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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.NO.2689 OF 2021
AND
C.M.P.NO.15451 OF 2021

The Managing Director,
Tamil Nadu State Transport Corporation,
3/337, Salamedu, Vazhuthareddy,
Villupuram. ...Appellant / 1st Respondent

Vs.

1.T.Mohan

2.Minor M.Silambarasan

3.Minor M.Dhanush

(Minors rep. by their father/guardian
the 1st respondent)

4.A.Arul

5.The National Insurance Company Limited,
No.165, Nethaji Road, Manjakuppam,
Cuddalore.

...Respondents / Claimants 1 to 3 &
Respondents 2 & 3

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 14.10.2020 made in MCOP No.1237 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub-Judge, Cuddalore.

For Appellant : Mr.K.J.Sivakumar

For Respondents : Mr.K.Varadhakamaraj
for R1 to R3

Mr.S.Arunkumar for R5

R4-Not Ready in notice



JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

This appeal is directed against the award passed by the Motor Accident Claims Tribunal, Special Sub Judge, Cuddalore made in MCOP No.1237 of 2016 dated 14.10.2020.

2. Facts necessary for disposal of the appeal is narrated herein under:-

On 08.11.2015 at 06.35 p.m, the deceased M.Kalaivani was travelling as pillion rider in a motorcycle bearing Reg.No.TN-31-AF-2777 at Mettupalayam. At that time, the appellant/Corporation's bus bearing Reg.No.TN-32-N-2260, which came from the opposite direction in a rash and negligent manner, hit against the motorcycle. In the impact, the deceased was thrown out from the motorcycle and run over by the appellant bus. At the time of accident, she was 37 years old working as Auxiliary Nursing Midwife at Primary Health Centre, Government of Tamil Nadu, Theerthanarigi and earning Rs.35,000/- per month. The first claimant is the husband and the claimants 2 and 3 are the sons of the deceased. The accident had happened only due to the rash and negligent driving of the driver of the appellant bus. Hence, the claimants filed the claim petition before the Tribunal claiming compensation of Rs.50,00,000/-.

3. The appellant/Transport Corporation and the fifth respondent/Insurance Company filed their respective counter disputing the manner of accident, occupation and income of the deceased and its liability to pay the compensation. It was also contended that the claim is excessive and exorbitant.

4. To substantiate the case, on the side of the claimants, three witnesses were examined as P.W.1 to P.W.3 and Ex.P.1 to Ex.P.9 were marked. On the side of the appellant/Transport Corporation, the driver of the offending Bus was examined as R.W.1 and Ex.R1 was marked.

5. The Tribunal, after considering the oral and documentary evidence, held that the driver of the appellant bus was responsible for the accident and awarded compensation of Rs.53,98,400/- to the claimants. Assailing the award, the appellant/Transport Corporation has filed the present appeal.

6.The learned counsel appearing for the appellant/Transport Corporation Mr.K.J.Sivakumar would submit that the Tribunal erred in fixing the monthly income of the deceased as Rs.28,297/- without any valid documents and awarding Rs.2,50,000/- towards loss of love and affection. Hence, the learned counsel prays for reduction of the compensation.



7. Per contra, the learned counsel appearing for the respondents/claimants Mr.K.Varadhakamaraj submitted that the impugned award awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

8. The learned counsel appearing for the 5th respondent/ Insurance Company Mr.S.Arunkumar has also supported the award of the Tribunal.

9. We have considered the rival submission of the learned counsels appearing on either side and perused the materials available on record.

10. In this appeal, negligence fixed by the Tribunal is not challenged. The appellant questions only quantum awarded by the Tribunal. A perusal of the impugned award would show that to prove the income of the deceased, the claimants have filed salary statement of the deceased (Ex.P.5). Based on which, the Tribunal has fixed the monthly income of the deceased as Rs.28,297/-. The Tribunal, after adding 50% of the income towards future prospects and after deducting 1/3rd towards her personal expenses and by applying multiplier '15' has awarded Rs.50,93,400/- $(28297+14148(50\%)=42445 \times 12 \times 15 \times 2/3)$ towards loss of income. In the opinion of this Court as per the decisions of the Hon'ble Supreme Court of India in the case of National Insurance Company Ltd., vs. Pranay Sethi and others reported in 2017(2) TNMAC 609 (SC) and in the case of Smt.Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009(2) TN MAC 1 (SC), the amount of Rs.50,93,400/- awarded under the head of loss of income is fair, just and reasonable and hence, the same is confirmed.

11. As per the decision of the Hon'ble Supreme Court of India in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), the claimants are entitled to Rs.40,000/- each towards consortium and filial consortium, which comes to Rs.1,20,000/-. Hence, the amount of Rs.20,000/- awarded towards loss of consortium is enhanced to Rs.1,20,000/- and the amount of Rs.2,50,000/- awarded towards loss of love and affection is set aside. The amount of Rs.15,000/- awarded towards funeral expenses; Rs.15,000/- towards loss of estate and Rs.5,000/- towards Transportation are confirmed. The rate of interest fixed by the Tribunal as 7.5% per annum remains unaltered.

12. Accordingly, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-



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Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of income	50,93,400/-	50,93,400/-	confirmed
Loss of Love and Affection	2,50,000/-	Nil	set aside
Funeral Expenses	15,000/-	15,000/-	confirmed
Transportation	5,000/-	5,000/-	confirmed
Loss of Estate	15,000/-	15,000/-	confirmed
Loss of Consortium & Filial Consortium	20,000/-	1,20,000/-	enhanced
Total	53,98,400/-	52,48,400/-	reduced
Rounded of		52,49,000/-	

13. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.53,98,400/- is reduced to Rs.52,49,000/-. Out of the said amount, the first claimant/husband of the deceased is entitled to Rs.22,49,000/- and the claimants 2 and 3/sons of the deceased are entitled to Rs.15,00,000/- each. The appellant/Transport Corporation is directed to deposit the modified award amount of Rs.52,49,000/- with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the first claimant is permitted to withdraw his share of the award amount along with proportionate interest and costs, less the amount already withdrawn, if any. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Bank till they attain majority and the first claimant being father and natural guardian is permitted to withdraw the interest once in six months directly from the Bank. The minor claimants/M.Silambarasan and M.Dhanush on attaining majority are permitted to withdraw their share. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

skn



To

The Motor Accident Claims Tribunal,
Special Sub Judge, Cuddalore.

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Copy To

The Section Officer,
V.R.Section,
Madras High Court, Chennai.

+1cc to Mr.S.Arunkumar, Advocate Sr.No.30484

+1cc to Mr.K.J.Sivakumar, Advocate Sr.No.29781

+1cc to Mr.K.Varadhakamaraj, Advocate Sr.No.29765

C.M.A.No.2689 of 2021
and
C.M.P.No.15451 of 2021

SSI (CO)
RVM(06/06/2022)