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C.M.A. No.1514 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1514 of 2023

1.D.Jayanthi

2.Minor D.Divya Dharshini

(rep by his mother, Natural guardian and
N.F.Jayanthi 1st Appellant herein)

3.Papathi

...Appellants/Petitioners

Vs.

The Managing Director

Tamil Nadu Transport Corporation (VPM) Ltd.,

Kanchipuram – 631 502.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.2718 of 2018 dated 14.12.2021 on the file of the Motor Accident Claims Tribunal/(Special Sub Judge No.2, Chennai)



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For Appellants : M/s.Ramya V. Rao
For Respondent : Mr.S.S.Santhosakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 14.12.2021 made in M.C.O.P.No.2718 of 2018 on the file of the Motor Accident Claims Tribunal/ Special Judge No.2, Court of Small Causes, Chennai.

2.The appellants filed M.C.O.P. No.2718 of 2018 on the file of the the Motor Accident Claims Tribunal/ Special Judge No.2, Court of Small Causes, Chennai, claiming a sum of Rs.40,00,000/- as compensation for the death of one Dhanasekaran, who died in the accident that took place on 01.03.2018.

3. According to the appellants, on 01.03.2018 at about 08.35 hours, when the deceased Dhanasekaran as a pedestrian was crossing at Chengalpattu to Tambaram National Highway, proceeding from West to East, the driver of the bus bearing Regn.No.TN 21 N 1319 belonging to the



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respondent drove the same in a rash and negligent manner endangering public safety, coming from Chengalpattu to Tambaram direction, hit the said Dhanasekaran and caused the accident. In the above said accident, the said Dhanasekaran sustained grievous injuries all over the body and died on the spot. Hence, the appellants filed claim petition claiming compensation against the respondent.

4. The respondent filed counter statement denying all the averments made by the appellants in the claim petition. According to the respondent, the driver of the bus drove the same with due care and caution observing traffic rules. At about 08.45 hours, the bus was nearing Vidhyala School in Urapakkam, the deceased person suddenly crossed the road and invited the accident. Hence, the respondent is not liable to pay compensation to the appellants. The total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.



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5. Before the Tribunal, the 1st appellant examined herself as PW1 and one Nehru, eye-witness to the accident was examined as PW2. Eight documents were marked as Exs.P.1 to Exs.P.8. Neither documents were marked nor witnesses were examined on the side of the respondent.

6. The Tribunal after considering the evidence and documents filed on the side of the appellants held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the respondent and directed the respondent to pay a sum of Rs.19,98,000/- as compensation to the appellants.

7. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

8. M/s.Ramya V.Rao, the learned counsel for the appellants submitted that the award of compensation by the Tribunal is meagre inasmuch as the notional income taken by the Tribunal as Rs.11,000/- is erroneous; that the



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accident took place in the year 2018, the appellants have established that the deceased was working as a vegetable merchant; and that the Tribunal ought to have fixed higher notional income. The learned counsel fairly submitted that the award of the compensation under the other heads are just and reasonable and prayed for allowing the appeal.

9. Mr.S.S.Santhosakumar, the learned counsel for the respondent, *per contra* submitted that the appellants have not produced any document to prove the avocation and income of the deceased. In the absence of any documentary evidence, the Tribunal was right in fixing the notional income as Rs.11,000/- per month. The learned counsel further submitted that there is no merit in the appeal and prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellants as well as respondent and perused the materials available on record.

11. The only question involved in this instant appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable.



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WEB COPY 12. On perusal of the records, this Court finds that the appellants, through PW1 have proved that the deceased was working as a vegetable vendor, at the time of accident. However, the appellants have not established the income of the deceased. Considering the year of accident, avocation of the deceased and Cost Inflation Index, this Court is of the view that that it would be reasonable to fix Rs.14,000/- per month as notional income of the deceased. The multiplier “15” has to be adopted since the deceased was aged 40 years at the time of accident. Since the appellants are wife, minor daughter and mother, 1/3rd has to be deducted towards personal expenses. Thus, by appying multiplier 15, adding 40% towards future prospects and deducting 1/3rd towards personal expenses of the deceased, the compensation awarded by the Tribunal under the head Loss of Dependency is calculated as follows:

$$\text{Rs.14,000} + 5600 (14000 \times 40\%) \times 12 \times 15 \times \frac{2}{3} = \text{Rs.23,52,000/-}$$

13. The compensation awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the



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compensation awarded by the Tribunal is enhanced from Rs.,19,98,000/- to

Rs.25,02,000/-, break-up as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	18,48,000/-	23,52,000/-	Enhanced
2.	Loss of Consortium	1,20,000/-	1,20,000/-	Confirmed
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	19,98,000/-	25,02,000/-	Enhanced by Rs.5,04,000/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.19,98,000/- is hereby enhanced to Rs.25,02,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The respondent/Transport Corporation is directed to deposit the award amount, now determined by this Court, less the



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amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants 1 and 3 are permitted to withdraw their share of the award amount, less the amount if any, already withdrawn, on the basis of apportionment fixed by the Tribunal. The share of the minor 2nd appellant is directed to be deposited in any one of the Nationalised Bank till the minor appellant attains majority. However, the 1st appellant, mother of the minor 2nd appellant is permitted to withdraw the accrued interest once in three months. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

03.08.2023

dk

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To

1.The Special Judge No.2
Motor Accident Claims Tribunal
Small Causes Court
Chennai.

2. The Section Officer,
VR Section,
High Court,
Madras.



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SUNDER MOHAN, J

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