



C.M.A.(MD)No.553 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 08.08.2022

Delivered On : 30.08.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.553 of 2022

1.Ponleelavathy

2.Thanga Denesh

.. Appellants /Petitioners

Vs.

State Express Transport Corporation Limited,

Through its Managing Director,

Thiruvalluvar House,

Pallavan Salai, Chennai – 600 002.

.. Respondent / Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow this appeal, to enhance the award amount, in M.C.O.P.No.361 of 2017, dated 26.10.2021, on the file of the Motor Accident Claims Tribunal Authority – Special Sub Judge, Tirunelveli.

For Appellants

: Mr.T.Selvakumaran

For Respondent

: Mr.P.Prabhakaran



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JUDGMENT

This Civil Miscellaneous Appeal has been filed to enhance the award amount, in M.C.O.P.No.361 of 2017, dated 26.10.2021, on the file of the Motor Accident Claims Tribunal Authority – Special Sub Judge, Tirunelveli. The appellants herein are the claimants and the respondent herein is the respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition, in M.C.O.P.No.361 of 2017, is as follows:

On 17.03.2017, at about 8.10 pm., when the deceased was walking inside the Nagercoil - Vadasery bus stand, a bus bearing Registration No.TN-01-AN-0598 came from the opposite direction in a rash and negligent manner, dashed against the deceased- Vetrivelmurugan and the deceased died on the spot. The deceased was working as stage decorator and was earning Rs.20,000/- per month. The claimants are his dependents and they claimed a sum of Rs.30,00,000/- as compensation.

3. Brief substance of the counter filed by the respondent, in M.C.O.P.No. 361 of 2017, is as follows:



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The driver of the respondent's bus drove the vehicle with due care and caution. The manner of the accident as narrated in the petition is wrong. The respondent's driver took his trip approximately at 8.00 pm., he departed from the Vadasery bus stand, at 8.35 pm. In the F.I.R, accident time was mentioned as 8.10 pm., but, according to the SETC records and log book, the respondent vehicle was stationed in the Vadasery bus stand, at 8.10 pm., for boarding passengers. In the F.I.R, vehicle number was not mentioned. The accident was no way connected with the bus. This petition is liable to be dismissed.

4. On the side of the claimants, 3 witnesses were examined and 6 documents were marked. On the side of the respondents, 1 witness was examined and no document was marked. After considering both sides, the Tribunal awarded a sum of Rs.12,40,000/- as compensation.

5. Against the order, the appellants preferred this appeal for enhancement of compensation on the following grounds:-

The Tribunal is wrong in fixing the monthly income as Rs.9,000/- instead of Rs.14,000/-. The Tribunal failed to award Rs.40,000/- towards loss of love and affection for the second appellant.



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6. On the side of the appellants, it is stated that the deceased was a stage decorator and the income ought to have been enhanced to Rs.14,000/- per month.

A judgment of the Division Bench of this Court reported in **2019-1-TNMAC-54 (DB) (Andal V. Avinav Kannan)** is cited, wherein, this Court has fixed the monthly income as Rs.11,000/-.

7. Another judgment of this Court reported in **2022-1-TNMAC-588 (Tamil Nadu State Transport Corporation Kumbakonam Division I Limited, V. Doulat @ Mohamed Gani Beevi)** is cited, wherein, this Court has fixed the monthly income as Rs.14,562/- for a 65 years old man.

8. Another judgment of the Division Bench of this court reported in **2022-1-TNMAC-814 (DB) (Legal Officer (TP Claims) Reliance General Insurance Co.Ltd., V. R.Amala)** is cited, wherein, this Court has fixed the monthly income as Rs.14,109/- per month.

9. On the side of the respondent, it is stated that the alleged accident has taken place in the bus stand and hence, there is no question of rash and negligent driving. An income of Rs.9,000/- per month fixed by the Tribunal was reasonable, hence, the Corporation has not filed an appeal. The judgments cited are after the



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year 2019 and they are not applicable to the facts of the present case. There is no document to prove the income of the deceased. The first claimant was mentioned in the petition as a coolie worker and she is not the dependent of the deceased.

10. The accident took place in the year 2017 and the judgments referred by the appellants are not wholly applicable. In view of the same, the monthly salary is fixed as Rs.11,000/-. The age of the deceased was 46 years and 25% future prospects has to be added. After adding 25% towards future prospects, the monthly income is fixed as Rs.13,750/- per month. After deducting $1/3^{\text{rd}}$ of the income towards his own expenses, the deceased might have contributed Rs.9,167/-. Considering the age of the deceased, multiplier '13' applicable. The claimants are entitled to Rs.14,30,052/- ($\text{Rs.9,167/-} \times 12 \times 13 = \text{Rs.14,30,052/-}$) towards loss of income. As per the dictum of the Hon'ble Supreme Court in **Pranay Sethi's** case, the claimants are entitled to Rs.70,000/- towards conventional charges. In total, the claimants are entitled to Rs.15,00,052/- as compensation.

11. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.12,40,000/- to Rs.15,00,052/- which shall carry interest at the rate of 7.5% per annum.



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(ii) The respondent – Transport Corporation, is directed to deposit the entire compensation of Rs.15,00,052/- (less the amount if any already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the Transport Corporation, the Tribunal may permit the claimants to withdraw their shares as apportioned by the Tribunal with interest and costs immediately, on the filing of proper petition before the Tribunal, less the amount, if already withdrawn by them. The Claimants are not entitled for interest for the default period, if there is any default.

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Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



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1.The Motor Accident Claims Tribunal -

Special Sub Court,

Tirunelveli

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.553 of 2022

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