IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **11.08.2022**

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THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.2973 of 2021
and
Cros.Obj.No.28 of 2022
and C.M.P.No.16945 of 2021

[CMA.No.2973 of 2021]

The Managing Director,
Tamil Nadu State Tansport Corporation Ltd.,
Villupuram, Thiruvannamalai Region.

... Appellant / Respondent

Vs

1.K.Bindhu

2.K.Yaksha (Minor)

3. K.Gowshik (Minor)
(Minors rep. by their mother and Natural Guardian 1st respondent)

4.B.Annakili

... Petitioners / Respondents

[Corss.Obj.No.28 of 2022]

1.K.Bindhu

2.K.Yaksha (Minor)

3. K.Gowshik (Minor)
(Minors rep. by their mother and Natural Guardian 1st respondent)

4.B.Annakili

... Appellants / Petitioners

Vs.

The Managing Director,
Tamil Nadu State Tansport Corporation Ltd.,
Villupuram, Thiruvannamalai Region.

...Respondent/Respondent

PRAYER in CMA.No.2973 of 2021 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the Decree and Judgment dated 30.10.2017 made in M.C.O.P.No.5094 of 2010 on the file of the Motor Accident Claims Tribunal II Court of Small Causes Chennai and be pleased to dismiss the above claim.

For Petitioner : Mr.K.J.Siva Kumar

For Respondent : Mr.S.Suriya Prakash [R.1]

: Minors rep. by R.1

: Not ready in notice [R.4]

PRAYER in Cross.Obj.No.43 of 2022 : Appeal filed Under Order 41, Rule 22 C.P.C, to enhance the compensation awarded in the judgment and decree dated 30/10/2017 passed in MCOP No.5094/2010 on the file of the Motor Accident Claims Tribunal Hon'ble II Small Causes Court at Chennai.

For Petitioner : Mr.S.Suriya Prakash

For Respondent : Mr.Mr.K.J.Siva Kumar

COMMON JUDGEMENT

Both the claimants as well as the Transport Corporation have preferred these appeals.

2. CMA.No.2973 of 2021 is filed by the Transport Corporation challenging the award in M.C.O.P. No.5094 of 2010 by the MACT, II Court of Small Causes. Chennai.

3. Cross Objection No.28 of 2022 is filed by the claimants seeking an enhancement of the award passed in MCOP No.5094 of 2010 by the MACT, II Court of Small Causes. Chennai.

4. The brief facts necessary for disposing of the above appeals are as follows and the parties are referred to in the same rank as before the Tribunal below.

5. The petitioners had filed the above claim petition seeking compensation for the death of one B.Kannan, husband of the 1st petitioner, father of the petitioners 2 and 3, and the son of the 4th petitioner in a road accident on 17.06.2010. It is their case that on the said date the deceased was riding his motorcycle on the GST Road as he had come near the Menam Hotel, the bus belonging to the respondent/Corporation driven by its driver in a rash and negligent manner hit the motor cycle from behind which caused grievous injuries to the said B.Kannan who died within 3 days of the accident.

6. The petitioners had claimed compensation of a sum of Rs.20.00,000/-. It is their case that the deceased who was aged 35 years was a sales executive with Aspen Diagnostics Private Limited and also owning diagnostic center and earning a monthly salary of Rs.20,000/-.

7. The respondent/ Corporation had filed their counter denying the negligence on the part of their driver and contending that it was only the negligence of the deceased which had resulted in the accident.

8. The Tribunal below by its award dated 30.10.2017 held that it was only the respondent/Corporation which was responsible for the accident and therefore, they are liable to pay compensation to the petitioners. The Tribunal has fixed a monthly notional income of Rs.8,000/- and taking into account the age of the deceased, which was 36 years, applied a multiplier of ‘15’ and to this added future prospects of 50%. Ultimately a sum of Rs.18,17,000/- was awarded under the head of loss of income.

9. Mr.K.J.Siva Kumar, learned counsel for the Transport Corporation would submit that the future prospects that has been fixed by the Tribunal below in awarding the compensation is not appropriate. Considering the age of the deceased the appropriate future prospects would be 40%. That apart, the $1/3^{rd}$ deduction towards personal expenses had not been adopted by the Tribunal below.

10. Mr.S.Suriya Prakash, learned counsel appearing for the petitioners/respondents on the other hand would submit that the notional income that has been fixed is not commensurate to the age, date of accident, and the nature of the work undertaken by the deceased. It is his contention that the amount has to be enhanced. Further, the Tribunal below has totally failed to appreciate Ex.P.4, medical bills which are to the tune of Rs.1,30,306/-, no amounts under this head have been granted despite the fact that all the documents have been submitted before the Tribunal below. He would also submit that the age of the deceased is 35 years and not 36 years and therefore the appropriate multiplier that has to be adopted is '16' and not '15'.

11. Heard the counsels on both sides.

12. The notional income of Rs.8,000/- appears to be reasonable considering the fact that no documents whatsoever has been filed by the petitioners to prove the salary of the deceased particularly when it is the specific case of the petitioners that the deceased was working as a sales

executive with diagnostic company. The Tribunal has wrongly added future prospects of 50% when the appropriate value would be 40%. Therefore, the amounts under the head of loss of income would be Rs.8,000 + 40% x 12 = Rs.1,33,440/- out of this 1/3rd has to be deducted towards personal expenses so the annual income that would be available to the family would be a sum of Rs.89,600/-. The deceased was aged about 35 years at the time of his death and the appropriate multiplier for this age is ‘16’. Therefore, the amounts under the head of pecuniary loss would be a sum of Rs.14,33,600/-. That apart, medical expenses to the tune of Rs.1,30,306/- which was omitted to be granted. The Tribunal has granted a sum of Rs.180,000/- under the head of loss of love and affection for petitioners 2 and 3, this has to be reduced to a sum of Rs.80,000/-. The 1st petitioner has been granted a loss of consortium of Rs.1,00,000/- which has to be reduced to Rs.40,000/- No amounts have been granted under the head of loss of estate and the same shall be granted at the rate of Rs.15,000/-. Under the head of funeral expenses the petitioners has been granted Rs.25,000/- which shall be reduced to Rs.15,000/- Therefore, the modified award would be 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 income	15,12,000/-	14,33,600/-	Reduced
2.	Loss of love and affection to 2nd and 3rd petitioners	1,80,000/-	80,000/-	Reduced
3.	Loss of Consortium	1,00,000/-	40,000/-	Reduced
4.	Loss of estate	---	50,000/-	Granted
5.	Funeral Expenses	25,000/-	15,000/-	Reduced
6.	Medical Expenses	--	1,30,306/-	Granted
	TOTAL	**18,17,000/-**	**17,13,906/-**	**reduced by Rs.1,03,094/-**

16. Therefore, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal be and hereby is reduced to a sum of Rs.**17,13,906**/- from Rs.**18,17,000/-** together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other aspects the award of the Tribunal is confirmed. The respondent/State Transport Corporation is directed to deposit the said amount (Rs.**17,13,906**/-) to the credit of M.C.O.P.No.5094 of 2010 on the file of the Motor Accidents Claims Tribunal Chennai (The II Court of Small Causes Chennai). together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a

copy of this Judgement. On such deposit being made, petitioners are permitted to withdraw their respective shares as apportioned by the Tribunal below. Since the petitioners 2 and 3 being minors in M.C.O.P.No.5094 of 2010, their respective shares of award amount as apportioned by the Tribunal shall be deposited in an interest bearing fixed deposit in any Nationalized bank till they attain majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the guardian/mother once in 3 months directly from the bank. If the minors has attained the age of majority, it is open to them to file formal petition before the Tribunal to get their shares of apportionment. Considering the order passed in the above appeal the Cross Objection is dismissed and Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

11.08.2022

Index : Yes/No
Internet: Yes/No
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To

1. The Motor Accident Claims Tribunal
   II Small Causes Court at Chennai.

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

3. The Managing Director,
   Tamil Nadu State Tansport Corporation Ltd.,
   Villupuram, Thiruvannamalai Region.

P.T. ASHA, J,

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