



C.M.A(MD)No.851 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.12.2022

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THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.(MD)No.851 of 2022

1.Deeparani
2.Jeevalakshmi (Minor)
3.Kanishka (Minor)
Iyyappa Naikcer (died)

4.Kuppayammal

... Appellants/ Petitioners 1-3 & 5

[Appellants 2 and 3 are Minors rep by
their guardian and mother Deeparani.]

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
No.37, Mettupalayam Road,
Coimbatore District.

...Respondent/Respondent

PRAYER :- This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to enhance the compensation award passed in M.A.C.O.P.No.537 of 2015 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Dindigul dated 07.02.2020.

For Appellants : Mr.C.K.M.Appaji

For Respondent : Mr.P.Prabhakaran

JUDGMENT

The claimants have filed this appeal for enhancement of compensation for the death of the husband of the first appellant, son of the fourth appellant and the father of the second and third appellants in a motor accident, which



occurred on 13.08.2015. The deceased when riding his two wheeler, was hit by the bus belonging to the respondent/ Transport Corporation and due to the impact of the accident, the deceased sustained severe injuries and succumbed to the same. According to the claimants, the deceased was aged about 35 years at the time of the accident and he was doing business of selling sugar cane juice and earning a sum of Rs.15,000/- per month. The appellants therefore, filed the claim petition claiming a sum of Rs.20 lakhs as compensation.

3.The transport Corporation filed a counter contending that the claim petition was not maintainable as the deceased himself was negligent and the accident occurred only due to the rash and negligent driving of the deceased. It was further stated that the claim petition was bad for non joinder of necessary parties and that the deceased did not possess valid licence and therefore, he contributed to the accident. The respondent corporation stated that the income specified in the claim petition at Rs.15,000/- per month was exaggerated one. For these and other reasons stated in the counter affidavit, the respondent corporation prayed for dismissal of the claim petition.

4.The Motor Accident Claims Tribunal on appreciation of the entire evidence on record allowed the claim petition and awarded the compensation



of Rs.8,53,300/- along with interest at the rate of 7.5%. Aggrieved by the judgment and decree of the Tribunal, the claimants have filed this appeal for enhancement of compensation.

5.The learned counsel for the appellants/ claimants submitted that the Motor Accident Claims Tribunal deducted 30% from the compensation amount towards contributory negligence of the deceased on the ground that the deceased did not possess valid driving licence at the time of accident. The learned counsel filed additional evidence enclosing the copy of the driving licence of the deceased to show that at the relevant point of time, the deceased possessed valid driving licence. The learned counsel further submitted that in the light of the additional evidence, deduction of 30% made by the Tribunal cannot be sustained. The learned counsel also submitted that the income of the deceased assessed by the Tribunal was erroneous. The learned counsel submitted that the income fixed at Rs.6,000/- per month was very meager as the deceased was running a sugar cane juice shop, the income ought to have been fixed at Rs.15,000/- per month. On the above grounds, the learned counsel for the appellants submitted that the award of the Tribunal had to be interfered with and the present appeal deserved to be allowed.



6.The learned counsel for the respondent Corporation on the other hand submitted that at the time of accident, the deceased did not possess a valid driving licence and hence, the Tribunal could not be faulted for deducting 30% towards contributory negligence. The learned counsel further submitted that in the absence of any evidence, the Tribunal was fully justified in adopting the notional income at Rs.6,000/- per month. He therefore, prayed for the dismissal of the appeal.

7.I have heard the learned counsel for the appellants/claimants and the learned counsel for the respondent corporation and perused the materials placed on record.

8.Regarding the first issue of deduction of 30% from the award amount towards contributory negligence, the learned counsel for the appellants / claimants produced the licence of the deceased for the relevant period as an additional evidence. The learned counsel opposed the receipt of additional evidence. P.W.1, the widow of the deceased, during her cross examination deposed that her husband possessed valid driving licence. Driving license is a public document and so I am of the view that the additional evidence can be permitted. The copy of the driving licence clearly shows that the deceased's driving licence was valid up to 18.05.2020, which covers the accident period.



In the light of the additional evidence filed by the appellant, the deduction of 30% towards contributory negligence on the ground of absence of driving licence cannot be sustained. Therefore, the deduction of 30% from the compensation amount for not possessing driving license is unsustainable. I am of the view that the claimant is entitled to 100% compensation without any deduction.

9.As regards the enhancement of monthly income of the deceased, I am in agreement with the learned counsel for the respondent. In the absence of any evidence, the income fixed by the Tribunal is justified and does not call for any interference.

10.In fine, this Civil Miscellaneous Appeal is partly allowed and the judgement and decree of the Tribunal is modified by awarding full compensation of Rs.12,19,000/- along with 7.5% interest without any deduction towards contributory negligence. In all other aspects, the award of the Tribunal is confirmed. The claimants are entitled to withdraw their share as apportioned by the Tribunal.

16.12.2022

Index : Yes / No
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N.MALA, J

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- To
- 1.The Managing Director,
Tamil Nadu State Transport Corporation,
No.37, Mettupalayam Road,
Coimbatore District.
 - 2.The Motor Accident Claims Tribunal
(Additional District Judge), Dindigul
 - 3.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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