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CMA.No. 1658 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.06.2023

Coram:

THE HONOURABLE MRS. JUSTICE N. MALA

C.M.A.No. 1658 of 2022

and

CMP.No. 16622 of 2021

1.Sumathi

2.R.Mohnapriya

3.R.Balaji

4.Ranganayagi

... Appellants

Versus

The Managing Director

Tamil Nadu State Transport Corporation

(Coimbatore) Limited

Chennimalai Road, Erode-1.

... Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree in MCOP.No. 1637 of 2015, dated 29.11.2016 on the file of the Motor Accident Claims Tribunal, Additional District and Special Court, Salem.

For Appellants : Mr.K.Varadha Kamaraj

For Respondent : Mr.Murali Vinodh



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JUDGMENT

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

2. According to the claimants, on 18.05.2015 while the deceased Ravi was walking inside the Erode bus stand, the driver of the respondent/Transport Corporation bus drove the vehicle in a rash and negligent manner and dashed against the deceased causing him grievous injuries. The deceased later succumbed to the injuries.

3. According to the claimants, the deceased was aged about 52 years at the time of accident and as a powerloom weaver earning a sum of Rs.25,000/- per month. The 1st claimant is the wife, 2nd and 3rd claimants are the daughter and son and the 4th claimant is the mother of the deceased. The claimants filed the claim petition claiming a sum of Rs.35,00,000/- as compensation.

4. Before the Claims Tribunal, the claim petition was contested by the respondent/Transport Corporation by filing a detailed counter



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affidavit denying all the averments made in the claim petition apart from disputing the negligence, as well as the quantum of compensation.

5. Before the Claims Tribunal, three witnesses were examined on the side of the claimants. Exs.P1 to Ex.P8 were marked in support of their claim. On the side of the respondent/Transport Corporation, one witness was examined and no documents were marked.

6. The Claims Tribunal on an assessment of the entire evidence on record, rendered a finding of the negligence against the driver of the respondent/Transport Corporation bus, assessed the compensation at Rs.13,12,956/- along with 7.5% interest and mulcted the liability on the respondent/Transport Corporation. Not satisfied with the award passed by the Claims Tribunal, the claimants have filed the above appeal for enhancement of compensation.

7. The learned counsel for the appellants submitted that the Tribunal erred in assessing the income of the deceased at Rs.6,000/- per month only. According to the counsel, even in the absence of any evidence



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to prove the income of the deceased, the Tribunal ought to have fixed reasonable sum as notional income. The counsel submitted that the Tribunal erred in awarding Rs.1,00,000/- towards “loss of love and affection” to the claimants 2 to 4. The counsel submitted that the widow of the deceased was entitled to Rs.40,000/- towards “loss of consortium”. The learned counsel fairly submitted that the award of the Tribunal towards the heads “Transport” and “Funeral Expenses” needed to be reduced in view of the judgment of the Hon'ble Supreme Court in *Pranayasethi's case*.

8. The learned counsel for the respondent 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 both the learned counsels and perused the materials placed on record.

10. According to the claimants, the deceased was aged about 52 years at the time of accident, was working as powerloom weaver and



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earning a sum of Rs.25,000/- per month. Exs.P1 to Ex.P8 were marked by the claimants in support of their claim. From Ex.P8 it is seen that the deceased was a member of the VEDIYARASAMPALAYAM Powerloom Weaver Co-operative Sangam and was a supplier of Clothes to the Co-operative Sangam. The Tribunal rejected the Ex.P8 on several grounds and the rejection of Ex.P8 is justified. The Tribunal having rejected as Ex.P8 assessed the notional income at Rs.6,000/- only. In my view the assessment of the notional income at Rs.6,000/- is not justified.

11. Considering that the accident took place in the year 2015, that the deceased was maintaining a family of four members, and also considering the costs index for the year 2015, I am of the considered view that the notional income of the deceased can be safely fixed at Rs.12,000/- per month. As the deceased was aged about 52 years at the time of accident 10% of the income is taken towards “future prospects”. 1/3 is deducted towards “personal expenses” and the multiplier 11 appropriate to the age of the deceased is adopted.



12. Therefore, the “loss of income” is assessed at Rs.11,61,600/-.

It is seen that the claimants were awarded Rs.1,00,000/- towards “loss of love and affection”. In my view, each of the claimants would be entitled to Rs.40,000/- towards “loss of consortium”. The award of the Tribunal towards “transport charges” and “funeral expenses” fixed by the Tribunal is found to be on the higher side. Following the judgment in *Pranayasethi's case* the same is reduced to Rs.15,000- towards each head.

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 (Rs.)</i>	<i>Award of this Court (Rs.)</i>
1.	Loss of Income	5,28,000	11,61,600
2.	Medical Expenses	6,04,956	6,04,956
3.	Loss of Love and Affection	1,00,000	1,20,000
4.	Loss of Consortium	30,000	40,000
5.	Transport Expenses	25,000	15,000
6.	Funeral Expenses	25,000	15,000
	Total	13,12,956	19,56,556

Loss of Income:

= Rs.12,000/- x Rs.1,200/- [10% personal expenses]

= Rs.13,200/- x 12 x 11 x 2/3 = Rs.11,61,600/-



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14. The claimants are entitled to enhanced compensation of Rs.19,56,556/- along with 7.5% interest from the date of the claim petition till the date of deposit. The respondent/Transport Corporation is directed to deposit the enhanced amount of Rs.19,56,556/- along with 7.5% interest, less the amount, if any, already deposited.

15. It is submitted by the learned counsel for the appellants that there was a delay of 948 days in filing the appeal, and the said delay was condoned without any condition. The claimants will be entitled to interest for the delay period of 948 days. The claimants are permitted to withdraw the compensation amount to be deposited by the Transport Corporation as per the apportionment and directions issued by the Claims Tribunal by making appropriate application before the Tribunal.

16. Accordingly, the appeal is partly allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

27.06.2023

Speaking Order :Yes/No
Neutral Citation:Yes/No
MSM



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To

1.The Additional District and Special Court,
Motor Accidents Claims Tribunal, Salem.

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



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N.MALA.J.,

MSM

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