



C.M.A.No.478



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No.478 of 2022

1.Kannagi

2.Mani

... Appellants

Vs.

The Managing Director
Tamil Nadu State Transport Corporation Ltd.
Villupuram division - II
Rangapuram, Vellore - 9.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 17.09.2019 made in M.C.O.P.No.675 of 2017 on the file of the I Additional District and Sessions Court, Vellore.

For Appellants : Mr.C.Prabakaran

For Respondent : Mr.T.Chandrasekaran

JUDGMENT

The appeal is filed by the appellants/claimants for enhancement of compensation granted by the Tribunal in the award dated 17.09.2019 made in

<https://www.mhc.tn.gov.in/judis>



M.C.O.P.No.675 of 2017 on the file of the I Additional District and Sessions Court,
Vellore.

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2. The brief facts leading to the appeal are that, on 08.12.2012 at about 6.45 p.m., while the deceased Karthik was travelling as a passenger in a Government bus bearing Registration No.TN 23 N 1796 belonging to the respondent/Transport Corporation, from Ranipet to Arcot Road, the driver of the bus stopped the bus at Rajeshwari junction bus stop and after some passengers got down from the bus, suddenly started the bus without noticing that the deceased Karthik was trying to board the bus. The deceased lost balance, fell down from the front side steps and got stuck in the back wheels of the bus, suffered grievous injuries and later succumbed to the same. According to the claimants, the parents of the deceased Karthik, he was aged 18 years at the time of accident and as a Mason, he was earning a sum of Rs.15,000/- per month. Therefore, the claimants filed the Claim Petition claiming a sum of Rs.30,00,000/- as compensation.

3. Before the Claims Tribunal, the respondent/Transport Corporation filed a counter denying all the averments raised in the Claim Petition apart from disputing negligence, liability and quantum of compensation.

4. Before the Claims Tribunal, in support of their claim, the 1st appellant/1st claimant, mother of the deceased examined herself as P.W.1, the eye-witness was



examined as P.W.2 and Exs.P1 to P5 were marked. On the side of the respondent, driver of the bus was examined as R.W.1 and no documentary evidence was marked.

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5. The Claims Tribunal, on an assessment of the entire evidence on record, found that the deceased Karthik had contributed to the accident by trying to board the running bus and therefore, fixed 10% & 90% negligence on the part of the deceased and driver of the bus respectively and awarded a sum of Rs.8,79,500/- as compensation along with 7.5% interest. Not satisfied with the quantum of compensation awarded by the Claims Tribunal, the appellants/claimants have filed the present appeal for enhancement of compensation.

6. Learned counsel for the appellants submitted that he was not disputing the finding on negligence arrived by the Tribunal. In view of the submissions made, the finding of the Tribunal that the deceased Karthik had contributed to the accident and apportionment of negligence at 10% against the deceased is not interfered with.

7. In so far as the quantum of compensation is concerned, the learned counsel for the appellants submitted that the deceased was aged 18 years at the time of accident and was earning a sum of Rs.15,000/- per month as a Mason and therefore, the assessment of notional income by the Tribunal at Rs.6,000/- per month was very meagre. The counsel further submitted that the appellants are entitled to Rs.40,000/-



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each towards loss of love and affection 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 Tribunal failed to award any sum towards loss of estate. On these grounds, the learned counsel prayed for enhancement of compensation.

8. 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.

9. I have heard the learned counsel for the appellants and the learned counsel for the respondent and perused the materials available on record.

10. The short point that arises in this appeal is whether the appellants/claimants are entitled for enhancement of compensation.

11. It is not disputed that the deceased Karthik was aged 18 years at the time of accident and was working as a Mason. The Tribunal in the absence of any evidence with regard to income of the deceased, fixed the notional income at Rs.6,000/- per month. No doubt, there is no proof in support of the income of the deceased. In any event, considering the cost escalation for the year 2012 and age of the deceased, I am

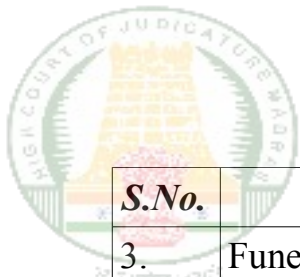


of the view that the notional income of the deceased can be fixed at Rs.9,000/- per month. 40% is added towards future prospects, as the deceased died as a bachelor at the time of accident and 50% is deducted towards personal expenses. The multiplier '18' is adopted appropriate to the age of the deceased. Hence, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.13,60,800/- (Rs.6,300/- X 12 X 18).

12. Learned counsel for the appellants is justified in his contention that the appellants, parents of the deceased are entitled to Rs.40,000/- each towards loss of love and affection. Therefore, the award of the Tribunal under the head 'loss of love & affection' deserves to be enhanced from Rs.50,000/- to Rs.80,000/-. The Tribunal did not award any sum towards loss of estate. But the Tribunal has awarded Rs.5,000/- towards transport expenses and therefore, the same is enhanced to Rs.15,000/-. The Tribunal awarded a sum of Rs.15,000/- towards funeral expenses and the same is reasonable and hence, it is confirmed.

13. 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 dependency	Rs.9,07,200/-	Rs.13,60,800/-
2.	Loss of love & affection	Rs.50,000/-	Rs.80,000/- (Rs.40,000/- X 2)



<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
3.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
4.	Transport expenses	Rs.5,000/-	Rs.15,000/-
	Total Compensation	Rs.9,77,200/-	Rs.14,70,800/-
	90% negligence fixed on the Transport Corporation	Rs.8,79,480/- rounded off to Rs.8,79,500/-	Rs.13,23,720/- enhanced compensation amount Rs.4,44,220/-

The appellants are entitled to total compensation of Rs.13,23,720/- along with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

14. It is submitted by the learned counsel for the respondent/Transport Corporation that the entire amount awarded by the Tribunal along with accrued interest and costs was already deposited before the Tribunal. In view of the said submission, there shall be a direction to the respondent/Transport Corporation to deposit the balance enhanced compensation of Rs.4,44,220/- along with 7.5% interest, less the amount already deposited, if any, within a period of eight 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 the same, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn, by making proper application before the Claims Tribunal.

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



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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

1. I Additional District and Sessions Judge
The Motor Accidents Claims Tribunal
Vellore.

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

N.MALA.J.,



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