F] dated 23/02/2021)

CMA(MD)No.524 of 2016
22.02.2021

KB(25.06.2021) 4P 6C