



C.M.A.No.131



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.131 of 2022

1.Sumathi Shankar

2.Naveen Kumar

3.Nandhini Sivakumar

... Appellants

Vs.

The Managing Director
KSRTC, Bangalore
Chikmagalur Division
Chikmagalur District.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 11.03.2020 made in M.C.O.P.No.845 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court for MAC cases, Krishnagiri.

For Appellants : Mr.S.P.Yuaraj

For Respondent : Mr.T.Thiyagarajan

JUDGMENT



The appeal is filed by the appellants/claimants for enhancement of compensation granted by the Tribunal in the award dated 11.03.2020 made in M.C.O.P.No.845 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court for MAC cases, Krishnagiri.

2. The brief facts leading to the appeal are that, on 14.10.2018 at about 11.40 hours, while the deceased Shankar was travelling with his brother in a motor cycle bearing Registration No.TN 83 T 2684 as a pillion rider, in Karkala Bajagoli to Udupi N.H. Road near Athrady, the driver of the KSRTC bus bearing Registration No.KA-18-F-0727, hit against the motor cycle, causing grievous injuries to Shankar, who subsequently succumbed to his injuries on 16.10.2018. According to the appellants, the accident occurred only due to rash and negligent driving by the driver of KSRTC bus. The deceased Shankar was aged 49 years at the time of accident and as a self-employed, he was earning a sum of Rs.40,000/- per month. Therefore, the widow and children of the deceased Shankar filed the Claim Petition seeking a sum of Rs.50,00,000/- as compensation, for his death.

3. Before the Claims Tribunal, the respondent/Transport Corporation filed a detailed counter denying all the averments raised in the claim petition including negligence, liability and quantum of compensation.

4. Before the Claims Tribunal, the 2nd appellant/2nd claimant, son of the deceased



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Shankar, examined himself as P.W.1, the eye-witness was examined as P.W.2 and 14 documents were marked as Exs.P1 to P14. On the side of the respondent/Transport Corporation, the driver of the bus was examined as R.W.1 and no documentary evidence was filed.

5. The Claims Tribunal, on an assessment of the entire evidence on record, rendered the finding of negligence against the driver of the KSRTC bus and assessed the compensation at Rs.13,01,183/- along with 7.5% interest. Not satisfied with the quantum of compensation awarded by the Claims Tribunal, the appellants/claimants have filed the above appeal for enhancement of compensation.

6. Learned counsel for the appellants/claimants submitted that the assessment of income at Rs.9,000/- by the Tribunal is very much meagre. Considering that the accident took place in the year 2018, the deceased was aged 49 years at the time of accident and was doing cloth business by setting up temporary shops & exhibition sale stalls according to the counsel, the Tribunal ought to have assessed higher income. The counsel for the appellants further submitted that the assessment of compensation under the heads “loss of consortium” and “loss of love & affection” are meagre and against the judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others* reported in (2017) 16 SCC 680. The learned counsel therefore pleaded that the award passed by the Tribunal deserved to be enhanced.



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7. Learned counsel for the respondent/Transport Corporation on the other hand submitted that the award of the Tribunal was fair, just and reasonable and did not call for any interference in the appeal.

8. I have heard both the learned counsel and perused the entire materials placed on record.

9. It is seen from the records that the accident occurred in the year 2018, the deceased was aged 49 years at the time of accident and was maintaining a family of three members. According to the appellants, the deceased was doing cloth business and was earning a sum of Rs.40,000/- per month. In the absence of any material with regard to income of the deceased, the Tribunal fixed the notional income of the deceased at Rs.9,000/- per month. Considering the cost escalation for the year 2018 and also the avocation of the deceased Shankar, I am of the view that the notional income can be fixed at Rs.12,000/- per month. The Tribunal added 25% towards future prospects, applied multiplier '13' and deducted 1/3rd towards personal expenses of the deceased. Thus, by fixing the monthly income of the deceased at Rs.12,000/-, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.15,60,000/- (Rs.12,000/- + 3000 [Rs.12,000/- X 25%] X 12 X 13 X 2/3). Therefore, the appellants/claimants are entitled to Rs.15,60,000/- towards loss of dependency. I find that the Tribunal awarded Rs.20,000/- towards loss of estate,



which is on the higher side and therefore, the award towards loss of estate is reduced to Rs.15,000/-. The Tribunal has awarded a sum of Rs.20,000/- towards loss of consortium and Rs.30,000/- towards loss of love and affection. I agree with the submission of the learned counsel for the appellants that the appellants are entitled to higher compensation under those heads. As per the judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others* reported in (2017) 16 SCC 680, the 1st appellant, wife of the deceased, shall be entitled to Rs.40,000/- towards loss of consortium and the appellants 2 & 3, who are son and daughter of the deceased Shankar shall be entitled to Rs.40,000/- each towards loss of love & affection. The award of the Tribunal under other heads are confirmed.

10. In view of the above discussions, the award of the Tribunal is modified as follows:

<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Loss of dependancy	Rs.11,70,000/-	Rs.15,60,000/-
2.	Loss of estate	Rs.20,000/-	Rs.15,000/-
3.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
4.	Loss of consortium to the 1 st appellant	Rs.20,000/-	Rs.40,000/-
5.	Loss of love & affection to the appellants 2 & 3	Rs.30,000/-	Rs.80,000/- (Rs.40,000/- X 2)
6.	Hospital bills	Rs.29,331/-	Rs.29,331/-
7.	Ambulance bill	Rs.16,852/-	Rs.16,852/-
Total Compensation		Rs.13,01,183/-	Rs.17,56,183/- enhanced amount Rs.4,55,000/-



The compensation awarded by the Tribunal at Rs.13,01,183/- is hereby enhanced to Rs.17,56,183/- along with interest at 7.5% per annum.

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11. Learned counsel for the respondent/Transport Corporation submitted that the entire amount awarded by the Tribunal along with accrued interest and costs has already been deposited in the execution proceedings. In view of the said submission, the respondent is directed to deposit the enhanced amount of Rs.4,55,000/- along with 7.5% interest and costs, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants shall be entitled to withdraw their respective share of the award amount now determined by this Court, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by making appropriate application before the Tribunal.

12. The appeal is accordingly partly allowed. There shall be no order as to costs.

09.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

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1.The Special District Judge
Motor Accidents Claims Tribunal
Krishnagiri.

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



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N.MALA.J.,

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