



C.M.A.(MD)No.253 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On : 28.09.2022

Delivered On : 26.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.253 of 2017

1.Krishnan

2.Sivakami

3.Meenakumari

.. Appellants /Petitioners

Vs.

Tamil Nadu State Transport Corporation,

Through its Managing Director,

Bye Pass Road, Madurai.

... Respondent / Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No. 448 of 2010, dated 12.06.2013, on the file of the Motor Accident Claims Tribunal (I Additional District Court), Tirunelveli.

For Appellants

: Mr.T.Selvakumaran

For Respondent

: Mr.P.Prabhakaran



WEB COPY



C.M.A.(MD)No.253 of 2017

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No. 448 of 2010, dated 12.06.2013, on the file of the Motor Accident Claims Tribunal - I Additional District Court, 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.448 of 2010, is as follows:

On 24.02.2010, at about night 01.45 am, when the deceased was riding a two wheeler bearing Registration No. TN-72-W-9439 along the Trichy-Madurai by-pass road, near Dindigul Thomayarpuram Pirivu, a bus bearing Registration No.TN-57-N-1676 was driven by its driver in a rash and negligent manner, dashed against the motorcycle and the deceased died on the spot. The deceased was a heavy vehicle lorry driver and he was earning Rs.8,000/- per month. The petitioners are his dependants and they claimed a sum of Rs.10,00,000/- as compensation.



C.M.A.(MD)No.253 of 2017

3. Brief substance of the counter filed by the respondent, in

M.C.O.P.No.448 of 2010, is as follows:

The driver of the bus is not responsible for the accident. The rider of the two wheeler was not having valid driving licence. Contributory negligence ought to have been fixed against the deceased. Loss of earning, transport expenses, funeral expenses are to be proved. Rate of interest demanded is excessive.

4. On the side of the claimants, 2 witnesses were examined and 4 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.8,76,200/- as compensation to the claimants.

5. Against the award, the claimants / appellants have filed this appeal on the following grounds:-

The Tribunal ought to have fixed the monthly income as Rs.9,000/- and added 15% towards future prospects and applying multiplier '17'. The Tribunal ought to have fixed the loss of income as Rs.18,36,00/-. The Tribunal ought to have granted Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of love and affection. The appeal is filed for enhancement on Rs.1,23,800/-.



C.M.A.(MD)No.253 of 2017

WEB COPY

6. On the side of the appellants, it is stated that the age of the deceased is 30 years. The Tribunal fixed the multiplier at '13', on the basis of the age of the mother of the deceased, but, multiplier '17' ought to have been applied. The Tribunal fixed the monthly income as Rs.8,000/- per month and it has to be fixed as Rs.9,000/-. A judgment of the Hon'ble Supreme Court reported in **2014 – 2 – TNMAC – 680 (SC) [Kala Devi & others V. Bhagwan Dass Chauhan & others]** is cited, wherein, Rs.9,000/- is fixed as income for a heavy motor vehicle driver.

7. On the side of the respondent, it is stated that there is no documents to prove the income of the deceased. The maximum amount sought for by the appellants before the Tribunal is Rs.8,000/- per month and the same was taken in fixing the monthly income. The appellants now cannot take a new stand.

8. On the side of the respondent, it is further stated that the appellants restricted the claim at Rs.10,00,000/- in the claim petition. On 08.12.2016, appeal was filed, even in the appeal only the balance of Rs.10,00,000/-, after deducting the award amount was claimed by the



C.M.A.(MD)No.253 of 2017

appellants. When the claimants restricted their claim, they are not entitled to refix the same.

9. On the side of the appellants, it is stated that the Court can grant more compensation than what was claimed by the claimants. A judgment of this Court in C.M.A.(MD)No.603 of 2022, dated 06.09.2022, (Jothilakshmi and another V. The Correspondent, PSR Engineering College and another) is cited.

10. On the side of the appellants, another judgment of the Hon'ble Supreme Court reported in **2003-ACJ-12 (Nagappa V. Gurudayal Singh and others)** is cited, wherein, the Hon'ble Supreme Court has held that “Whether in an appropriate case compensation more than claimed can be awarded. There is no restriction that compensation could be awarded only up to the amount claimed. The Tribunal / Court is to award 'just' compensation which is reasonable, on the basis of evidence on record; if required, Court may permit amendment to the claim petition. There is no question of claim being time barred. It cannot be contended that by enhancing the claim there would be change of cause of action.”



C.M.A.(MD)No.253 of 2017

11. On the side of the appellants, it is stated that the monthly income of the deceased ought to have been fixed at Rs.9,000/-. The claimants themselves have admitted that the monthly income is Rs.8,000/-, but, there is no other document to prove the income, it is decided that the income fixed by the Tribunal is reasonable.

12. On the side of the appellants, it is stated that the multiplier adopted by the Tribunal is wrong. Considering the age of the deceased, multiplier '17' is to be adopted. On the side of the respondent, it is stated that the Tribunal has fixed the multiplier on the basis of the age of the mother of the deceased, which is reasonable. Considering the dictum of the Hon'ble Supreme Court, it is decided that the multiplier ought to have been fixed on the basis of the age of the deceased. The age of the deceased at the time of accident is 30 years. Hence, multiplier '17' is to be adopted.

13. The monthly income fixed by the Tribunal is Rs.8,000/- pm.. After deducting 50% for his own expenses, the deceased might have contributed Rs.4,000/- for his family. Including 40% (Rs.1,600/-) towards future prospects, the monthly income is calculated as Rs.5,600/-. After applying multiplier '17', the loss of income is calculated at Rs.11,42,400/-



C.M.A.(MD)No.253 of 2017

(Rs.5,600/- X 12 X 17 = Rs.11,42,400/-). 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.

14. The total compensation is calculated as follows:-

Loss of income	:	Rs.11,42,400/-
Conventional charges	:	Rs. 70,000/-
Total compensation	:	 Rs.12,12,400/-

15. This Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.8,76,200/- to Rs.12,12,400/-.

(ii) The respondent - Transport corporation, is directed to deposit the entire compensation of Rs.12,12,400/-(if not already deposited) together with interest for Rs.8,76,200/- at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, and for Rs.3,36,200/- with 7.5% interest from the date of this order, within a period of eight weeks from the date of receipt of a copy of this order. The first appellant /father of the deceased is entitled to a share of Rs.4,00,000/-



C.M.A.(MD)No.253 of 2017

with proportionate interest and costs. The second appellant / mother of the deceased is entitled to a share of Rs.5,12,400/- with proportionate interest and the third claimant is entitled to a share of Rs.3,00,000/- with proportionate interest.

(iii) On such deposit being made by the respondent / Transport corporation, the appellants herein/ major claimants are permitted to withdraw their share amount as apportioned by this Court with proportionate interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimants are not entitled for interest for the default period, if there is any.

(iv) The appellants/claimants are **directed to pay the court fee** for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

26.10.2022

Index : Yes/No

Internet : Yes/No

Ls



C.M.A.(MD)No.253 of 2017

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.

To

- 1.The I Additional District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.253 of 2017

R. THARANI, J.

LS

Pre-delivery Judgment made in
C.M.A.(MD)No.253 of 2017

26.10.2022