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C.M.A.No.2336 of 2017 &
Cross. Obj.No.38 of 2021

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 12.09.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2336 of 2017
and
Cross. Obj.No.38 of 2021

C.M.A.No.2336 of 2017:

The Managing Director,
TNSTC.
Rangapuram,
Vellore.

... 1st Respondent/Appellant

Vs.

1.Palaniammal

2.Minor Tharun
rep. by his mother 1st petitioner
Ms.Palaniammal

... Respondents/Petitioners

3.Chitra

... 2nd Respondent/Respondent

4.Jamini @ Rajendiran

... 3rd Respondent/Respondent



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Cross. Obj.No.38 of 2021:

1.Palaniammal

2.Minor Tharun

rep. by his mother 1st petitioner

Ms.Palaniammal

... Cross Appellants/Petitioners

v.

1.The Managing Director,

TNSTC, Rangapuram,

Vellore.

...1st respondent/Respondent

2.Chitra

... 2nd Respondent/Respondent

3.Jamini @ Rajendiran

... 3rd Respondent/Respondent

(Added as per order in I.A.No.243 of 2013 dated 29.10.2015 and amended as per order in I.A.No.23 of 2016 dated 20.01.2016)

Prayer in C.M.A.No.2336 of 2017: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 09.01.2017 in M.C.O.P.No.1458 of 2013 on the file of the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Tirupattur.



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Prayer in Cross. Obj.No.38 of 2021: Civil Miscellaneous Appeal is filed under Order 41 Rule 22 of the Code of Civil Procedure against the Award and Decree dated 09.01.2017 in M.C.O.P.No.1458 of 2013 on the file of the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Tirupattur, for enhancement of compensation.

For Appellants : Ms.Tamil Selvi
in C.M.A.No.2336 of 2017

Mr.A.G.F.Terry Chella Raja
in Cross. Obj.No.38 of 2021

For Respondents : Mr.A.G.F.Terry Chella Raja for R1
R2 - Minor rep. by R1
in C.M.A.No.2336 of 2017

Not ready in notice
regarding R3 and R4
in C.M.A.No.2336 of 2017

Ms.Tamil Selvi
in Cross. Obj.No.38 of 2021

COMMON JUDGMENT

This Civil Miscellaneous Appeal and Cross Objection arise out of the Award dated 09.01.2017 passed by the learned Special



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Subordinate Judge, Motor Accidents Claims Tribunal, Tirupattur, in M.C.O.P.No.1458 of 2013. The appeal is filed by the Transport Corporation and the Cross Objection by the claimants. The parties are referred to in the same rank and array as before the trial Court.

2.The brief resume of the facts that has been culminated in filing of the present appeal is narrated herein below:

The petitioner who are the wife and minor son of one Deeparasan had filed a claim petition seeking compensation for the death of Deeparasan in a road accident took place on 16.12.2009. It was their case that the said Deeparasan, aged about 24 years on the date of the death, was a tailor earning a monthly income of Rs.15,000/- . It is their case that on the said date, the deceased was riding his Bajaj Pulsar two wheeler, bearing Registration No.KA 01 EH 9073 from Bangalore to Tirupattur. When the deceased was proceeding near Velan Nagar, the respondent's bus bearing Registration No.TN 23N 1310 which was driven by its driver in a rash and negligent manner coming from the



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opposite direction had hit the two wheeler and ran over his head. The deceased has sustained grievous injuries and died on the spot.

3.The respondent/Transport Corporation has filed their counter stating that on the said date, the respondent's bus after dropping all the passengers at Velan Nagar bus stand had slowly started moving. At that time, the motor cycle which the deceased was riding was coming in the opposite direction and the deceased drove his two wheeler in a rash and negligent manner. The motor cycle hit a bullock which was standing on the right hand side of the road and as a result, the rider of the motor cycle lost his balance and dashed against the bus. Therefore, they would submit that the accident had occurred only on account of the negligence of the deceased Deeparasan therefore, the Transport Corporation was not liable to pay compensation to the petitioners. That apart, they would contend that the quantum of compensation claimed was very excessive.



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4.The Tribunal on considering the evidence on record and taking into account the oral evidence of the eye witnesses held that the respondent/Transport Corporation is not able to establish their case that after losing control, the deceased had hit the bus. No independent witness was examined. It was only the interested evidence of the driver which is available to substantiate this. PW2 in his evidence has stated that it was the driver of the respondent bus who had driven the vehicle in a rash and negligent manner. Ultimately, the Tribunal has awarded a compensation of Rs.11,98,000/- to the petitioners by adopting a notional income of Rs.6,500/-. Aggrieved by said Judgment and Decree, the Transport Corporation has filed this appeal.

5.Ms.Tamil Selvi, learned counsel for the appellant would contend that the accident has occurred only on account of the negligence of the rider of the motor cycle and the First Information Report had also been lodged against him. Therefore, the finding of the Tribunal that the driver of the respondent's bus was responsible is



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totally misconceived. She would further submit that the multiplier adopted by the Tribunal was wrong and the appropriate multiplier is 17. She would submit that excessive amounts have been granted under the head of loss of consortium, loss of love and affection and loss of funeral expenses. She would submit that the notional income which was granted is in order.

6.Per contra, Mr.A.G.F.Terry Chella Raja, learned counsel for the claimants would submit that the deceased was a Tailor and the accident had taken place in the year 2009 and the Tribunal ought to have adopted a notional income at Rs.10,000/-. He would submit that the future prospects has not been added which would be 40 % considering the age of the deceased. He would fairly concede that the multiplier should be adopted is 17.

7.Heard the learned counsels appearing on either side and perused the papers.



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8.The accident has taken place in the year 2009 and the deceased was carrying on his avocation as a Tailor at Periyathallapadi Village. Krishnagiri District. The monthly income of Rs.6,500/- which has been notionally fixed is very much in order, however, the Tribunal has failed to add future prospects and the future prospects of 40% is now added. Therefore, the monthly income would be a sum of Rs.9,100/- and the annual income would be a sum of Rs.1,09,200/-(Rs.9,100/- x 12). Of this, 1/3 has to be deducted towards personal expenses. Therefore, the annual contribution to the family would be a sum of Rs.72,800/-. Adopting a multiplier of 17, the loss of income would be a sum of Rs.12,37,600/- (Rs.72,800/- x 17 = Rs.12,37,600/-). The Tribunal has awarded a sum of Rs.50,000/- for loss of consortium and the same has to be decreased to a sum of Rs.40,000/-. That apart, only a sum of Rs.60,000 has been granted under the head of loss of love and affection for the 2nd petitioner and the respondents 3 and 4, the parents of the deceased. They are entitled to a sum of Rs.40,000/- each and therefore, the amount under this head is enhanced to a sum of



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Rs.1,20,000/- (Rs.40,000/- x 3). A sum of Rs.10,000/- granted under the head of loss of estate has to be enhanced to a sum of Rs.25,000/-.

A sum of Rs.25,000/- granted under the head of funeral expenses is reduced to a sum of Rs.5,000/-. Therefore, taking into consideration the above aspects, the modified amount is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	Rs.10,53,000/-	Rs.12,37,600/-	Enhanced
2.	Loss of consortium	Rs.50,000/-	Rs.40,000/-	Reduced
3.	Loss of love and affection to the 2 nd petitioner and the respondents 3 and 4	Rs.60,000/-	Rs.1,20,000/-	Enhanced
4.	Funeral expenses	Rs.25,000/-	Rs.5,000/-	Reduced
5.	Loss of estate	Rs.10,000/-	Rs.25,000/-	Enhanced
	TOTAL	Rs.11,98,000/-	Rs.14,27,600/-	

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9.PW2 who is the eye witness to the accident has clearly deposed that the accident had occurred only on account of the negligent driving



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of the driver of the bus. The contents of the First Information Report cannot be relied upon who has not been examined on the side of the respondents. Therefore, the finding with reference to the negligence has to be definitely confirmed and the liability is fastened on the driver of the respondent's bus.

10.In the result, this Civil Miscellaneous Appeal is dismissed and the Cross Objection is allowed and enhanced. The appellant Transport Corporation is directed to deposit the entire compensation amount, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.1458 of 2013 on the file of the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Tirupattur, within a period of six weeks from the date of receipt of a copy of this order, if not deposited earlier.

11.On such deposit, the 1st petitioner and the respondents 3 and 4 are permitted to withdraw the entire award amount with proportionate



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accrued interest and costs as apportioned by the Tribunal, by making necessary applications. The share of the minor/2nd petitioner shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minor/2nd petitioner shall be paid to the mother of the minor, once in three months, till he attains majority.

The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimants. No costs.

12.09.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps



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To

The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Tirupattur.



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P.T. ASHA, J,

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