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C.M.A.No.1052 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1052 of 2020

1.Nagarathinam

2.Ramamma

3.Lakshmi

4.Sujatha

... Appellants

vs.

The Regional Manager,
A.P.S.R.T.C.,
APSRTC Bus Station Complex,
Nellore, Medchal – 524 001.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 30.04.2019 made in M.C.O.P.No.237 of 2014 on the file of Motor Accident Claims Tribunal, (Subordinate Judge), Tiruttani.

For Appellants : Mr.K.Varadhakamaraj

For Respondent : M/s.G.V.Shobana

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J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Decree and Judgment dated 30.04.2019 made in M.C.O.P.No.237 of 2014 on the file of Motor Accident Claims Tribunal, (Subordinate Judge), Tiruttani.

2.The appeal is filed by the claimants seeking enhancement of compensation.

3.The claimants filed the claim petition claiming compensation for the death of their father one Mr.Arimani Bujjaiya, who died in a motor accident which occurred on 30.03.2014.

4.According to the claimants, while the deceased was walking on the Nellore High Road he was hit by a RTC Bus, which was driven by its driver in a rash and negligent manner and sustained fatal injuries. According to the claimants, the accident occurred only due to the rash and negligent



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driving of the RTC Bus driver.

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5. According to the claimants, the deceased was aged about 50 years at the time of accident and was earning Rs.15,000/- per month as a Masonary Coolie. The claimants therefore filed the claim petition seeking Rs.10,00,000/- as compensation.

6. The respondent Transport Corporation filed a counter denying all the allegations in the claim petition, apart from disputing the negligence and quantum of compensation claimed by the claimants.

7. Before the Claims Tribunal, the first claimant examined herself as PW1 and one other witness was examined as PW2 and Ex.P1 to Ex.P6 were marked in support of the claim. On the side of the respondent one witness was examined and one document was marked.

8. The Claims Tribunal on an assessment of the evidence on record returned a finding of negligence against the driver of the Transport



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Corporation. The Claims Tribunal awarded a sum of Rs.5,20,000/- along with 7.5% interest as compensation. Not satisfied with the award passed by the Claims Tribunal, the claimants have filed the above appeal.

9.For the sake of convenience the parties will be referred to as per the ranking in the Tribunal.

10.The learned counsel appearing for the claimants submitted that the assessment of the income of the deceased by the Tribunal was erroneous. He further submitted that the Tribunal failed to award any amount towards love and affection to the claimants. The learned counsel therefore submitted that the Tribunal ought to have awarded fair just compensation to the claimants.

11.The learned counsel for the respondent on the other hand submitted that in the absence of any evidence the Claims Tribunal was justified in assessing the notional income of the deceased at Rs.4,500/-. He further submitted that as the claimants were major daughters of the deceased they were not dependent on the income of the deceased and as such not



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entitled for compensation. As regards the conventional damages awarded by the Tribunal, the learned counsel fairly submitted that he had no objection to the same.

12.I have heard both the learned counsel and have perused the materials on record.

13.The objection of the learned counsel for the respondent that the claimants were not dependent on the deceased as they were major daughters, is not sustainable, in view of the Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Vs. Birender and Others in Civil Appeal Nos.242-243 of 2020 dated 13.01.2020. In the said Judgment, the Hon'ble Supreme Court held as follows:

“15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden



duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only.”

14.In the light of the said Judgment of the Hon'ble Supreme Court, the first objection of the learned counsel for the respondent is rejected. As far as the contention of the claimants that the income assessed by the Tribunal is erroneous, I am of the view that in the absence of any evidence in proof of the income the Tribunal was justified in arriving at the notional income of Rs.4,500/- per month. Therefore the award of the Tribunal towards loss of financial dependency to the family, funeral expenses and loss of estate are confirmed.

15.The learned counsel appearing for the claimants is justified in his submission that the Tribunal failed to award any compensation towards loss of love and affection/consortium. The claimants shall be entitled to Rs.40,000/- each in total Rs.1,60,000/- towards loss of consortium, as per



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the Judgment of the Hon'ble Supreme Court in Pranay Sethi's case. The Tribunal also failed to award any sum towards transportation. I therefore find that the claimants are entitled to Rs.15,000/- towards transportation.

16.In view of the above discussion, the award of the Claims Tribunal is modified as follows:

SI. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of financial dependency to the family	Rs.4,90,116/-	Rs.4,90,116/-
2	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
3	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-
4	Loss of filial consortium		Rs.1,60,000/-
5	Transport Expenses		Rs. 15,000/-
TOTAL		Rs.5,20,116/-	Rs.6,95,116/-

17.The claimants shall be entitled for a sum of Rs.6,95,116/- along with interest at the rate of 7.5%, from the date of the claim petition till the date of realisation. The Insurance Company is directed to deposit the award amount along with 7.5% interest and cost before the Tribunal, within a



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period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimants shall be entitled to withdraw the said amount in the ratio determined by the Tribunal by making proper application before the Tribunal. The claimants are further directed to pay the Court fee, if any, for the enhanced compensation amount if not already paid. The Registry is directed to draft the decree only after payment of the deficit Court fee, if any.

18.In the result, the Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

05.04.2023

Index : yes/no

Internet : yes/no

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To

1.The Motor Accident Claims Tribunal,
(Subordinate Judge),
Tiruttani.

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

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N.MALA, J.

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