



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM :

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

C.M.A.NO.3368 OF 2019
AND
C.M.P.NO.19650 OF 2019

1.Selvarani
2.Minor Lakmikanth
3.Minor Arujan
4.Rathinavel
5.Kaliyammal ...Appellants
(Minor Appellants 2 & 3 are
Rep. by next friend and Mother
1st Appellant Selvarani)

Vs.

1.Shanmugavelu
2.The United India Insurance Co. Ltd.,
Divisional Office,
Aurobindo Road,
Block-19, Neyveli,
Cuddalore District.
3.The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
3/137, Salamedu, Valuthareddy,
Villupuram Post, Taluk & District.
4.The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
3/137, Salamedu, Valuthareddy,
Villupuram Post, Taluk & District. ...Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to enhance the compensation in Judgment and Decree dated 25.04.2019 in MCOP No.34/2017 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Kallakurichi.



For Appellants : Mr.R.Nalliyappan

For Respondents : Mr.S.Arunkumar for R2
Mr.G.Saravanakumar for R3 & R4

WEB COPY

JUDGMENT

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

This appeal is filed by the claimants in MCOP No.34 of 2017 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Kallakurichi seeking enhancement of compensation, wherein, the Tribunal has awarded Rs.20,27,000/- against the claim of Rs.30,00,000/-.

2.The claimants are the legal heirs of the deceased Janannathan. He died in a motor-vehicle accident on 30.11.2016. The deceased at the time of accident was a passenger in a bus belonging to the Tamil Nadu State Transport Corporation. The bus hit against the bus belonging to the first respondent.

3.It appears that in the accident, some passengers died while few sustained injuries. The Tribunal, after analyzing the evidence adduced by the parties, held that both the drivers of the bus were equally responsible for the accident. The finding of the Tribunal was confirmed by a learned Single Judge of this Court in CMA Nos.4222 and 4227 of 2019 dated 26.03.2021. Hence, the negligence apportioned by the Tribunal in this O.P is confirmed.

4.With regard to the quantum, it was pleaded that the deceased was Manager in a Petrol Bunk and Star Health Insurance Agent, thereby, he was earning Rs.30,000/- per month. The Tribunal has fixed the income at Rs.13,000/- to determine loss of income. The main grievance of the appellant is that the Tribunal failed to add 40% of the income towards future prospects.

5.The learned counsels appearing for the respondents contended that the award of the Tribunal is based on the evidence and there is no merit in the appeal.

6.In the instant case, though the Tribunal has not accepted the case of the claimants and rejected Exs.P.13 and 14, in which, the claimants claimed Rs.30,000/- per month as income, the Tribunal fixed the notional income at Rs.13,000/-. Considering the age of the deceased and the nature of employment, we are of the opinion that the income fixed by the Tribunal is correct and the same is confirmed. As rightly pointed out by the learned counsel for the appellants, the Tribunal failed to add 40% towards future prospects. As per the



decision of the Hon'ble Apex Court in the case of National Insurance Company Ltd., vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), the claimants are entitled 40% towards future prospects. So, the total income comes to Rs.18,200/- (13000+5200). 1/4th is deducted towards his personal and living expenses and by applying multiplier '16', the loss of income is assessed as Rs.26,20,800/- (18200x12x16x3/4). As per the decision of the Hon'ble Apex Court 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 parental and filial consortium, which comes to Rs.2,00,000/-. Hence, the amounts awarded by the Tribunal under the head of loss of consortium and loss of love and affection are set aside. The amount of Rs.25,000/- awarded towards funeral expenses is reduced to Rs.15,000/-. This Court awards Rs.15,000/- towards loss of estate. Accordingly, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-

Heads	Amount (Rs.)
Loss of dependency	26,20,800/-
Loss of Consortium	2,00,000/-
Loss of Estate	15,000/-
Funeral Expenses	15,000/-
Total	28,50,800/-
Rounded off	28,51,000/-

7. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed and the award amount of Rs.20,27,000/- is enhanced to Rs.28,51,000/-. Out of the amount, the first claimant/wife of the deceased is entitled to Rs.7,00,000/-; the second and third claimants/children of the deceased are entitled to Rs.7,00,000/- each; the fourth claimant/father of the deceased is entitled to Rs.3,75,000/- and the fifth claimant/mother of the deceased entitled to Rs.3,76,000/- together with proportionate interest and costs. The second respondent/Insurance Company and the third respondent/Transport Corporation are directed to deposit the modified award amount at the ratio of 50:50 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 major claimants are permitted to withdraw their share after filing a memo, along with a copy of this Judgment, less the amount if already withdrawn. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Bank till they attain majority and first claimant/mother is permitted to withdraw the interest once in



six month directly from the Bank. The minor claimants 2 and 3 on attaining majority are permitted to withdraw their share. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

skn

To

1.The III Additional District Judge,
The Motor Accident Claims Tribunal
Kallakurichi.

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.10672

+1cc to Mr.G.Saravanakumar, Advocate, S.R.No.10989

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.10542

C.M.A.No.3368 of 2019
and
C.M.P.No.19650 of 2019

SVI (CO)
RVM(28/03/2022)