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C.M.A.No.486 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.07.2023**

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.486 of 2022

1.S.Kaladevi

2.P.Shanmugam

3.Kullammal

... Appellants

Vs

The Managing Director,

Tamil Nadu State Transport Corporation Ltd,

Kancheepuram Region,

Kancheepuram - 631 501.

... Respondent

PRAYER:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.4275 of 2018 dated 09.11.2021 on the file of Motor Accident Claims Tribunal / 1 Additional District and Sessions Judge, Cuddalore.

For Appellants : Ms.Ramya V.Rao

For the Respondent : Mr.S.S.Santhosakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the parents and the wife of the deceased, who are the claimants, challenging the judgment and



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decree in M.C.O.P.No.4275 of 2018 dated 09.11.2021 on the file of Motor Accident Claims Tribunal / I Additional District and Sessions Judge, Cuddalore, seeking enhancement of the compensation awarded by the Tribunal.

2. The appellants are the claimants in M.C.O.P.No.4275 of 2018 on the file of the Motor Accident Claims Tribunal / I Additional District and Sessions Judge, Cuddalore. They filed the Claim Petition claiming a sum of Rs.50,00,000/- as compensation for the death of Senthilkumar, in the accident that took place on 14.06.2018.

3. According to the appellants, on 14.06.2018, at about 17.00 hrs, while the deceased was standing near Tea shop, the driver of the respondent/Transport Corporation bearing Registration No.TN-21-N-1086 had driven the bus in a rash and negligent manner and hit against the deceased; that due to the impact, the deceased sustained fatal injuries. The claimants, therefore, filed a Claim Petition claiming a sum of Rs.50,00,000/- as compensation.



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4. The respondent/Transport Corporation filed a counter denying all the averments made in the Claim Petition that the driver of the respondent/Transport Corporation was rash and negligent at the time of accident. The driver had followed the traffic Rules and drove the bus in the right direction. The deceased had negligently crossed the road without seeing the bus approaching him. Therefore, the respondent/Transport Corporation is not liable to pay compensation.

5. Before the Tribunal, the claimants examined PW1 and PW2 and marked Exs. P1 to P11. On the side of the respondent/Transport Corporation, neither oral nor documentary evidence was adduced.

6. The Tribunal after considering the oral and documentary evidence, held that the accident occurred due to the rash and negligent act of the driver of the respondent/Transport Corporation and awarded the compensation of Rs.17,18,300/-. The Tribunal directed that the 1st appellant



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would be entitled to a sum of Rs.10,68,300/- and the 2nd and 3rd appellants would be entitled to a sum of Rs.3,25,000/- each.

7. The learned counsel for the appellants submitted that the Tribunal ought to have considered the fact that the deceased had a Diploma in Mechanical Engineering and was also pursuing B.E. The learned counsel further submitted that the deceased was working in a Private Company and also doing agricultural business and earning a sum of Rs.50,000/- per month. The Tribunal had erroneously taken the notional income as Rs.9,000/- which is very meagre and considering the fact that the accident was of the year 2018, the Tribunal ought to have taken a higher notional income. The learned counsel relied upon the orders passed by this Court in C.M.A.No.1635 of 2020, dated 09.02.2023 and C.M.A.No.1258 of 2021, dated 17.04.2021 in support of her contention. The learned counsel further submitted that the compensation under the head “Loss of love and affection” awarded by the Tribunal at Rs.10,000/- each is erroneous. The Tribunal ought to have awarded a sum of Rs.40,000/- each to the 2nd and 3rd



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appellants and hence, prayed for enhancement the compensation under the head of “loss of love and affection”. The learned counsel further submitted that the compensation under the head “Loss of Estate” has to be taken at Rs.15,000/- which has been omitted by the Tribunal and hence, the learned counsel prayed for enhancement of the same.

8. Per contra, the learned counsel for the respondent/Transport Corporation submitted that the claimants have not produced documents to substantiate the income of the deceased; that in the absence of any evidence the notional income taken by the Tribunal at Rs.9,000/- was just, fair and reasonable and need not be interfered with; and that the compensation under the head “transport expenses” is not justified as the claimants have not produced any proof to claim compensation under that head.

9. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent/Transport Corporation and perused all the materials available on record.



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10. This Court finds that admittedly the deceased had a Diploma in Mechanical Engineering. It is also an admitted fact that the appellants have not produced any proof for the income earned by the deceased. It is seen that the accident had taken place in the year, 2018. Having regard to the fact that the deceased was holding a Diploma in Mechanical Engineering and the year of the accident, this Court is of the view that the notional income of the deceased fixed by the Tribunal at Rs.9,000/- is meagre. In C.M.A.Nos.2210 and 2218 of 2021, dated 13.06.2023, this Court had fixed the notional income at Rs.15,000/- per month for the accident that took place in the year 2018 for a person working as a Tailor Cum Appalam maker. For better appreciation, the relevant portion of the said judgment is extracted hereunder:-

"10.Point No.(ii) Now coming to the notional income, in the absence of any proof, it can be seen that the evidence of the claimants is that the deceased Jamuna was working as a Tailor Cum Apalam maker. Similarly, the deceased Kamalesh was the first year



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B.C.A. student in a private College in Chennai. Under these circumstances, the Division Bench of this Court in Managing Director, Tamil Nadu State Transport Corporation Vs. Neela and another (CDJ 2019 MHC 3304) (cited supra) has categorically laid down that considering the vagaries of the employment and the prevailing circumstances as of the year 2018, a sum of Rs.10,000/- is too low and the notional income of Rs.15,000/- per month will be appropriate.”

11. In the instant case, this Court is of the view that considering the fact that the deceased was a Diploma Holder, his age and the fact that the accident is of the year 2018, a notional income of Rs.15,000/- would be just, fair and reasonable. The deceased was aged about 33 years at the time of accident. Hence, the “future prospects” has to be taken at 40% as per the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680***. Since, the deceased was survived by his wife and parents, 1/3rd of his monthly income has to be deducted towards “personal expenses”. Therefore, the monthly income of the deceased after considering the “future prospects” and



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deduction would come to Rs.15,000/- + Rs.6,000/- = Rs.21,000/- (-) Rs.7,000/- (1/3 deducted towards personal expenses) = Rs.14,000/-. Since, the deceased was aged about 33 years, multiplier of 16 has to be applied in this case as per the *Sarla Verma's case* (cited supra). Hence, the compensation under the head "Loss of income" has to be fixed at Rs.14,000/-x12x16= Rs.26,88,000/-.

12. The compensation under the head "Loss of love and affection" is enhanced from Rs.30,000/- to Rs.80,000/- at the rate of Rs.40,000/- each to the 2nd and 3rd appellants. The compensation under the head of "Transport expenses" is erroneous and hence, the same is set aside. On perusal of the records, it reveals that the Tribunal has not awarded any compensation under the head "Loss of Estate" and therefore, the claimants are entitled to a sum of Rs.15,000/-. "Loss of consortium" to the first claimant is reduced from Rs.44,000/- to Rs.40,000/- and the compensation under the head "Funeral expenses" is reduced from Rs.16,500/- to Rs.15,000/- Thus, the compensation awarded by the Tribunal is modified as follows:-



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Sl.No.	Description	Amount awarded by the Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	16,12,800	26,88,000	enhanced
2.	Loss of Consortium (10% enhanced)	44,000	40,000	reduced
3.	Loss of love and affection	30,000	80,000	enhanced
4.	Transport Expenses	15,000	---	---
5.	Funeral Expenses (10% enhanced)	16,500	15,000	reduced
6.	Loss of Estate	--	15,000	Awarded
	Total	17,18,300	28,38,000	11,19,700

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,18,300/- is hereby enhanced to Rs.28,38,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. Out of total amount awarded a sum of Rs.28,38,000/-, the 1st appellant being the wife of the deceased is entitled to



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a sum of Rs.16,00,000/-, and the 2nd and 3rd appellants being the father and mother of deceased are entitled to a sum of Rs.6,19,000/- each as compensation. The respondent/Transport Corporation is directed to deposit the modified award amount along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs.

04.07.2023

Index : Yes/ No
Speaking order: Yes/ No
Neutral Citation: Yes/ No
GBA

To
1.The Motor Accident Claims Tribunal /
I Additional District & Sessions Judge, Cuddalore.

2.The Section Officer
VR Section, High Court of Madras, Chennai – 600 104

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SUNDER MOHAN,J.

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